Review of grants administration in NSW

Final report

April 2022

NSW GOVERNMENT

Acknowledgement of Country

The Department of Premier and Cabinet and the NSW Productivity Commissioner acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas, and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes.

Artwork: 'Regeneration' by Josie Rose

Commissioner's preface

It has been a real privilege for me to be involved in this review of NSW grants administration. Grants are integral to helping improve the wellbeing of all NSW citizens.

Of course, grants also involve the use of public resources, making it vital that they are administered fairly and efficiently.

The Premier requested that the Department of Premier and Cabinet and the NSW Productivity Commissioner review the administration of NSW Government grants. Consultation is fundamental to the Commission's work, and I would like to express my gratitude to all who have provided feedback.

The NSW community rightly expects that grants deliver public value and adhere to the highest standards of integrity. This requires:

- transparency: decisions are trusted and open to public scrutiny

- accountability: decision makers 'own' their decisions

- fairness: everyone is given a fair go

- customer focus: processes do not create unnecessary red tape.

The Review's recommendations will help to achieve this and support public confidence in NSW Government grants administration.

PETER ACHTERSTRAAT AM
NSW Productivity Commissioner

Secretary's preface

The Department of Premier and Cabinet was delighted to be asked by the Premier to work with the NSW Productivity Commissioner to review the administration of NSW Government grants.

Trust is the greatest asset of public services. And like most things that are precious, it is hard to accumulate and easy to lose.

Grants are an important means of distributing public money to achieve benefits for the community. They should be managed transparently and in the public interest for the common good.

We hope the recommendations from this review will strengthen the administration of grants and increase trust that grants serve a public purpose.

I would like to record my thanks to the staff of my Department, and of Treasury, who supported the work of this review.

MICHAEL COUTTS-TROTTER
Secretary
NSW Department of Premier and Cabinet

Contents

Abbreviations and terms

Acronym	Definition
BCR	Benefit-Cost Ratio
CBA	Cost-Benefit Analysis
DCS	Department of Customer Service
DPC	Department of Premier and Cabinet
ERC	Expenditure Review Committee of Cabinet
GIPA Act	*Government Information (Public Access) Act 2009* (NSW)
GSA Act	*Government Sector Audit Act 1983* (NSW)
GSE Act	*Government Sector Employment Act 2013* (NSW)
GSF Act	*Government Sector Finance Act 2018* (NSW)
HR	Human Resources
ICAC	Independent Commission Against Corruption
ICAC Act	*Independent Commission Against Corruption Act 1988* (NSW)
IT	Information Technology
LGA	Local Government Area
MP	Member of Parliament
NPV	Net Present Value
NSW PC	New South Wales Productivity Commission
PAC	Public Accountability Committee of NSW Parliament
PGPA Act	*Public Governance, Performance and Accountability Act 2013* (Cth)
PID Act	*Public Interest Disclosures Act 1994* (NSW)
PPIP Act	*Privacy and Personal Information Protection Act 1998* (NSW)
SARA	State Archives and Records Authority
SOCs	State Owned Corporations
SR Act	*State Records Act 1998* (NSW)
UK	United Kingdom

Term	Definition
Agency	Means a government sector agency under the *Government Sector Employment Act 2013* (NSW)
Assessment criteria	The criteria used to assess the merits of an application against a benchmark and, in the case of a competitive grant, to determine the rankings of applications
Assessment team	The person or persons responsible for assessing individual grants against the grant guidelines
Eligibility criteria	The fixed criteria which must be met to qualify for a grant. Assessment criteria may apply in addition to eligibility criteria
Grants administration	Refers to the processes that an agency puts in place to deliver grants. It includes: planning and design; promotion; assessment and decision-making; the making of a grant; the management of grant agreements; the ongoing relationship with grantees; reporting; and review and evaluation
Grant lifecycle	Refers to the stages of grants administration, from planning and design to evaluation
Grant guidelines	Refers to a document containing the relevant information required for potential grantees to understand: the purpose, outcomes, and objectives of a grant; the application and assessment process; the governance arrangements (including roles and responsibilities); and the operation of the grant
Grantee	Means the individual or organisation selected to receive a grant
Officials	Means persons employed in the government sector under the *Government Sector Employment Act 2013* (NSW), excluding employees of State Owned Corporations
Ministerial staff	Means persons employed under the *Members of Parliament Staff Act 2013* (NSW) by Ministers as a member of their staff
Selection criteria	Comprise eligibility criteria **and** assessment criteria
Assessment process	Is the method used to select potential grantees. This process may involve comparative assessment of applications or the assessment of applications against the eligibility criteria and/or the assessment criteria

Executive Summary

The NSW Government uses grants to achieve government objectives by supporting individuals and organisations to deliver outcomes for the NSW community.

Led by the Department of Premier and Cabinet (**DPC**) in partnership with the NSW Productivity Commissioner, Peter Achterstraat AM, the Review of Grants Administration in NSW (**the Review**) was tasked with delivering an updated *Good Practice Guide to Grants Administration* (**the draft Guide**) and recommendations to the Premier, the Hon. Dominic Perrottet MP to ensure that NSW Government grants:

- deliver value for public money in achieving their stated purpose or purposes
- are robust in their planning and design
- adopt key principles of transparency, accountability, and probity
- deliver a high-quality customer experience.

The Review makes 19 recommendations to bring grants administration into line with best practice. In addition to feedback from 26 stakeholder groups, the Review considered grants administration guidelines from comparable jurisdictions, best practice risk assessment and assurance frameworks, and the existing NSW policy and legislative context.

The recommendations, outlined in full below, include:

An updated Grants Administration Guide. The draft Guide provides principles-based guidance and includes mandatory requirements for officials, Ministers, and ministerial staff. The Review recommends that the Guide be issued as a Premier's Memorandum and that compliance with the Guide is a legislative requirement. Among other things, the draft Guide provides robust decision-making frameworks to ensure the accountability of those involved in grants administration. The Guide's implementation will foster a culture of 'ownership' that is important for the integrity of grants processes.

Enhanced probity requirements. To ensure compliance with the draft Guide, the Review recommends agencies identify and task relevant officials within the organisation with providing support and advice to grant administrators on the design and implementation of grants. For all complex, high risk, or high value grant programs, officials should be required to seek probity advice. After implementation, agencies' internal audit programs should provide for regular audits of compliance with the Guide.

A Community of Practice. The Review recommends bringing together officials experienced in grants administration to support the development of skills and expertise across government. The Community of Practice will promote compliance with the Guide and improve the professionalism of grants administration. This group should also work to improve the coordination of the many grants with similar objectives or that target the same stakeholders.

A whole-of-government website that makes up-to-date information on grants available to the public. Transparency supports ethical and fair decision-making and ensures accountability. Transparency is key to building public confidence in grants processes and expenditure. The Review recommends that agencies be required to publish end-to-end information on all grant programs, including open and upcoming opportunities, details of grants awarded, the use of ministerial discretion, and program evaluations.

These recommended measures provide safeguards against poor governance and improper process. Importantly, they do not sideline elected representatives from grants administration. Rather, they ensure that ministerial decisions are accompanied by clear, detailed, and timely reasons that are open to public and parliamentary scrutiny. The public can then make a well-informed judgement about whether these decisions are consistent with the public interest and provide value for money.

Figure 1: Elements of transparent and accountable grants administration

1 Planning and design
Develop selection criteria, the assessment process and grant guidelines based on program objectives and risks

2 Promotion
Grant details are released publicly unless the Minister approves an exception

3 Assessment and decision making
Applications are assessed against the public selection criteria, decisions are documented with reasons, including any variations to assessor recommendations

4 Grant award
Grants are awarded and decisions are publicly reported after the grant agreement takes effect

5 Grant management
Officials monitor grants to assess progress and confirm projects remain on track

6 Reporting and acquittal
Grant agencies have customer-focussed processes for reporting and acquittal

7 Review and evaluation of outcomes
Officials undertake grant program evaluations proportionate to the value, risk and significance to Government objectives

A best practice grants process

Recommendations

A new *Grants Administration Guide*

Principles-based guidance with mandatory requirements

Recommendation 1	Issue the draft *Grants Administration Guide* at **Appendix A**, which:
	• provides guidance based on the principles set out in the *Commonwealth Grants Rules and Guidelines* (2017) and reflects the government sector core values of integrity, trust, service, and accountability
	• includes mandatory requirements for officials, Ministers, and ministerial staff.

Compliance through legislative amendment and capability building

Recommendation 2	Issue the draft *Grants Administration Guide* at **Appendix A** under a Premier's Memorandum, which is binding on officials, Ministers, and ministerial staff and can be readily updated in line with evolving best practice.
Recommendation 3	Make compliance with the draft *Grants Administration Guide* at **Appendix A** a legislative requirement.
Recommendation 4	Develop grants administration skills and expertise among officials by establishing a cross-agency "community of practice", convened by the Department of Premier and Cabinet and responsible for: • developing resources to support compliance with the draft *Grants Administration Guide*, including templates and training materials for officials administering grants • exploring opportunities for collaboration across government to improve the timing and coordination of grant opportunities, particularly where multiple grants target the same stakeholders.

Accountability and transparency

Responsibilities identified and documented in the planning and design phase

Recommendation 5	When establishing a new grant, officials must identify and document roles and responsibilities, including who is responsible for assessing applications and making recommendations and who is the designated decision maker.

Open and transparent application and assessment processes

Recommendation 6	Officials must ensure all new grants have published guidelines that: include the purpose of the grant, clear selection criteria, and details of the application and assessment process; and are approved by the responsible Minister(s) or delegate.
Recommendation 7	Where a method other than a competitive, merit-based selection process is planned to be used, officials must document the reasons why a different approach has been chosen and outline the risk mitigation strategies. This must be approved by the responsible Minister or delegate.
Recommendation 8	Officials must assess all grant applications against the published selection criteria. Where significant changes are made to the grant opportunity, the guidelines must be amended and re-published as soon as possible. In limited circumstances eligibility criteria may be waived. The reasons for any departure from the published eligibility criteria must be documented and approved by the decision maker.
Recommendation 9	Ministers and Members of Parliament can make suggestions for grant funding in their electorates. Officials should, however, document: • the input from Ministers and Members of Parliament at all stages of the process • how any input from Ministers and Members of Parliament during the assessment phase was considered in formulating funding recommendations.
Recommendation 10	Where the decision maker is a Minister, officials must provide written advice that includes, at a minimum: • grantees recommended for funding based on selection criteria • the merits of the proposed grant(s), having regard to the grant guidelines and the key principle of achieving value for money • proposed funding amounts for each recommended grantee • details of the application and assessment process applied • any relevant input from key stakeholders, including ministerial staff, the responsible Minister, and other Ministers or Members of Parliament.

Robust decision-making and record keeping frameworks

Recommendation 11	Grants administration processes must involve robust decision-making frameworks for Ministers and officials, including that: • where there is an assessment team making recommendations to a decision-maker, those recommendations should be made in writing • a Minister must not approve or decline a grant without first receiving written advice from the assessment team on the merits of the grant • a Minister, or delegated official, who approves a grant must record the decision in writing, including the basis for the approval with regard to the grant guidelines and achieving value for money • where a Minister, or delegated official, makes a decision that departs from the recommendations of the assessment team, they must record the reasons for the departure.
Recommendation 12	As reflected in the draft *Grants Administration Guide* at **Appendix A**, guidance on grants administration should emphasise all parties' obligations under the *State Records Act 1998* (NSW), especially those of Ministers and ministerial staff to ensure decisions and actions of Ministers are properly recorded and stored.

Comprehensive grants information on a central, publicly accessible website

Recommendation 13	Develop a whole-of-government database that includes up-to-date information on: • upcoming grant opportunities • all open grant opportunities and their guidelines • all grants awarded • a record of ministerial grant award decisions that vary from the recommendations of officials, and the reasons for the decisions • grant program evaluations. This grants information must be made publicly available on a central website, subject to legal and policy exceptions outlined in the draft *Grants Administration Guide*. Until a central website can display this information, it should be published on agency websites.

Grantees are accountable for how they spend public funds

Recommendation 14	All grants must have a funding agreement or, where not practicable, formalised terms and conditions. Where grants have an acquittal process, officials should assess grantee compliance with the terms of the funding as part of this process.

Value for money and outcomes orientation

Efficient and customer-focused grants processes

Recommendation 15	As reflected in the draft *Grants Administration Guide* at **Appendix A**, guidance on grants administration should make clear that application, reporting and acquittal requirements must be proportionate to the value and risk of the grant, and the applicant's capability.

Reinforce existing NSW expenditure appraisal and evaluation policies

Recommendation 16	Grants should be designed with clear and specific objectives, including connection to identified needs, agency outcomes and government priorities. Officials should identify the outcomes and program measures to be used to evaluate the program against these objectives, consistent with existing policy requirements.
Recommendation 17	Officials must demonstrate at the planning and design stage how a grant program will deliver value for money by identifying benefits and costs (economic, social, environmental, and cultural). Value for money assessment should be proportional to the value and risk of the grant.

Probity and governance

Leverage agencies' existing risk management requirements and practices

Recommendation 18	Ensure best-practice grants processes, in line with agencies' risk management frameworks and requirements under the *Government Sector Finance Act 2018* (NSW), by requiring: - officials to establish processes to identify and manage risks throughout the grant lifecycle, including preparation of a risk appetite statement for all medium-to high-risk grants for approval along with the grant guidelines - agencies to identify and task their appropriate risk management officials with providing advice and support to officials who are planning, designing, and implementing grants - officials to seek probity advice (whether external or internal) for all grant programs that are complex, high risk or high value, to support the design, application, assessment, and decision-making phases - Chief Audit Executives to ensure their agency's internal audit program includes regular audits of grant programs to monitor and assess compliance with the Guide. The frequency of audits should be proportionate to the value and risk of grants activity undertaken by the agency.

Implement fraud risk controls

Recommendation 19	When administering grants, officials must develop and implement fraud controls that are proportionate to the value and risk of the grant and consistent with NSW public sector risk management requirements.

1. Introduction

Grants are a key mechanism for achieving government objectives; they support individuals and organisations in delivering outcomes for the NSW community. The NSW Government typically spends around $4 billion per annum on grants to invest in community programs, projects, and infrastructure; provide targeted business and industry support; and fund research and development activities. In recent years, additional grants worth several billion dollars have been made available to support individuals and businesses affected by the COVID-19 pandemic, natural disasters, and drought.

The varied nature and scale of NSW Government grants creates challenges to ensuring best practice grants administration. Community expectations for timely and easy access to financial support must be balanced against requirements for accountability, probity, and transparency.

The Review puts forward 19 recommendations to ensure the administration of NSW Government grants maximises public confidence and value for taxpayers' money. In doing so, the Review considered best practice approaches and feedback provided by stakeholders.

1.1 Purpose of this Review

In November 2021 the NSW Premier, the Hon. Dominic Perrottet MP, announced a Review of Grants Administration in NSW. The purpose of the Review is to deliver value for money for the taxpayer by ensuring that the administration, assessment, and assurance of grants is in line with best practice.

DPC in partnership with the NSW Productivity Commissioner, Peter Achterstraat AM, was tasked with delivering to the Premier the draft Guide at **Appendix A** and any recommendations arising from the Review.

In line with its Terms of Reference (**Appendix B**), the Review aims to ensure that NSW Government grants:

- deliver value for public money in achieving their stated purpose or purposes
- are robust in their planning and design

- adopt key principles of transparency, accountability, and probity
- deliver a high-quality customer experience.

1.2 Our approach to this Review

DPC and the NSW Productivity Commissioner have considered:

- grants administration guidelines from other jurisdictions identified as best practice
- recommendations made by parliamentary, integrity, and oversight bodies, including the Public Accountability Committee of NSW Parliament (the PAC), the NSW Auditor-General, and the Independent Commission Against Corruption (the ICAC)
- best practice risk assessment and assurance frameworks for grants administration
- the existing NSW policy and legislative context.

1.3 Consultation

DPC and the NSW Productivity Commissioner engaged in an extensive consultation process with stakeholders involved in grants administration (see Table 1). The Review also closely considered the submissions and evidence presented to the PAC Inquiry into the *Integrity, efficacy and value for money of NSW Government grant programs,* and performance audits of grants by the NSW Auditor-General, including the recent report on *Integrity of grant program administration.*

Table 1: Stakeholder consultation

Stakeholders	Areas of focus
NSW Government	
- Infrastructure NSW - Department of Regional NSW - Department of Communities and Justice - Department of Customer Service - Department of Education - Department of Enterprise Investment and Trade - Ministry of Health - Department of Planning and Environment - Office of Local Government - Office of Sport - Treasury - Resilience NSW - Service NSW - Transport for NSW	Perspectives from NSW Government departments and agencies who administer grants, including best practice approaches, practical challenges, and opportunities for improvement. Alignment with principles and appraisal requirements for public spending, including grants.
Commonwealth Government	
- Department of Finance - Department of Industry, Science, Energy and Resources - Department of Social Services - Department of Infrastructure, Transport, Regional Development and Communications - Infrastructure Australia	Commonwealth perspectives on grants administration processes, including best practice approaches, practical challenges, central oversight, and information release.
Parliamentary, integrity and oversight bodies	
- Independent Commission Against Corruption - Audit Office of NSW	Parliamentary, integrity, and oversight body perspectives on best practice approaches to probity, accountability, and transparency.

• Australian National Audit Office • Public Accountability Committee	

Peak bodies

• Local Government NSW • Business NSW • NSW Council of Social Service	Grant applicant and grantee perspectives on fit-for-purpose and customer-focused administration processes.

2. About grants administration in NSW

Grants administration in NSW is guided by the current *Good Practice Guide to Grants Administration* (the **current Good Practice Guide**) and occurs in the context of a broader integrity framework as well as legislative and policy requirements that govern public expenditure and set ethical standards of behaviour.

2.1 Grants expenditure

The NSW Government typically spends around $4 billion per annum on financial arrangements that meet the Review's definition of a 'grant' (see **Section 3.2**). Grant values for individual projects range from a few hundred dollars for individuals or small community organisations up to multimillion-dollar funding to support local councils, not-for-profits, and research and development activities.

In recent years, grants funding has increased significantly – to around $10 billion per annum – to provide temporary support to individuals, businesses and communities affected by the COVID-19 pandemic, natural disasters, and drought.

There is currently no publicly accessible, whole-of-government database of grants expenditure in NSW. To assess the transparency of grants expenditure, the NSW Productivity Commission (**NSW PC**) conducted an exercise to determine what information on grant funding could be gathered using publicly available sources. The NSW PC reviewed the community grants recorded in the latest annual reports of 10 NSW Government agencies, including the Departments of Communities & Justice, Education, Health, Premier & Cabinet, Treasury, Regional NSW, Planning & Environment, Sport, Customer Service, and Investment NSW. The NSW PC also considered grants established in recent years to provide temporary support to businesses, individuals and communities affected by the COVID-19 pandemic and natural disasters. Many of these grants are reported on the Service NSW performance dashboard.

In principle, the figures compiled in this exercise should represent a lower bound on the value of grant expenditure in NSW. Annual reports only capture community grants, and therefore important grants categories, such as some business and local government grants, are excluded. In practice,

however, it was not possible to definitively determine even a lower bound on grants expenditure in NSW from publicly available information.

In part, this is because agencies' annual reports are compiled using the accounting definition of a grant, which can include other types of government expenditure, rather than the definition used in this Review (see **Section 3.2**). An example is the Department of Communities & Justice's 'Children and Families Thrive' program, which was worth $1.4 billion in 2020-21. This program does not meet the definition of a grant used in this Review; instead, it is better understood as 'commissioning', in which non-government organisations are funded to deliver services for the government. A further complication is that it is not always clear from public sources whether grant values include contributions from co-funders, such as the Commonwealth Government.

A detailed discussion of published grants data and recommendations to improve transparency is provided in **Section 4.9**.

2.2 Legislative and policy context

The current Good Practice Guide provides guidance on grants administration in NSW. The Guide is issued under DPC Circular C2010-16 *Good Practice Grants Administration.* Agencies and their employees are required to comply with the Circular. The current Good Practice Guide does not operate in isolation; it operates within legislative and policy frameworks that govern public expenditure and guide the ethical behaviour of officials and Ministers.[1]

2.2.1 Legislative requirements for grants administration

While there is no legislation directed specifically at grants administration, various legislative requirements and instruments establish relevant controls and principles (see **Table 1**). These frameworks set the accountability, integrity, and transparency standards for the distribution of public money, including through grants.

Table 1: Legislative requirements and instruments

	Instrument	Description	Relevance to grants administration
Officials Ministers	*Government Sector Finance Act 2018* (NSW) (**GSF Act**)	Establishes a framework for the financial management and administration of the NSW Government Sector, with a focus on transparency, accountability, and the efficient, effective, and economical use and management of government resources.	Sets out principles regarding the expenditure of money as well as financial management. Requires that the expenditure of money be 'authorised', namely, with lawful authority and in accordance with any delegation,[2] and that officials are to be guided by the values of accountability, integrity and transparency and associated principles when managing public money.[3]
Officials	*Government Sector Employment Act 2013* (NSW) (**GSE Act**)	Provides the framework for employment and workforce management of the NSW Government Sector.	Part 2 of the Act establishes the Ethical Framework for the NSW Government Sector, setting the standards of performance and behaviour expected of all employees. The Ethical Framework identifies the role of the Government Sector, including to implement the decisions of the government of the day, to preserve the public interest and defend public value.[4] The Ethical Framework also prescribes the core values of integrity, trust, service, and accountability, and sets

[1] Persons employed in the NSW Government Sector.
[2] *GSF Act.* section 5.5.
[3] *GSF Act.* section 3.7.
[4] *GSE Act. Part 2.* section 6.

	Instrument	Description	Relevance to grants administration
			out the principles of expected behaviour of Government Sector employees including: acting professionally with honesty, consistency and impartiality; placing the public interest over personal interest; providing transparency to enable public scrutiny; and being fiscally responsible and focusing on efficient, effective and prudent use of resources.[5]
Officials Ministers Ministerial staff	*State Records Act 1998 (NSW)* (**SR Act**)	Regulates records management across the public service and Ministerial offices.	Supports transparency in decision-making and record-keeping and provides for penalties for offences in relation to state records. Under section 12, public offices (including agencies and Ministerial offices) have an obligation to keep full and accurate records of the office. It is an offence under section 21 to, among other things, abandon, dispose of, damage, or alter a state record.
Officials Ministers Ministerial staff	*Government Information (Public Access) Act 2009* (**GIPA Act**)	Encourages the proactive release of government information and gives members of the public an enforceable right to access government information.	The Act provides that the purpose of these measures is 'to maintain and advance a system of responsible and representative democratic government that is open, accountable, fair and effective' (section 3). Members of the public can access information about grants, grants administration, and decisions by making an application for access to information under the GIPA Act to an agency (which includes ministerial offices). Access to government information will only be restricted if there is an overriding public interest against disclosure.

2.2.2 Integrity framework in NSW

Grants administration in NSW is carried out within the broader integrity framework. Various integrity bodies are empowered to investigate and make findings and recommendations in relation to the workings of government and the conduct of Ministers and officials (see **Table 2**).

There are also various statutory and common law offences that may apply in the event of misconduct in grants administration. Misconduct in public office, for example, is a common law offence in NSW. It includes conduct such as nepotism, favouritism, wilful neglect of duty, and use of information gained in public office for a private benefit.[6]

Table 2: Integrity framework

Name of Act or document	Description
Independent Commission Against Corruption Act 1988 (NSW) (**ICAC Act**)	Establishes the ICAC as an independent and accountable body to investigate, expose and prevent corruption involving or affecting public authorities and

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[5] *GSE Act . Part 2.* section 7.
[6] *R v Quach* [2010] VSCA 106 at [18], *R v Dytham* [1979] QB 722 and *Obeid v R* [2015] NSWCCA 309.

Name of Act or document	Description
	public officials, and to educate about corruption.[7] The ICAC's jurisdiction extends to all NSW public sector agencies.[8] This includes government agencies, local councils, Members of Parliament (**MPs**), Ministers, and persons employed under the *Members of Parliament Staff Act 2013.* While it can take many forms, corrupt conduct includes conduct involving a breach of public trust and conduct affecting the honest or impartial exercise of official functions, or conduct involving the dishonest or partial exercise of official functions.[9] The ICAC may make a finding that an individual has engaged in serious corrupt conduct[10] and may make recommendations to eliminate or reduce the likelihood of corrupt conduct and to promote the integrity and reputation of public administration.[11]
NSW Ministerial Code of Conduct[12] (Ministerial Code)	Establishes the standards of ethical behaviour required of Ministers. The Ministerial Code is prescribed by the *Independent Commission Against Corruption Regulation 2017* (**ICAC Regulation**) for the purposes of section 9 of the ICAC Act, meaning that a substantial breach of the Ministerial Code could amount to corrupt conduct under the ICAC Act. Among other things, the Code imposes requirements with respect to disclosures of interests, management of conflicts of interest, and acting honestly and in the public interest.
Government Sector Audit Act 1983 (NSW) (GSA Act)	Provides the Auditor-General with oversight functions, which can be exercised with respect to grants administration in NSW. In particular, the Auditor-General may carry out performance audits to determine whether public money is spent efficiently, economically, and in compliance with the law.[13] Special audits may be requested by the Treasurer, Ministers, or Parliament to audit agencies' compliance with specific legislation, directions, and regulations.[14] The Auditor-General may also investigate complaints of a serious and substantial waste of government money.[15] In exercising his or her functions, the Auditor-General may have regard to whether there has been any waste of public resources, or any lack of probity or financial prudence in the management or application of public resources.[16]
Ombudsman Act 1974 (NSW) (Ombudsman Act)	Establishes the Ombudsman who has the power to investigate complaints about the conduct of a public authority (which includes agencies, officials, and ministerial staff), including complaints about alleged maladministration. Ministers and MPs are excluded.[17] The Ombudsman may carry out an investigation into the conduct[18] and make recommendations for corrective action and systemic improvements.[19] The Ombudsman may form the opinion that a public authority is, or may be, guilty of serious misconduct.[20]
• *Public Interest Disclosures Act 1994* (NSW) (PID Act)	Sets out the procedures for making public interest disclosures (**PIDs**) and for PIDs to be investigated and dealt with. The PID Act protects public officials from reprisals related to PIDs. Disclosures may include information concerning maladministration, corrupt conduct, or serious and substantial waste.
NSW Office Holder's Staff Code of Conduct (Attachment B to the Ministers' Office Handbook)	Sets out the standards that Office Holder staff are expected to meet in the performance of their duties. The Code requires that all Office Holder staff behave honestly and with integrity and not knowingly encourage or induce a public official to breach the law, Parliamentary obligations, or duties under an applicable code of conduct.

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[7] ICAC Act. section 2A.
[8] Except NSW Police who are subject to their own independent oversight body, the Law Enforcement Conduct Commission.
[9] ICAC Act. section 8(1).
[10] ICAC Act. section 74B.
[11] ICAC Act. section 13(1).
[12] ICAC Regulation. Appendix.
[13] GSA Act. section 38B.
[14] GSA Act. section 27B(3).
[15] GSA Act. section 52D.
[16] GSA Act. section 27B(5).
[17] Ombudsman Act. Schedule 1.
[18] Ombudsman Act. section 13.
[19] Ombudsman Act. section 26(2).
[20] Ombudsman Act. section 28.

Name of Act or document	Description
	In respect of the staff of Government Office Holders, the Code requires that staff: • acknowledge that staff do not have the power to direct public servants in their own right and that public servants are not subject to their direction • recognise that executive decisions are the preserve of Ministers or lawfully authorised government officials, and not staff acting in their own right • comply with all applicable laws, applicable codes of conduct and Premier's Memoranda (including, without limitation, the NSW Lobbyists Code of Conduct, record keeping requirements under the *State Records Act 1998* and responsibilities under work health and safety legislation).

2.2.3 Financial management and investment frameworks

In addition to legal requirements, NSW Government agencies are also subject to policy requirements that govern financial and risk management, and investment prioritisation (see **Table 3**).

Table 3: NSW Government policy guidelines

Guideline	Description
Internal Audit and Risk Management Policy for the General Government Sector (TPP 20-08)	The policy assists agencies to implement their legislative obligations under the GSF Act, namely that they establish and maintain an effective internal audit function. The policy also seeks to strengthen internal audit, risk management and governance practices across the NSW public sector by ensuring an ongoing minimum level of compliance to provide for the efficient and effective administration of the state's resources.
NSW Government Business Case Guidelines (TPP 18-06)	Business cases are a tool to inform evidence-based investment decisions. The guidelines establish a best practice, clear, and consistent approach to preparing business cases. This ensures resource allocation decisions are well-timed, offer value for money, consider and mitigate risks, and are consistent with government priorities and objectives.
NSW Government Guide to Cost-Benefit Analysis (TPP 17-03)	Cost-benefit analysis (**CBA**) is a resource prioritisation tool. The guidelines promote a consistent approach to CBA appraisal and evaluation of government programs and policies. This ensures government delivers the best possible outcomes for the people of NSW.
NSW Government Program Evaluation Guidelines	Program evaluation is a tool to support evidence-based policy and decision-making in government. The guidelines promote a consistent approach to program evaluation with the aim of improving programs and providing more rigorous and transparent evidence of program outcomes.
NSW Gateway Policy (TPP 17-01)	Gateway is a project assurance process providing independent assurance using peer reviews in a project or program's lifecycle at key decision points. This provides the NSW Government, as the investor, with a level of confidence that state programs and projects are effectively developed and delivered on time, on budget, and in accordance with the government's objectives.
Recurrent Expenditure Assurance Framework (TPP 19-03)	An independent risk-based assurance process for the State's major recurrent projects. It requires recurrent proposals above a threshold to be risk assessed and undergo a series of external assurance reviews at key milestones.

3. Grants Administration Guide

The provision of central grants administration guidance is important for ensuring that grants processes and decisions are consistent, robust, fair, and effective. Grants guidelines are in place in most Australian jurisdictions, as well as in other comparable countries including the United Kingdom (**UK**), New Zealand, and Canada.

The current Good Practice Guide, issued under DPC Circular C2010-16 *Good Practice Grants Administration,* is the primary source of guidance for the NSW government sector on the administration of grants. The focus of the current Good Practice Guide is to assist agencies to deliver grants in a consistent way. It complements existing legislative and policy requirements (see **Chapter 2**) and provides guidance for officials at each stage of the grants administration cycle. As stated in the introductory paragraphs of the Guide, *'Each section covers a different process in the grants administration cycle and provides good practice, tools, and resources for use by grants program managers.'*

3.1 A new Grants Administration Guide would reflect current best practice

Recommendation 1	Issue the draft *Grants Administration Guide* at **Appendix A**, which:
	• provides guidance based on the principles set out in the *Commonwealth Grants Rules and Guidelines* (2017) and reflects the government sector core values of integrity, trust, service, and accountability
	• includes mandatory requirements for officials, Ministers, and ministerial staff.

The current Good Practice Guide was last updated in 2010 following a 2009 performance audit by the NSW Auditor-General[21], which made a series of recommendations relating to:

- **transparency,** communicating openly about grant opportunities, and the outcomes of funding decisions
- **customer focus,** streamlining and standardising processes
- **outcomes,** effective monitoring, and evaluation
- **efficiency** and reducing red tape.

The current Good Practice Guide responded to these recommendations by providing guidance and resources to support officials undertaking grants administration. The current Guide covers six stages in the grants lifecycle:

1. planning and design
2. promotion
3. receiving and processing applications
4. offering and entering into funding agreements
5. monitoring and acquitting
6. evaluation.

The principles of transparency, customer focus, outcomes orientation, and efficiency remain paramount to good grants administration. More recently, a performance audit by the NSW Auditor-General[22] and the first[23] and final[24] reports of the PAC Inquiry raised concerns about accountable and transparent decision-making, and the role of Ministers. It is evident from these reports, stakeholder feedback, and the events that triggered them, that to uphold public confidence in grants administration in NSW, there must be greater transparency about *who* makes funding decisions and the *reasons* for their decisions.

What constitutes good practice has also evolved since the current Good Practice Guide was last updated, with stakeholders pointing to the Commonwealth and UK Government's guidance as best practice:

The Commonwealth Grants Rules and Guidelines:

Includes key principles and minimum mandatory requirements for non-corporate Commonwealth entities and Ministers.

The UK Government's Guidance for General Grants:

Is underpinned by a 'comply or explain' principle: officials must comply with 10 minimum requirements; where this is not possible, a rationale is required.

The draft Guide at **Appendix A** provides guidance on key principles such as accountability and transparency, as well as mandatory requirements for officials and Ministers. Replacing the current Good Practice Guide with the draft Guide would address issues raised by key stakeholders and bring NSW in line with best practice. It would also provide clear, user-friendly guidance and embed an accountable and transparent approach to grants administration without becoming cumbersome and

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[21] Audit Office of NSW. 2009. 'Auditor-General's Report, Performance Audit: Grants Administration'.
[22] Audit Office of NSW. 2022. 'Auditor-General's Report, Performance Audit: Integrity of grant program administration'.
[23] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8.
[24] NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10.

unwieldy.

Like the current Good Practice Guide, the draft Guide would operate within the overarching legal and policy framework that governs the conduct of those involved in grants administration in NSW.

3.2 Broad coverage of the Guide would minimise unintended gaps

The draft Guide at **Appendix A** provides a comprehensive definition of *what* financial arrangements are captured and *who* must adhere to the requirements.

The draft Guide defines a 'grant' based on principles, rather than a specific accounting method. This is consistent with the *Commonwealth Grants Rules and Guidelines* and ensures broad application of the Guide. A 'grant' is defined as an arrangement for the provision of financial assistance by the NSW Government (or on behalf of the NSW Government) whereby money:

- is paid to a grantee other than the NSW Government

- is intended to help address one or more of the NSW Government's policy outcomes

- is intended to assist the grantee achieve its objectives

- does not result in the return of goods or services by the grantee of an equivalent value to the NSW Government (i.e. it is a non-reciprocal exchange).

The draft Guide outlines specific exclusions from the definition to provide clarity to the sector. Exclusions are payments that do not meet the threshold criteria outlined above or are governed by other legislative frameworks. Section 4 of the draft Guide contains the full definition.

The draft Guide would apply to the full spectrum of grant selection[25] processes (see **Table 5**).

Table 5: Types of grants captured by the draft Grants Administration Guide

Type of grant	Description
Open, competitive	Applications must be submitted by a specified date. Eligible applications are then assessed on their comparative merits against nominated assessment criteria.
Targeted, competitive	Open to a smaller number of potential grantees based on the specialised requirements of the grant activity.
Closed, non-competitive	Applicants are invited to submit applications that are assessed individually, without reference to the comparative merits of other applications.
Open, non-competitive	Applications are assessed individually against the selection criteria, without reference to the comparative merits of other applications.
One-off or ad hoc grants	Determined on an ad hoc or targeted basis, usually by ministerial decision.
Demand-driven or 'first-in, first-served'	Applications that satisfy stated eligibility criteria are approved, up to the limit of available funding.

Adapted from the *Commonwealth Grants Rules and Guidelines (2017)*, section 13.11, p. 37

The draft Guide would apply to officials[26], Ministers, and ministerial staff, extending the scope of the current Good Practice Guide, which only applies to officials. This responds to stakeholder calls for greater rigour around the role of Ministers, and their staff, in grants administration and will bring NSW in line with the Commonwealth.

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[25] In this Report, the term 'selection criteria' is used to refer to grants that may have eligibility criteria **and** assessment criteria. See Definitions Section for further details.
[26] Persons employed in the government sector under the GSE Act, excluding SOC employees.

State Owned Corporations (**SOCs**) would be encouraged to use the draft Guide, but due to their legislative framework[27] would not be bound by it. If SOCs were bound by the Guide, they would be subject to more onerous obligations than others in the private sector, raising issues of competitive neutrality. The draft Guide would also not bind third-party providers that administer grants on behalf of the NSW Government. Officials would, however, need to satisfy themselves that there are practices in place to ensure the grants are administered in a way that is consistent with the principles and requirements of the Guide.

3.3 Guiding principles would set clear standards of expected behaviour

Principles-based guidance sets the standards by which grants administration must be conducted. The benefit of a principles-based approach is the ability to express the expected behaviours and overarching requirements, while providing administrators with the flexibility to tailor processes to the specific circumstances of each grant.

There is strong stakeholder support for a principles-based approach to grants administration guidance, in contrast to the current Good Practice Guide, which focuses primarily on ensuring good processes. Various stakeholders expressed a preference for the seven overarching principles of the *Commonwealth Grants Rules and Guidelines*:

1. robust planning and design
2. collaboration and partnership
3. proportionality
4. an outcomes orientation
5. achieving value with relevant money
6. governance and accountability
7. probity and transparency.

These principles have been adopted in the draft Guide at **Appendix A**.

The GSE Act establishes an Ethical Framework for the NSW Government Sector, which includes the government sector core values of integrity, trust, service, and accountability, and the principles that guide their implementation.[28] The NSW Auditor-General's report into the integrity of grant program administration[29] recommended that a model for grant administration be developed based on ethical principles in the GSE Act. The draft Guide would address this recommendation by requiring officials to carry out their grants administration functions in line with the government sector core values. This includes requirements to be fiscally responsible, to focus on efficient, effective, and prudent use of resources, and to provide transparency to enable public scrutiny.

3.4 Mandatory requirements would ensure consistent grants administration practices

In addition to principles-based guidance, the draft Guide at **Appendix A** includes mandatory requirements for officials, Ministers, and ministerial staff. Mandatory requirements are important to ensure grants administration meets minimum standards of accountability, transparency, probity, proportionality, and value for money. Best practice guidance from both the Commonwealth and UK

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[27] Under section 20N of the *State Owned Corporations Act 1989* (NSW) the portfolio Minister may direct a statutory SoC to perform activities, or to cease to perform activities, or not to perform activities in circumstances where the board considers that it is not in the commercial interests of the SoC to do so, but the SoC is entitled to be reimbursed for the net cost of performing or not performing the relevant activities at the direction of the Minister.
[28] GSE Act. Part 2. section 7.
[29] Audit Office of NSW. 2022. 'Auditor-General's Report, Performance Audit: Integrity of grant program administration'.

Governments contains mandatory requirements, and stakeholders consulted in this Review expressed strong support for the NSW guide to adopt a similar approach.

In response to stakeholder views, the draft Guide contains mandatory requirements for officials, Ministers, and ministerial staff. The table in **Appendix C** sets out the requirements in the draft Guide as compared to the those in the *Commonwealth Grants Rules and Guidelines*.

The Commonwealth Grants Rules and Guidelines has mandatory requirements for:

- **Officials** relating to transparency of grants information, recording reasons for approvals, and providing written advice to Ministers.
- **Ministers** relating to receiving written advice from officials, recording reasons for approvals, and accountability for grants approved in own electorate or contrary to officials' advice.

The UK Government's Guidance for General Grants has 10 minimum requirements for officials:

These relate to transparency of grants information, competitive selection processes, accountability, probity and risk management, annual review and financial reconciliation, outcomes orientation, business case development, and training.

3.5 The Grants Administration Guide should be enforceable

Recommendation 2	Issue the draft *Grants Administration Guide* at **Appendix A** under a Premier's Memorandum, which is binding on officials, Ministers, and ministerial staff and can be readily updated in line with evolving best practice.
Recommendation 3	Make compliance with the draft *Grants Administration Guide* at **Appendix A** a legislative requirement.

The current Good Practice Guide is not a legislative instrument. This contrasts with the approach in the Commonwealth, where compliance with the equivalent guidelines is mandated under legislation.

The current Good Practice Guide not being issued under legislation was a focus of the PAC Inquiry into the integrity, efficacy, and value for money of NSW Government grant programs. The PAC's First Report states that (at [2.92]):[30]

> *The Good Practice Guide to Grants Administration provides some guidance to departments but lacks detail and is outdated. It is guidance only and does not appear to be enforced or enforceable. It is not clear to the committee if there are even any administrative attempts to have various agencies comply with the Guide, there was certainly no evidence in the materials before this committee that any attempts were made in any of the grant programs currently under review. Further, there is clearly no monitoring of compliance by the Department of Premier and Cabinet or any other government agency.*

The PAC's First Report recommends that the NSW Government ensure that key requirements of an updated *Good Practice Guide to Grants Administration* are enforceable. The First Report indicates

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[30] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8.

that *'[t]he revised Guide should be codified in legislation or regulation so that its requirements are mandatory and enforceable'*.[31]

It is important to note the current Good Practice Guide is binding by virtue of being issued under a DPC circular. DPC circulars are issued by the Secretary, DPC and have the status of whole-of-government policy, direction, or guidance. Agencies and their employees are required to comply with the terms of a circular. Failure to comply may result in disciplinary action under the GSE Act. As such, the current Good Practice Guide is not only a source of guidance for agencies but is also legally enforceable.

Nonetheless, this Review has considered the enforceability of the draft Guide and whether the method for requiring compliance should be adapted. Informed by the approach taken in other jurisdictions as well as stakeholder feedback, the Review has considered various options for enforceability including maintaining the status quo (issuing the draft Guide under a Circular), issuing a statutory direction requiring compliance with the draft Guide, or codifying the substance of the draft Guide, or certain requirements in the draft Guide, in an Act or regulation.

The last of these options aligns most closely with the PAC's recommendations but it is also the least flexible option and is, therefore, not the Review's preferred approach.

Converting the entirety of the draft Guide into legislation would be impractical. The draft Guide imposes some mandatory requirements but also provides principles-based guidance. As such, many aspects of the draft Guide would not be amenable to codification. It would also make the draft Guide an inflexible document that could not be adapted without legislative amendment. Codifying only certain aspects of the draft Guide would also hamper the ability of the draft Guide to be responsive to change and adaptable over time (albeit to a lesser degree).

Instead, the Review has concluded that the best option would be to elevate the draft Guide by issuing it under a Premier's Memorandum. Like circulars, Premier's Memoranda are binding on officials. A serious breach of a mandatory requirement in a Premier's Memoranda may result in disciplinary action under the GSE Act. Premier's Memoranda are also binding on Ministers, with any sanctions for a breach to be determined by the Premier.

A significant benefit of this approach is that any necessary updates to the draft Guide, which might arise from changed practices or new developments in the grants landscape, could be facilitated smoothly and easily, without requiring, for example, the passage of a Bill.

The integrity framework in NSW, as considered in Section 2.2.2, is comprehensive and robust. A significant breach of the requirements under the draft Guide would likely be unlawful conduct under that framework. Such a breach, for example, might amount to corrupt conduct under the ICAC Act, or maladministration under the Ombudsman Act, or warrant an audit or investigation by the Audit Office or another oversight body.

In this sense, issuing the draft Guide under a Premier's Memorandum is no different in effect from the approach taken in the Commonwealth. While the *Commonwealth Grants Rules and Guidelines* are made under section 105C of the *Public Governance, Performance and Accountability Act 2013* (**PGPA Act**) and are a legislative instrument, there are no specific penalties for breaches of the Commonwealth Guide. Conduct in breach of the Commonwealth Guide would be enforced in the same way conduct in breach of the draft Guide would be enforced – through the framework of integrity and other laws that apply and may be relevant in any given case.

In addition to issuing the draft Guide at **Attachment A** under a Premier's Memorandum, it is recommended that the enforceable nature of the draft Guide be underlined by making compliance a legislative requirement. Various options can be explored if this recommendation is accepted, including the possibility of amending the GSF Act or the GSE Act to include an express requirement to this effect. This would respond directly to concerns expressed by stakeholders that, because the current Good Practice Guide is not a legislative instrument or otherwise mandated under legislation, it is treated as optional guidance.

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[31] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Para 2.94. Report No 8.

3.6 Capability building would support compliance with the new Guide

Recommendation 4	Develop grants administration skills and expertise among officials by establishing a cross-agency "community of practice", convened by the Department of Premier and Cabinet and responsible for:
	• developing resources to support compliance with the draft *Grants Administration Guide*, including templates and training materials for officials administering grants
	• exploring opportunities for collaboration across government to improve the timing and coordination of grant opportunities, particularly where multiple grants target the same stakeholders.

Compliance with the draft Guide would likely be enhanced if supported by additional resources and training materials. This would help to ensure grants are delivered to high standards of integrity by fostering a culture of continuous learning and improvement.

Like other areas of professional services, such as finance, information technology (**IT**), procurement and human resources (**HR**), grant administrators need to have specialised skills and expertise. Technical and operational grants administration skills include, for example:

- **planning and design:** problem identification, business case development, program design and stakeholder engagement

- **implementation:** risk identification and management, monitoring and compliance, and financial and contract management

- **evaluation:** data collection and analysis, and identification of outcomes and benefits.

The Commonwealth and UK Governments both recognise the importance of skills development in grants administration:

The Commonwealth Government provides supporting resources for officials:

The Department of Finance website contains guidance material and tools for grants administration. These include templates for guidelines, grant agreements, and ministerial reporting.

The UK Government's Guidance for General Grants also recognises the importance of capability building:

Minimum Requirement Ten of the Guidance for General Grants mandates that all those involved in the development and administration of grants should undertake core training in grant management best practice. The UK Government has prepared eLearning modules and other training resources for the Government Grants Academy, which is a suite of bespoke training products relating to grant management. This Academy is located on the 'Grants Centre of Excellence', a web-based repository that disseminates best practice guidance across government and provides products, toolkits, and training with a focus on improving grant awards and administration.

A NSW Government cross-agency Community of Practice tasked with identifying the support needs of officials and developing resources to address these needs would uplift the capability of officials. This would make it easier for officials to comply with the requirements of the draft Guide, standardise administration practices, and deliver a customer-focused experience.

Proposed outputs of the Community of Practice include:

- templates, for:
    - o grant guidelines
    - o risk appetite statements
    - o briefings to the decision maker
    - o documenting reasons for departing from the assessment team's recommendations
    - o grant funding agreements and variations
    - o grant acquittals.
- case studies or good practice examples for risk management, data protocols, program design, application and assessment processes and evaluation methodologies
- training materials.

It is also envisaged that the Community of Practice would considers ways to improve collaboration across government on the planning and design of grants, particularly where numerous grants target the same stakeholders or stakeholder group. Greater coordination of the targeting and timing of grants to local government and non-government organisations, such as cultural organisations and social service providers, should lead to better alignment with stakeholder needs and more efficient and effective achievement of government objectives.

A cross-agency grants review working group has been consulted during the Review, including on the draft Guide at **Attachment A**. The group comprises individuals whose operational responsibilities include administering grants and who have been identified by their agency as an appropriate representative on grants-related matters. This group could be adapted to form the Community of Practice, which would be chaired by DPC with Terms of Reference developed for endorsement by the Premier.

4. Accountable and transparent grants administration

To ensure public trust in the integrity of NSW Government grants administration, processes must be — and must be perceived to be — fair, transparent, and accountable.

As noted above these values are enshrined as government sector core values in the GSE Act, and the principles that guide their implementation include the requirement to:[32]

- consider people equally without prejudice or favour

- act professionally with honesty, consistency, and impartiality

- place the public interest over personal interest

- take responsibility for decisions and actions

- provide transparency to enable public scrutiny.

There are many participants in grants administration, including officials, Ministers, MPs, ministerial staff, and grantees. **Accountability** is achieved when all parties are answerable for their decisions and actions.

Grants administration that is open and transparent promotes public confidence in the process. **Transparency** supports accountability by enabling public and parliamentary scrutiny. It can provide assurance that officials and Ministers are upholding appropriate standards for ethical and fair decision-making.

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[32] GSE Act. Part 2.

4.1 Identifying and documenting key functions will support accountability

Recommendation 5	When establishing a new grant, officials must identify and document roles and responsibilities, including who is responsible for assessing applications and making recommendations and who is the designated decision maker.

To support accountability in grants administration, key responsibilities must be defined, documented, and traceable. Formally documenting these functions means everyone has a clear understanding of who is accountable at each stage of the process and responsible parties take ownership for their actions. Important functions include the:

- **designated decision maker**, responsible for making the final decision on awarding funding to grantees
- **assessment team**, responsible for overseeing the assessment of grant applications and making recommendations for funding to the designated decision maker.

Appropriate person(s) or role(s) with the necessary authority, capability, and capacity should be assigned to these key functions. This will support the integrity of the process by ensuring that the assigned person(s) or role(s) are equipped to conduct their duties in a way that delivers fairness, transparency, and value for money while also managing risk within acceptable limits.

There will be some grants that do not have the typical two-stage assessment and decision-making process such as time-limited, demand-driven grant programs. Funding for these programs is typically approved by Government, via the Expenditure Review Committee (**ERC**), and subsequently implemented by a government agency. An example is the recent 2022 Storm and Flood Disaster Recovery Small Business grants. Where Government has approved the parameters of the program, the agency's role is to administer the program and assess applications in line with the approved criteria and policy intent. In this case, the agency needs to clearly identify the:

- **designated decision maker**, who must be satisfied that the funds are being assessed and administered in accordance with the approved criteria and policy intent. This entails signing off on program-wide assessment policies and processes, risk management policies, quality assurance and auditing checks, and escalation processes (if compliance issues are identified).
- **assessment team**, responsible for ensuring grants are administered in accordance with approved criteria.

These roles differ from non-demand driven grant programs where the designated decision maker, for example, is responsible for making decisions regarding the merits of individual grant applications.

All parties involved in grants administration have an obligation to manage conflicts of interest. According to the ICAC, '*a conflict of interest exists when a reasonable person might perceive that a public official's personal interest(s) could be favoured over their public duties'.*[33]

Section 7 of the *Ministerial Code of Conduct* requires that Ministers must not knowingly conceal a conflict of interest from the Premier or, without the written approval of the Premier, make, or participate in the making of, any decision or take any other action in relation to a matter in which the Minister is aware they have a conflict of interest. Section 3.7 of the GSF Act provides that government officers should '*ensure any real or perceived conflicts of interest are avoided or effectively managed*' and '*disclose to the appropriate entity, as soon as possible, any direct or indirect material conflict of interest of the officer that relates to the affairs of the GSF agency*'.

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[33] Independent Commission Against Corruption. 2019. 'Conflicts of Interest'. p4.

To comply with these requirements, and to foster public trust in grants administration, due consideration must be given to the separation of duties, where necessary, to avoid real — or reasonably perceived — conflicts of interest. The designated decision maker should not, for example, be involved in making a grant decision that confers a private benefit on their family members. There should also be an arm's length relationship between 'client facing' officials — who may have a relationship with potential applicants — and assessors, to ensure such conflicts are appropriately managed.

Section 6.1 of the draft Grants Administration Guide:

Provides guidance on how to identify the designated decision maker and select an appropriate assessment team. This information must be documented in the grant guidelines. Officials must also consider and develop a plan for the management of any conflicts of interest that might arise.

The UK Government's Guidance for General Grants also recognises the importance of accountability in grants administration:

Minimum Requirement One of the Guidance for General Grants mandates all government grants have a named senior officer responsible for the grant with clearly defined responsibilities throughout the lifetime of the grant.

4.2 Consistent grant guidelines help to ensure the process is fair and transparent

Recommendation 6	Officials must ensure all new grants have published guidelines that: include the purpose of the grant, clear selection criteria, and details of the application and assessment process; and are approved by the responsible Minister(s) or delegate.

Grant guidelines should have consistent information on grant objectives, selection criteria, application and assessment processes, and likely timeframes for a decision. Consistent and clear information will help ensure that potential applicants have a comprehensive understanding of the grant requirements, allowing them to develop an application that meets these requirements, and thereby maximising their chances of success. It also makes grant reasoning and decision-making more transparent.

The PAC has highlighted the importance of '*program guidelines that are clear, detailed and publicly available.*'[34] While the Review notes that it is common practice for officials to develop and publish grant guidelines, integrity agencies have identified instances where the guidelines did not include sufficient detail on the objectives, criteria, and priorities for selecting successful projects.[35]

Critical to ensuring a fair and transparent process is the inclusion of clear and specific selection criteria in the guidelines. This creates a level playing field for potential applicants, makes the basis for decisions transparent, and is more likely to result in grant funding flowing to projects or programs that will achieve the best outcomes.

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[34] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. Para 2.95.
[35] Audit Office of NSW. 2022. 'Auditor-General's Report, Performance Audit: Integrity of grant program administration'. p2 & 7-8.
NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10. p viii & 37.

Stakeholders, including integrity agencies, have highlighted the risks of broad and non-specific criteria. In response to this identified risk, the NSW Auditor-General has recommended a model for grant administration in NSW that '*ensures assessments and decisions can be made against clear eligibility criteria*'.[36]

This Review agrees that grant guidelines should not include broad criteria such as '*any other relevant factors*'. Such criteria are not good practice and provides assessors and decision makers with broad discretion that is not suited to objective, merit-based grants administration. It creates the risk that decisions may not be — and may not be seen to be — fair, accountable, and transparent.

Section 6.1 of the draft Grants Administration Guide:

Requires officials to prepare clear and consistent grant guidelines that contain, as a minimum, information on: the grant purpose and objectives, selection criteria and assessment process, grant value, opening and closing dates, application outcome date, source agency and the decision maker.

The Commonwealth Grants Rules and Guidelines:

Includes a mandatory requirement for officials to develop guidelines for all grants, and to ensure that the '*rules of grant opportunities are simply expressed, are clear in their intent and are effectively communicated to stakeholders*'[37] and that selection criteria is '*straightforward, easily understood and effectively communicated to potential grantees*'.[38]

4.3 Grant applications should be assessed on merit

Recommendation 7	Where a method other than a competitive, merit-based selection process is planned to be used, officials must document the reasons why a different approach has been chosen and outline the risk mitigation strategies. This must be approved by the responsible Minister or delegate.

Ideally, grants should involve a competitive selection process that enables the comparative assessment of applications on merit. *All things being equal*, a competitive process is most likely to be in the public interest. Competitive grants should, in principle, be more awarded to the most meritorious applicants from a pool of potential grantees, ensuring fairer outcomes and better value for public money. Many stakeholders consulted during this Review, including integrity agencies, have emphasised the benefits of open and competitive processes.

Grants can, however, take a variety of forms (see **Table 5**). Non-competitive processes include:

- **open, non-competitive grants**, where applications are assessed individually against the selection criteria. An example of this would be a grant program for apprentices. To meet a workforce shortage, government may provide employers with grants to take on apprentices. This would not require a competitive process; it would simply require the applicants to provide evidence that they have employed an approved apprentice.

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[36] Audit Office of NSW. 2022. 'Auditor-General's Report, Performance Audit: Integrity of grant program administration'. p3.
[37] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. Para 4.4, p11. Para 8.7, p21.
[38] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. Para 8.7, p21-22.

- **closed, non-competitive grants**, such as one-off or ad hoc grants, often determined by a ministerial decision. An example of this could be a Ministers discretionary fund where grantees cannot apply for funding unless they have been invited to do so.

- **demand-driven grants**, where applications that satisfy fixed eligibility criteria are approved, up to the limit of available funding. An example of this would be grants to support businesses and individuals impacted by a natural disaster.

There may be valid policy reasons for using one of these non-competitive processes. Appropriate circumstances may include, for example, when there is:

- a time-critical need to deliver financial support to a large number of grantees, such as emergency or disaster relief grants

- clear and robust evidence of the specific needs of particular individuals, organisations, regions, or industry sectors

- a strong public interest case for supporting a grantee or group of grantees

- limited providers with the required technical expertise to deliver the grant activity.

The draft Guide at **Appendix A** retains flexibility for administrators to use the selection process that is most likely to achieve the desired policy outcomes. As such, non-competitive processes should remain an option but, given the substantial benefits of competitive grants, officials should always ask: 'If not competitive, why not?' Where it is proposed to use a method other than a competitive, merit-based selection process, officials should document why this approach has been used. The 'comply or explain' approach to using a competitive selection process in the draft Guide is consistent with best practice.

📖 Section 6.1 of the draft Grants Administration Guide:

Allows for a Minister (or delegate) to approve the awarding of a grant, or opening of a grant opportunity, using a method other than a competitive, merit-based assessment process. The decision maker must have regard to the advice of officials and must document the reasons for selecting the alternative process.

The Commonwealth Grants Rules and Guidelines:

Requires that officials:
- document why a different approach to competitive, merit-based selection will be used[39] and provide written advice to Ministers on the selection process (when Ministers have a role as an approver)[40]
- for demand-driven or a 'first-in first-served' selection methods, officials must explain to Ministers how the grant allocation method was developed, how implementation issues were considered, and the risk mitigation strategies.[41]

The UK Government's Guidance for General Grants:

Grant agencies must always explain in the business case why a non-competitive process is required, such as a direct grant award.[42] The UK Guide notes that '*competition is not always appropriate for grant funding and exceptions can be approved, subject to a robust rationale, approved at the appropriate level in the organisation.*'[43]

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[39] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. Para 11.5, p31.
[40] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. Para 4.6, p11.
[41] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. Para 4.6, p11.
[42] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Five: Competition for Funding'. p12.
[43] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Four: Business Case Development'. p14.

4.4 Applications should be assessed against the published criteria

Recommendation 8	Officials must assess all grant applications against the published selection criteria. Where significant changes are made to the grant opportunity, the guidelines must be amended and re-published as soon as possible.
	In limited circumstances eligibility criteria may be waived. The reasons for any departure from the published eligibility criteria must be documented and approved by the decision maker.

Regardless of whether a competitive or non-competitive process is used to administer a grant, applications should be assessed against the criteria contained in the public guidelines. The NSW Auditor-General and the PAC have identified instances where guidelines did not include all criteria considered by assessors, with adverse impacts for fair and transparent grants administration.[44]

The published guidelines should identify the criteria that will be used to assess applications, and officials must then assess all applications against these. Failure to do so may give rise to the perception of 'shadow' or 'secret' criteria. The basis for decision-making then becomes opaque and undermines public trust in the integrity of the process.

There may, however, be limited instances where it is considered necessary to waive the published eligibility criteria for example, where not doing so would:

- lead to perverse or unfair outcomes
- be contrary to the policy intent
- damage the reputation and integrity of the grant program.

Where divergence from the published eligibility criteria is specific to one applicant, the reasons for waiving criteria must be clearly documented, with supporting evidence where applicable, and approved by the program's designated decision maker.

Where significant changes are made to a grant opportunity, officials must revise the guidelines and re-publish them as soon as possible. This includes instances where waiving eligibility criteria for one applicant would also impact the assessment of other applicants. As an example, new circumstances may emerge for grants targeting natural disaster relief, potentially requiring the assessment team and decision maker to update the program's eligibility criteria.

This approach is consistent with the Commonwealth Grants Rules and Guidelines:

Suggests that officials ensure grant guidelines document any circumstances in which the selection criteria set out in guidelines may be waived or amended[45] and grant assessors should document when referring to, or relying on, knowledge or documentation other than the application form.[46]

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[44] NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10. p 37.
Audit Office of NSW. 2022. 'Auditor-General's Report, Performance Audit: Integrity of grant program administration'. p2 & 7-8.
[45] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. Para 13.14, p38.
[46] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. Para 13.14, p38.

4.5 Input from Members of Parliament should be documented

Recommendation 9	Ministers and MPs can make suggestions for grant funding in their electorates. Officials should, however, document:
	• the input from Ministers and MPs at all stages of the process
	• how any input from Ministers and MPs during the assessment phase was considered in formulating funding recommendations.

MPs are elected to represent their communities and understand local needs and issues. They act as a voice for their constituents and can play a valuable role in identifying grant projects or programs and advocating for funding. Integrity bodies have acknowledged that, at the policy formulation stage, MPs can provide useful insights into:

- the need for government intervention, and whether a grant is a suitable way to address the identified need

- the broad policy objectives of a grant

- the total amount of funds required to achieve the policy objectives.

Integrity agencies have identified instances where MPs were influential in the selection of grantees and have raised concerns that the involvement of MPs can sometimes lack transparency and accountability.

Potential applicants do not always know which government agency to contact in relation to a specific grant and, instead, will reach out to their local MP. In practice, MPs may communicate with the relevant Minister, on behalf of their constituents, to seek information on eligibility and application processes, put a case forward for their constituent to receive funding, or advocate for changes to the selection criteria.

A decision to fund a grant project or program should be merit-based and guided by public interest principles. As such, while input from MPs may be relevant when assessing the merit of a grant application, it should not be determinative, nor should it be the only factor considered.

A performance audit by the Audit Office of NSW found some MPs were identifying projects for a grant program *before* the first set of program guidelines were approved, giving rise to the risk of the guidelines not being appropriately used to guide objective, merit-based assessment of projects.[47]

To ensure public trust in the process, where it is anticipated that a grant will involve input from MPs, the expected role of MPs should be clearly identified and documented in the published guidelines. Where MPs provide input on the selection of applicants, officials should record any discussions with, and input from, MPs. Any actions taken as a result, such as changes to the ranking of applicants, should be documented in the brief to the designated decision maker.

Section 6.3 of the draft Grants Administration Guide:

Requires that, where it is anticipated that a grant opportunity will involve input from MPs or other stakeholders, officials must ensure that: the grant guidelines clearly outline the role of stakeholders; there are processes in place to manage this interaction; and all stakeholder input is documented as part of the assessment process, where relevant. Where such input is received outside of the process set out in the grant guidelines, this must be documented.

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[47] Audit Office of NSW. 2022. 'Auditor-General's Report, Performance Audit: Integrity of grant program administration'. p8.

4.6 Officials should provide clear and impartial advice to decision makers

Recommendation 10	Where the decision maker is a Minister, officials must provide written advice that includes, at a minimum: • grantees recommended for funding based on selection criteria • the merits of the proposed grant(s), having regard to the grant guidelines and the key principle of achieving value for money • proposed funding amounts for each recommended grantee • details of the application and assessment process applied • any input from key stakeholders, including ministerial staff, the responsible Minister, and other Ministers or MPs.

For funding decisions to be in the public interest, decision makers must have access to all relevant information. Officials involved in the assessment process should provide complete and impartial written advice so the decision maker can be satisfied of the:

• integrity of the application and assessment processes

• merits of projects or programs recommended for funding

• value for money achieved by the projects or programs recommended for funding.

This is consistent with the Ethical Framework for the government sector established under the GSE Act[48], which commits officials to 'a merit-based, apolitical, and professional' approach to public administration to support the public interest and defend public value.[49]

During the Review, stakeholders expressed concerns about ministerial interference in the advice of officials, for example, where a Minister is the final decision maker, and they also seek to influence an official's funding recommendations.

Ministers and ministerial staff are bound by codes of conduct that seek to regulate ministerial interference. Section 5 of the NSW Ministerial Code of Conduct provides that:

• a Minister must not knowingly issue any direction, or make any request, that would require a public service agency to act contrary to the law

• a Minister who seeks advice from a public service agency that is subject to the Minister's direction must not direct that agency to provide advice with which the agency does not agree

• for the avoidance of doubt, this section does not prevent Ministers discussing or disagreeing with the advice of a public service agency, making a decision contrary to agency advice, or directing an agency to implement the Minister's decision (whether or not the agency agrees with it). Nor does this section prevent an agency changing its advice if its own view changes, including following discussions with the Minister.

Similarly, the NSW Office Holder's Staff Code of Conduct requires that Office Holder staff not knowingly encourage or induce a public official to breach the law, Parliamentary obligations, or duties under an applicable code of conduct.

To ensure accountability and transparency in grants administration, there must be a clear delineation of what officials recommended and what decisions the Minister made, and the reasons for those decisions. Where the decision-making Minister, or their staff, provide input on the assessment of grant applicants, officials should record any discussions or input. Any actions taken

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[48]GSE Act. Part 2. sections 6 & 7.
[49]GSE Act. Part 2. sections 6 & 7.

as a result, such as changes to the ranking of applicants, should be documented in the brief outlining the assessment team's recommendations.

📖 **Section 6.3 of the draft Grants Administration Guide:**

Includes the mandatory requirement that officials provide written advice to a decision-making Minister which, at a minimum: outlines the application and selection process, including the criteria used to select the recommended grantees; includes the merits of the proposed grant or grants having regard to the grant guidelines and the key principle of achieving value for money; identifies the recommended grantees; identifies proposed funding amounts for each recommended grantee; and includes relevant input from key stakeholders, including MPs, the responsible Minister, ministerial staff, and other Ministers.

This is consistent with the Commonwealth Grants Rules and Guidelines:

Includes a mandatory requirement for officials to provide written advice to Ministers, where Ministers exercise the role of an approver.

4.7 Accountable decision-making is necessary to manage the risk of pork-barrelling

Recommendation 11	Grants administration processes must involve robust decision-making frameworks for Ministers and officials, including that:
	• where there is an assessment team making recommendations to a decision-maker, those recommendations should be made in writing
	• a Minister must not approve or decline a grant without first receiving written advice from the assessment team on the merits of the grant
	• a Minister, or delegated official, who approves a grant must record the decision in writing, including the basis for the approval with regard to the grant guidelines and achieving value for money
	• where a Minister, or delegated official, makes a decision that departs from the recommendations of the assessment team, they must record the reasons for the departure.

Robust decision-making frameworks will help to ensure accountability and transparency in grants administration. This includes identifying and documenting who makes funding decisions and on what basis. This is particularly relevant in the context of concerns raised by stakeholders about perceived pork-barrelling in the administration of grants.

4.7.1 What is pork-barrelling?

Pork-barrelling involves the use of government funds for political benefit.[50] Conduct associated with pork-barrelling may be unlawful depending on the circumstances. In *Bailey, Re; Transport Workers' Union of Australia (Vic Branch), Re* (1997) 79 IR 1 the Court considered conduct known as pork-barrelling and observed that:

> *It is not uncommon for elected officials to make decisions which benefit their constituents, in the hope that by doing so they will become more popular and more likely to be re-elected. Indeed, it*

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[50] The term originated in the United States when, in the early nineteenth century, politicians sent merchandise, including barrels of salted pork, to gold miners whose votes they were chasing: *Encyclopaedic Australian Legal Dictionary*.

could be said that such a process is fundamental to most systems of representative democracy. However cynically a disgruntled voter might regard such "pork-barrelling", it must be distinguished from bribery by the absence of any overt appeal for the casting of a vote in a particular way as a quid pro quo for the conferral of the benefit.

In addition, Mahoney JA in *Greiner v ICAC* (1992) 28 NSWLR 125 at 163 stated:

There is no doubt that, in some cases where public power is exercised, it may be exercised after taking into account a factor which is political or it may be exercised for the purpose of achieving a political object.

In a similar vein, the ICAC in its submission to the PAC (p.7) observed:

In a representative democracy, political imperatives necessarily allow some broad discretionary policy and political considerations to influence government decisions. Put another way, politicians have a legitimate interest in their own election or re-election and are entitled to allow their political objectives to affect the decisions they make.

The ICAC further observed that:

...allocating grants to particular electorates because they are marginal, or otherwise preferred by the government (also known as pork-barrelling), will not, absent other markers of misconduct, amount to corrupt conduct. That is to say, politicians may preference certain electorates, regions, causes or ideological beliefs without engaging in "partial" behaviour within the meaning of the ICAC Act. In addition, creation or expansion of a grant scheme in order to pursue a political objective (for example, prior to an election), is not corrupt conduct. Nor is the practice of announcing an actual or proposed grant as part of an election campaign, possibly in a marginal seat.

However, as the ICAC has noted[51] while 'pork-barrelling' is not necessarily illegal, it is not a desirable way to administer public money and it should not be a feature of grants administration in NSW.

As elected officials, Ministers perform a role that is markedly different from unelected officials and have some discretion to consider other factors, including political objectives, in government decision-making. In the context of grants, Ministers may, therefore, make decisions that are contrary to the advice of the assessment team, but they must always have regard to the public interest.

Probity measures are also in place for Ministers (as for officials) to manage conflicts of interest and ensure that they do not have a direct or indirect private interest which may influence their decision-making. The exercise of ministerial discretion in grants decision-making must, therefore, occur in accordance with proactive conflict of interest management.[52]

While use of government funds, including the allocation of grants, may occur for a political purpose or benefit, it must still serve a public purpose. Grants that benefit private interests at the expense of, or without due consideration of, the public interest are improper and may amount to a breach of public trust.

4.7.2 Suggested approach to dealing with pork-barrelling

Conduct arising from pork-barrelling may be unlawful depending on the circumstances. The conduct may be unlawful where it amounts to, for example, corruption, or bribery[53], or maladministration or records mismanagement/destruction. Criminal sanctions following prosecution may also arise. The

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[51] Independent Commission Against Corruption. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 92. p7.

[52] Under the Ministerial Code of Conduct Ministers have responsibilities to manage and declare conflicts of interest. A conflict of interest arises in relation to a Minister if there is a conflict between the public duty and the private interest of the Minister, in which the Minister's private interest could objectively have the potential to influence the performance of their public duty.

[53] For example, under section 209 of the Electoral Act 2017 (NSW) it is an offence to '... influence or affect any person's election conduct, give or confer, or promise or offer to give or confer, any property or any other benefit of any kind to the person or any other person...' 'Election conduct' includes relevantly the way a person votes and a person's support of or opposition to a candidate or political party at an election. Bribery is also a type of corrupt conduct: see section 8(2), ICAC Act.

current integrity-based legislation in NSW that governs public officials provides legally enforceable sanctions (see **Section 2.2.2**).

Given the existing legally enforceable measures for dealing with unlawful conduct arising from pork-barrelling, it is not suggested that an offence prohibiting pork-barrelling be created in new or existing legislation. It is also not considered appropriate to update the definition of 'corrupt conduct' in the ICAC Act to specifically include pork-barrelling. The ICAC Act already includes an extensive definition of what constitutes 'corrupt conduct' and the ICAC would have jurisdiction under the ICAC Act to investigate corrupt conduct associated with pork-barrelling (the ICAC submission to the PAC made this clear).

In addition to the existing legal framework, the draft Guide at **Appendix A** is directed to ensuring transparency and accountability in grants decision making in the following ways:

- recommendations to decision-makers should be made in writing
- grants decisions must be recorded in writing
- grant decisions which deviate from advice must be declared
- mechanisms are in place to ensure decision makers do not have a direct or indirect interest which may influence grants activities.

The clear requirements in the draft Guide about record keeping and documentation[54] ensure that reasons for decisions are recorded in writing and made publicly available so that Ministers and officials are accountable for making justifiable, merit-based decisions in the public interest. This review suggests that these transparency measures are a powerful deterrent to the possibility of unlawful conduct arising from pork-barrelling.

The draft Grants Administration Guide:

Includes the mandatory requirement that, where a decision maker approves or declines a particular grant where this would depart from the recommendation of the assessment team, they must declare this and the reasons for doing so in the relevant documentation. The exercise of ministerial discretion in making grant decisions that vary from the recommendation of officials is also required to be published on a public website.

This is consistent with the Commonwealth Grants Rules and Guidelines:

Ministers must report to the Finance Minister if they approve a grant that is not recommended by the relevant officers or if they approve a grant within their own electorate.

4.8 Record keeping supports accountability

Recommendation 12	As reflected in the draft *Grants Administration Guide* at **Appendix A**, guidance on grants administration should emphasise all parties' obligations under the *State Records Act 1998* (NSW), especially those of Ministers and ministerial staff to ensure decisions and actions of Ministers are properly recorded and stored.

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[54] The requirement for reasons and records of decision-making by Ministers and Officials about grants is provided for under other Australian jurisdictions' grants policies.

Records management is governed by the SR Act. Section 11 of the Act states that '*each public office must ensure the safe custody and proper preservation of the state records that it has control of*'.

Ministers and their staff have responsibilities under the Act to comply with the obligations to:

- create full and accurate State records

- preserve and protect State records

- retain and dispose of State records through authorised means.

The Act requires that all ministerial Offices have appropriate systems, policies and procedures in place to meet their obligations. Ministers' offices need to retain State records for certain periods of time to provide evidence of the business conducted or to meet legal or other obligations. After a document relating to the Minister's portfolio responsibilities is no longer required for administrative purposes, consideration must be given to whether it may be destroyed or, in the case of State records, must be retained or transferred to NSW State Archives.

The role of ministerial staff is to assist the Minister in performing their duties. This includes managing the records of the Minister's office. The *Ministers' Office Handbook* contains general guidance on managing records, including how to appropriately create, classify, store, and dispose of records.[55]

The State Archives and Records Authority (**SARA**)[56] has recently found examples of inadequate records management by ministerial staff. SARA has suggested that while the *Ministers' Office Handbook* provides broad and high-level guidance on records management, ministerial staff need more detailed and explicit advice on the proper creation, management, and disposal of state records.

In response to the issues identified, SARA approved a new retention and disposal authority (*General Retention and Disposal Authority GDA13: Minister's Office records*) dealing with records of a Minister's office. GDA13 covers the functions of Ministers' Offices and provides authority for records disposal, including transfer of States records to NSW State Archives. GDA13 provides that Minister's Offices are to retain records relating, amongst other things, to: advice received or provided to the Minister, actions taken or decisions made by the Minister in their capacity as a Minister, on matters relating to the Minister's portfolio.

Additionally, DPC has assisted with training of ministerial staff on record-keeping practices. Work is also being done to update the record-keeping section of the *Ministers' Office Handbook*.

The Review welcomes these developments. In addition, to help remind Ministers and ministerial staff of their obligations under the SR Act, these obligations are articulated in the draft Guide at **Appendix A**.

4.9 Public information ensures grants administration is transparent

Recommendation 13	Develop a whole-of-government database that includes up-to-date information on: • upcoming grant opportunities • all open grant opportunities and their guidelines • all grants awarded • a record of ministerial grant award decisions that vary from the recommendations of officials, and the reasons for the decisions

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[55] NSW Department of Premier and Cabinet. 2020. 'Ministers' Office Handbook'. p31-33.
[56] NSW State Archives and Records Authority 'Recordkeeping Assessment: Matter raised by Mr Greg Warren MP: Alleged non-compliant disposal of records relating to the Stronger Communities Fund', 21 January 2021

- grant program evaluations.

This grants information must be made publicly available on a central website, subject to legal and policy exceptions outlined in the draft *Grants Administration Guide*. Until a central website can display this information, it should be published on agency websites.

Transparency in government and ministerial decision making for grants was a clear recommendation of the PAC. Stakeholders consulted during this Review have identified five categories of grants information that should be transparent and accessible to the public:

- **open grant opportunities**, to ensure more equal access to grant funding

- **upcoming grant opportunities**, to help applicants plan and help grant giving agencies coordinate the future pipeline of government grants

- **awarded grants**, to allow the public to review and assess if funding decisions have been made in the public interest

- **ministerial discretion**, to ensure that there is transparency and accountability of funding decisions, including decisions made against the assessment team's advice

- **outcome evaluations**, to ensure that evidence of the effectiveness of past grant programs is transparent.

4.9.1 Current publication of grants data

The availability of grants information, including the level of published detail and timing of release, varies considerably across programs and agencies. There are also substantial differences in how much data is published across the five categories of grant information identified in this Review. The status of each category is discussed below.

Information on **upcoming and open grant opportunities** is currently available on agencies' websites or via the NSW Government's new **Grants and Funding Finder.** Managed by the Department of Customer Service (**DCS**), the *Grants and Funding Finder* is a publicly available online resource that currently consolidates 200 grant opportunities from 21 NSW Government agencies.

Grant opportunities published on the *Grant and Funding Finder* do not consistently record all the information recommended by this Review (see **Appendix D**). Upcoming grant opportunities, for example, are often not published, and open opportunities do not always include specific information on dates and funding amounts.

Awarded grants are published on different platforms depending on the type of grant. For instance, grants paid to non-government organisations (so-called 'community grants') are reported in agencies' annual reports. COVID-19, disaster and business support programs are reported on the Service NSW performance dashboard. The *Grants and Funding Finder* also publishes past funding decisions for some grants.

At present there is no consistent approach to reporting awarded grants across government. Public information on community grants tends to be limited to a list of grantees and awarded grant values, whereas the Service NSW performance dashboard includes aggregated information on grantee location, such as Local Government Area (**LGA**). Awarded grants data are also not typically published in a sufficiently timely manner to facilitate public scrutiny. Data on community grants may lag by up to 12 months between annual reports, and there does not appear to be a regular schedule by which grants awarded by Service NSW are uploaded to the performance dashboard.

The use of **ministerial discretion** should be published in accordance with the current Good Practice Guide, which requires agencies to disclose any variation to officials' recommendations. In practice, however, there is currently limited proactive public disclosure of ministerial discretion in grant

decisions. Although ministerial discretion can also be made public via other mechanisms – such as an order for papers under the Legislative Council's Standing Order 52, an application under the GIPA Act, or a performance audit of a specific grant program by the Auditor-General – such disclosures are rarely made in a timely or accessible manner.

The NSW Government evaluation policy and guidelines require officials to schedule and prioritise **program evaluations** for all government expenditure, which includes grants.[57] Agencies are required to proactively and publicly release the findings of program evaluations unless there is an overriding public interest against disclosure of the information in line with the GIPA Act. The evaluation guidelines recommend that where a consultant is engaged to undertake an evaluation, the brief should include expectations regarding the dissemination of evaluation methods and findings, including publication. In practice, however, not all evaluations are published. Moreover, when evaluations are published, they are typically uploaded to agencies' websites, with the timing of publication largely at the discretion of the agency.

4.9.2 A central web portal

Moving to a central, web-based portal with proactive disclosure requirements will ensure that end-to-end grants data is universally accessible, transparent, and meets customer needs. Centralised, web-based publication of grants information is best practice and already available in other jurisdictions. The Commonwealth Government has a central website, *GrantConnect*, which displays information including guidelines, selection criteria, key dates, and grant value. While search functionality on this site is limited, push notifications for newly published grant opportunities provide a good level of accessibility. Information on grants awarded such as the grantee name, funding amount, and grant location are also displayed on the website. Many stakeholders have emphasised the public value of easy-to-access grants information on a single website, and even the potential to better coordinate the timing of grant programs across government. The PAC noted:

> *'the Australian Government's GrantConnect website provides a centralised, searchable, information system that publishes current and forecast grant opportunities, and information of grants that have been awarded. This website provides a layer of transparency on grants that are available for community organisations to apply for, and what grants have been made, that is currently lacking in NSW.'*

The Department of Regional NSW is leading the development of an internal whole-of-government grants database, which in time is intended to become a comprehensive NSW Government solution for grants information and analysis. This database would integrate with the *Grants and Funding Finder*, which would remain the public-facing central website. Until such time as this database becomes available, this Review recommends the *Grants and Funding Finder* be further developed as soon as practicable to provide information on all available, upcoming, and awarded NSW Government grants, as well the use of ministerial discretion and the results of all grant program evaluations. All agencies not yet supplying their grant information to the *Grant and Funding Finder* should take steps to do so. Until agencies can publish their grant opportunities on this site, they should publish the information outlined in **Appendix D** on their agency website.

More consistent presentation of grants data in a common template will improve its accessibility. Grants information published on the central website should include a standard minimum set of data items, which should be made available in a machine-readable format. Appropriate search and filtering tools should be provided to deliver the best customer experience.

Detailed requirements on the scope and format of published grants data are provided in **Appendix D**.

4.9.3 Exemptions to publication

There will be circumstances in which some grants data cannot be legally published. For instance, if releasing grantee information would breach the *Privacy and Personal Information Protection Act* or the *Health Records and Information Privacy Act*. The draft Guide mandates that officials must still publish as much information as possible within these limitations. For instance, if a grantee's name

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[57] TC18-03 Program Evaluation and the NSW Government Program Evaluation Guidelines 2016 are current as at April 2022. These will be superseded later in 2022 by an updated *Treasury Policy and Guidelines: Evaluation* publication.

must be withheld, the location of the grantee should be made public, if allowed. Officials must also document their reasons for withholding any information.

In limited circumstances there may be a valid policy reason for not publishing information on awarded grants, for example, where public reporting of a grant decision would not be practical or feasible in the circumstances, or would adversely affect the achievement of government policy outcomes. In such cases, the approval of the Minister not to publish the information must be obtained and relevant officials must publish as much information as is reasonably practicable. Officials must document and publish the reasons for not reporting fully.

4.10 Responsibilities of grantees should be clearly communicated

Recommendation 14	All grants must have a funding agreement or, where not practicable, formalised terms and conditions. Where grants have an acquittal process, officials should assess grantee compliance with the terms of the funding as part of this process.

All parties to a grant, including grantees, should be accountable for the way public funds are used. Clearly documenting the expectations of grantees is important to ensure a shared understanding of the terms and conditions of the funding, and support accountability in the delivery of outcomes and value for money. Integrity agencies and other stakeholders consulted during this Review have noted the importance of grantee accountability.

The NSW Government commonly uses a 'funding agreement'[58], *'a legal document which sets out the arrangements under which a grant is provided, received, managed and acquitted.'* Grant agreements should aim to strike a balance between efficiency and customer-focus while also mitigating risks. Unless legislation or policy prescribes otherwise, officials should use the proportionality principle to choose the appropriate form of agreement, guided by the grant's risk rating.

There may be some circumstances where applying the proportionality principle will not be practical. Grants awarded for disaster relief or in emergency situations, for example, may require timely delivery to many grantees. Although these grants can carry a higher risk of grantee fraud, for example, the time and effort required to administer individual grant agreements would undermine the objectives of the scheme. In such instances, grantees must, at a minimum, be bound by clear and specific terms and conditions.

Section 6.4 of the draft Grants Administration Guide:

 Requires that officials ensure that grantees are subject to clear and specific terms and conditions for a grant. This should be by way of a grant agreement, unless not practicable.

This is consistent with the Commonwealth Grants Rules and Guidelines:

Officials must use a 'grant agreement' that ranges from a simple letter of agreement to a tailored agreement depending on the complexity of the grant.

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[58] NSW Department of Premier and Cabinet. 2010. 'Good Practice Guide to Grants Administration'. p14.

The UK Government's Guidance for General Grants also recognises the importance of grants agreements:

Minimum Requirement Six of the Guidance for General Grants mandates that all government grants be awarded through robust grant agreements, proportionate to the value of the grant, which include the terms of funding.

5. Proportionate and customer-focused grants administration

Grants processes that are fit-for-purpose and **proportionate** help to maximise efficiency and provide equitable access to funding. This makes it easier for grantees to apply for grants, and to meet requirements if successful, while also minimising risks.

Collaboration with all relevant stakeholders is important when designing grants if needs are to be properly identified and met. Partnering with grantees and other funding providers to coordinate and co-design grants will help to achieve government objectives in a strategic way.

5.1 Fit-for-purpose processes support good customer experience and equitable access

Recommendation 15	As reflected in the draft *Grants Administration Guide* at **Appendix A**, guidance on grants administration should make clear that application, reporting and acquittal requirements must be proportionate to the value and risk of the grant, and the applicant's capability.

Effective grants administration requires finding an appropriate balance between minimising the administrative burden on grantees and maintaining a suitable level of oversight. Limiting application, reporting, and acquittal requirements to the minimum necessary information helps deliver efficiency and value for money by:

- making the process easier for applicants, particularly those with fewer resources, thus maximising the pool of potential grantees
- making grants administration less time-consuming and resource intensive, with cost savings for agencies and grantees.

Officials should consider whether proposed grant processes might deter worthy applicants from applying. High compliance requirements disproportionate to the size and risk profile of the grant may result in programs being undersubscribed.

Local Government NSW told the PAC Inquiry that *insufficient lead times before applications open and unrealistic timeframes for implementation* are problematic. [59] The peak body said local councils who are grantees had similar concerns, reporting *onerous and unnecessary reporting requirements, particularly for councils with limited resources*. For low value grants Local Government NSW argued, *there is opportunity to reduce reporting red tape and better match reporting requirements to risk.* [60]

Arts and cultural organisations expressed similar views to the PAC Inquiry, saying that application processes are: so onerous they can discourage applicants from applying; [61] *the most cumbersome and time-intensive* of all arts grant applications; [62] and making grant funding *exclusive and inaccessible.* [63]

While onerous reporting and acquittal requirements can deter potential grantees, limited oversight can increase the risk of undesirable outcomes, such as fraud and non-compliance. Taking a risk-based approach to grant governance helps level the playing field for grant applicants of varying size and resources.

Drawing on Guidance provided in the Commonwealth Guidelines, section 5.3 of the draft Grants Administration Guide:

Require officials to tailor guidelines, application and assessment processes, grant agreements, accountability, and reporting requirements to the potential risks and specific circumstances.
Officials should consider ways to streamline reporting requirements, including:
- using information available from other sources
- aligning grant reporting requirements with a grantee's internal reporting requirements
- balancing the rigour of acquittal procedures against the level of risk involved with the grant activity, the grantee and the costs of compliance

The Commonwealth Grants Rules and Guidelines:

Seek to ensure that grants administration appropriately reflects the capabilities of potential grantees while accommodating the government's need for robust and accountable processes.

The cross-government Community of Practice (see **Section 3.6**) should investigate opportunities for improving the customer experience for applicants and grantees, particularly the smaller and less well-resourced. For example, by considering how standardising application and compliance requirements might reduce duplication and red tape. Features of existing government streamlining

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[59] Local Government NSW. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 11. p6.
[60] Local Government NSW. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 11. p6.
[61] NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10. p48.
[62] NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10. p48. [63] NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10. p49.
[63] NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10. p49.

initiatives such as the "Tell us Once" initiative[64] and the Prequalified Supplier procurement arrangements should be examined for how they might be applied to grantee requirements.

5.2 Collaboration and coordination helps meet needs and objectives

NSW Government grants are a significant source of funding for local councils, cultural organisations, and community groups, especially smaller not-for-profit entities. There are a broad range of grants on offer across the NSW Government, as well as from the Commonwealth Government. Some stakeholders say there is significant overlap in these offerings and applicants can find themselves eligible for numerous grants at any one time.

While there are benefits to having multiple funding options available, overlapping grants can also create challenges for applicants. Both large and small local councils, have said it can be difficult and confusing to navigate the varying eligibility rules, application processes, response timeframes, and reporting requirements of the many different grants relevant to them.[65]

Kyogle Council told the PAC Inquiry grants are not being designed with the local government delivery partner or the community in mind and were *essentially an ad hoc collection of programs, operating in isolation from one another with little to no consideration of the impacts on other state and federal programs [or] the delivery partners...*[66]

Tweed Shire Council said *the diverse range of funding programs, partners, timeframes, and rules creates inefficiencies and confusion at the application stage, for project planning and for project delivery.*[67] Penrith and Lake Macquarie city councils suggested to the PAC Inquiry that many grant programs could be consolidated and simplified.[68]

At the same Inquiry, arts and cultural organisations reported a *lack of clear and timely communication* around the opening and awarding of funding programs, which can *undermine an applicant's project [and] derail the viability of an organisation or an artist's career.*[69]

The community sector voiced similar concerns directly to the Review, saying the range of disconnected grant and other funding programs amounts to a piecemeal approach to sector support. It said organisations often have to pool a number of grants to fund core, ongoing activities, resulting in a constant process of scratching around for money. Although their comments relate to broader funding arrangements, grants are an important component. These reports highlight a need for more strategic and longer-term funding arrangements.

The Commonwealth Grants Rules and Guidelines identify collaboration and partnership as a key principle:

Officials are encouraged to seek input from non-government stakeholders to: improve the design and delivery of grants, identify and reduce fragmentation and unnecessary overlaps in grant opportunities and reduce administration and compliance costs for potential grantees, grantees, and government.[70]

The UK Government's Guidance for General Grants also encourage collaboration:

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[64] 'Government made easy' Premier's Priority — 'increase the number of government services where citizens of NSW only need to "Tell Us Once" by 2023'. Department of Customer Service.

[65] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. p78.

[66] Kyogle Shire Council. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 52. p2.

[67] Tweed Shire Council. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 46. p1.

[68] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. p78.

[69] NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10. p49.

[70] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. Para 8.2, p20.

Encourage early market engagement and consultation with relevant stakeholders to inform grant program design and delivery.[71] Identified benefits include a better understanding of eligible applicant needs, including the best delivery period for stakeholders, and innovative delivery options to maximise grant program objectives.[72]

A connected, collaborative approach to grant design and delivery is best practice and the draft Guide at **Attachment A** reflects the Commonwealth guidance in recognising this as an important principle for effective grants administration. Officials should consider their stakeholders as partners in the funding of activities to achieve mutual objectives. Approaches that support this principle include targeted consultations and program co-design.

📖 **Section 5.2 of the draft Grants Administration Guide:**

Notes the critical need for collaboration when policy responsibility for grants administration is shared between different agencies or levels of government. Officials should consider the interaction of the grant with other government or non-government funded activities, particularly where there are similar desired policy outcomes.

Generally, NSW Government agencies do engage with key stakeholders in the grant design process, particularly potential applicants, grantees, and peak bodies. Connecting with other funding entities working in the same space does not appear as common. Collaboration and engagement should not only be on a program-by-program basis, but instead include a more holistic approach aimed at broader strategic and customer-focused outcomes. This would help create a more efficient, complementary and consolidated approach to grant funding. It should lead to grantee needs and government objectives being met in a more strategic way, with fewer grants, grants working in combination, or the avoidance of adverse interactions between grants.

These are not easy challenges to overcome. In **Recommendation 4** of this Review is the establishment of a cross-agency Community of Practice to, amongst other matters, review collaborative approaches and examine how to better coordinated grant funding both within clusters and, where appropriate, across government.

Issues the Community of Practice might consider include:

- coordinating the timing of grant opportunities targeting the same sectors or geographic areas
- linking or consolidating grants programs around broader strategic objectives
- co-design approaches between different funding entities and potential grantees
- sharing resources for improved efficiency and value for money in grants implementation
- longer-term grant funding options where an ongoing need is identified.

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[71] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Four: Business Case Development'. p10-11.
[72] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Four: Business Case Development'. p11.

6. Achieving outcomes and value for money

The allocation of public resources should be based on the **outcomes** and benefits achieved for the people and communities of NSW. **Value for money** assessments guide the prioritisation of resources towards initiatives that maximise net social benefits and use taxpayer money to best effect.

The NSW Government's Outcomes Budgeting Framework ensures public resources are allocated strategically and in line with government priorities. The NSW Government provides best practice guidance to agencies on conducting business cases, CBAs, assurance, and evaluations so that investments can achieve the best outcomes for the people of the State.

6.1 Robust planning and design underpins effective grants implementation

Recommendation 16	Grants should be designed with clear and specific objectives, including connection to identified needs, agency outcomes and government priorities. Officials should identify the outcomes and program measures to be used to evaluate the program against these objectives, consistent with existing policy requirements.

Robust planning and design of grants is necessary if they are to meet identified needs, deliver value for taxpayer money, and maximise community benefits. Appropriate accountability and transparency settings should be in place prior to the implementation of a grant. Grant administrators have indicated that once a grant is underway, it is difficult to fix any shortcomings or correct for unintended consequences.

Robust planning and design involves working closely with stakeholders in identifying needs and making a strong case for change, setting clear and specific objectives, identifying risks, and establishing assessment and performance measures. In some cases, partnering with potential

grantees and other relevant stakeholders in a co-design process is an effective way to plan grants that best meet needs.

The design of grant programs should be based on sound evidence, of the nature and extent of identified needs and the experience of what policy interventions work best in response. Grants management should remain flexible beyond the planning and design stage to take account of emerging evidence during implementation.

The NSW Government has an expenditure policy framework, including *Business Case Guidelines* (TPP 18-06) and the *Guide to Cost-Benefit Analysis* (TPP 17-03). These have been devised to ensure planning and design for expenditure programs is conducted to a high standard across government. This includes requirements for a detailed business case and cost-benefit analysis for proposed initiatives exceeding specific value thresholds. The guidance also has regard to the GSF Act that requires risks be appropriately assessed and managed in grants administration from the planning and design stage.[73]

Current levels of adherence to these guidelines are inconsistent across government and NSW Treasury is working with clusters to address this. Non-compliance was reflected in submissions to the PAC Inquiry. The NSW Auditor-General noted instances where grants did not have clearly stated output, outcome or benefit targets, or where alignment with government priorities was not clear.[74] In some instances, high-level macroeconomic targets were used to assess the program's impacts despite the loose connection between these outcomes and program objectives. The Auditor-General noted *the lack of program-level targets limited the Department's accountability for results* and that more *defined targets may encourage the selection of projects with the highest net benefits.*[75] The ICAC also underscored the need for grants to be designed with reference to an existing policy priority and emphasised that the stated objectives should be specific and inform the relevant assessment criteria.[76]

Bolstering compliance with the existing business case and cost-benefit policy requirements will address these issues raised by stakeholders.

Sections 5.5 and 6.1 of the draft Grants Administration Guide:

Reinforce the policy requirements of the *Business Case Guidelines* (TPP 18-06) and the *Guide to Cost-Benefit Analysis* (TPP 17-03).

This approach aligns with the UK Government's Guidance for General Grants:

Minimum Requirement Four mandates officials develop a business case in grants planning consistent with overarching government policy on appraisal and evaluation, while being proportionate to the level of expenditure and risk of the grant. It notes that specific consideration should be given to value for money, CBA, optimism bias, benefits management, competition, risk management, and approvals.

The Commonwealth Grants Rules and Guidelines:

Outline principles for effective grant design, including efficient, effective, economical, and ethical grants administration and notes officials should address all relevant planning and implementation issues before commencing grant opportunities.

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[73] Section 3.6 of the GSF *Act* requires Agencies *to establish, maintain and keep under review effective systems for risk management, internal control and assurance.*
[74] NSW Auditor General. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 23. p9.
[75] NSW Auditor General. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 23. p9.
[76] Independent Commission Against Corruption. 2022. 'Letter to the Review of Grants Administration in NSW'. p7.

6.2 Assessing value for money

Recommendation 17	Officials must demonstrate at the planning and design stage how a grant program will deliver value for money by identifying benefits and costs (economic, social, environmental, and cultural). Value for money assessment should be proportional to the value and risk of the grant.

Determining value for money requires an assessment of the expected lifetime benefits of a grant against its expected lifetime costs. These costs and benefits can be both monetary and non-monetary, and will be affected by a range of factors including the efficiency with which outputs are produced and the appropriateness and effectiveness of the initiative in achieving outcomes and objectives.

As outlined at Section 6.1, NSW Government grants are subject to *Business Case Guidelines* (TPP 18-06) and the *Guide to Cost Benefit Analysis* (TPP 17-03). NSW Government grant programs, and any individual grants, above $10 million are required to have a CBA appraisal. CBA offers the most comprehensive means of assessing value for money and incorporates the complete range of expected economic, social, cultural, and environmental benefits and costs, which may be captured either quantitatively or qualitatively. It also considers the distribution of these benefits and costs across the community and the appropriateness of the proposed initiative in meeting government objectives. TPP17-03 notes that quality assurance processes are important, including considering the use of independent assessors, to help ensure the value for money assessment is high quality and without bias.

The benefit-cost ratio (**BCR**) and the net present value (**NPV**) are key metrics produced in a CBA. A BCR greater than one and a positive NPV indicate that quantified benefits outweigh the quantified costs. These metrics are not the sole means of demonstrating value for money and a BCR below one should not by itself disqualify a grant from approval. The BCR and the NPV should, however, be calculated in accordance with TPP17-03 and included in the details of the assessment provided in the formal advice to the decision maker. In a submission to the PAC Inquiry, the Department of Regional NSW expressed the view that meeting a target BCR, such as 'greater than one', should not deny critical services and infrastructure to the regions. [77]

Notwithstanding the existing requirements, the ICAC has highlighted that some grant programs (particularly non-competitive grants) fail to properly consider value for money and the alternative uses of public money. The ICAC identified instances of poor-quality business cases with sub-standard CBAs, for example; where costs, negative impacts, and risks are underestimated or omitted; information is unreliable; and opportunity costs are ignored. The ICAC also noted some business cases and BCR calculations for grants were prepared by the grant applicant without independent appraisal. In these situations, the assessment may therefore not be fair and impartial. [78]

This Review recommends that value for money assessments should have a level of detail and rigour that is proportionate to the value, risk, and time sensitivity of the grant, as well as the applicant's capability. In the design of emergency relief grants, value for money should be assessed to the maximum degree possible in the time available, with justification provided for the level of rigour applied.

Grant applicants across NSW vary in size and resourcing. Some may be disadvantaged in applying for competitive grants where there are onerous requirements to demonstrate value for money. In submissions to the PAC Inquiry, local councils and cultural organisations advocated for streamlining

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[77] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. p85.
[78] Independent Commission Against Corruption. 2022. 'Letter to the Review of Grants Administration in NSW'. p7.

and simplifying application processes.[79] They cited the cost and administrative burden of completing businesses cases and CBA, which often require the engagement of external consultants, as too onerous for the size of the grant.[80]

For smaller or time-critical grant programs, more streamlined options such as a rapid CBA may be appropriate, based on the same principles but requiring less precision. While formal business cases and cost-benefit analyses under TPP 18-06 and TPP 17-03 are not required for grants of smaller value, these guidelines are a useful resource for helping assess value for money in grants of any size. Using approaches proportionate to value and risk, officials should also ensure that individual grants within a grant program demonstrate value for money. This may not be practicable for high-volume grants such as those for emergency relief.

The Commonwealth Grants Rules and Guidelines:

Provide guidance on how officials might deliver value for money and how grantees may contribute to value for money, having regard to efficient grants design and delivery, promoting the economical and ethical use of public resources, managing risk to minimise adverse impacts and maximise benefits, and maintaining flexibility to respond to changing circumstances.

The UK Government:

Minimum Requirement Four mandates officials must establish a business case and should conduct evaluations of grants, both of which should include an assessment of value for money using CBA (proportional to the size and risk of the grant).

Section 5.5 of the draft Grants Administration Guide aligns with the UK guidance, providing more specific process requirements than the Commonwealth guidelines:

Officials should assess the expected lifetime benefits against the expected lifetime costs to a level proportionate to the value and risk of a grant. The Guide provides principles for the consideration and assessment of value for money, which align with specific guidance in TPP 18-06 and TPP 17-03.

6.3 Monitoring and evaluation

Monitoring and evaluation provides a means of understanding and measuring the extent to which grants expenditure makes a long-term positive difference to the people of NSW and enables government to build evidence of what works. These processes are also important for helping to ensure the delivery of grant activities and outcomes complies with grants administration guidelines and requirements.

In its submission to the PAC inquiry, the ICAC noted that, while most grants involve an acquittal process, there was not always a detailed evaluation of outcomes or value for money for more complex and higher value grants:

> *Merely awarding a grant does little, if anything, to advance the public interest. Benefits are only generated when the funding has been applied to its intended purpose, which is why the administration of grants schemes should involve a process for verifying outcomes.[81]*

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[79] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. p80.
Theatre Network NSW, MusicNSW, Ausdance NSW and Regional Arts NSW. 2020. 'Submission to the NSW Public Accountability Committee inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 37. p8-9.
[80] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. p80.
[81] Independent Commission Against Corruption. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 92. p16.

Evidence provided by the NSW Auditor-General to the PAC Inquiry of five performance audits examining grants administration processes over the previous seven years identified consistent gaps in monitoring whether funds were achieving their intended goals.[82] The Auditor-General said comprehensive evaluations are needed to judge whether programs achieve their objectives efficiently and effectively.[83] The Auditor-General pointed to NSW Government examples where grants were not evaluated, did not have clear output or outcome targets to effectively evaluate against, or where evaluations otherwise did not meet the standards required under the NSW Government evaluation guidelines.[84]

Monitoring and evaluation should be a collaborative and continuous process, with officials supporting grantees to ensure their activities stay on track, risks are managed and any areas for improvement are identified. Long term, ongoing programs should be evaluated at suitable intervals to ensure their purpose and objectives remain appropriate and relevant to current government priorities. For high-volume grants, such as those for emergency relief, where monitoring and acquittal is not practicable for each grantee, alternative methodologies for monitoring and evaluating activities, outputs, outcomes and benefits should be applied.

The NSW Government provides evaluation guidelines that support agencies in taking a robust and consistent approach to grants evaluation.[85] The guidelines note that monitoring and evaluation processes should be collaborative and tailored to the value, risk and level of government priority of the program. Updated evaluation guidelines due to be issued in mid-2022 will recommend that programs, including grants, over:

- $10 million have evidence of costs, outcomes, and benefits provided
- $50 million have evidence of outcomes and net social benefits provided, and value for money assessed.

Compliance with the existing and updated evaluation guidelines will help address the shortcomings identified by the ICAC and the NSW Auditor General.

The Commonwealth Grants Rules and Guidelines emphasise monitoring across the grant lifecycle:

It notes monitoring should provide assurance that grants are proceeding as planned and that relevant money is being appropriately managed.[86] The Guidelines state reporting and acquittal requirements and procedures should be specified in grant guidelines.[87] Performance and evaluation measures should be established in planning to ensure that outputs and outcomes are clearly specified for evaluation to be effective.[88]

The UK Government gives specific guidance on monitoring and evaluation:

Recommends defining agreed performance measures and outcomes which would aid effective monitoring and evaluation.[89] It also notes that evaluation (proportionate to the size and risk of the grant) is the final step in the grants lifecycle and an appropriate evaluation model should be developed at the design stage.[90]

Sections 6.6 and 6.7 of the draft Grants Administration Guide:

Outline approaches to developing a monitoring and evaluation framework, reinforcing existing NSW Government program evaluation guidelines.

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[82] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. p22.

[83] NSW Auditor General. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 23. p9.

[84] NSW Auditor General. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 23. p9.

[85] TC18-03 Program Evaluation and the NSW Government Program Evaluation Guidelines 2016 are current as at April 2022. These are due to be replaced later in 2022 by *Treasury Policy and Guidelines: Evaluation*

[86] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. p29.

[87] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. p23 & 34.

[88] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. p27.

[89] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Introduction'. p6.

[90] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Introduction'. p8.

The publication of evaluation findings is an important transparency and accountability measure that also contributes to the government's evidence base for future appraisals. Officials should understand they are required to proactively release findings of grant evaluations, unless there is an overriding public interest against disclosure of the information, in line with the GIPA Act.[91]

[91] Agencies may also choose to release a Plain English executive summary and statement of findings on their website. Grant administrators may choose to collate evaluations for publication, to limit requirements on smaller organisations to undertaking publishing.

7. Probity and oversight

Probity refers to qualities of integrity and is achieved though ethical and responsible behaviour and practices.

The people of NSW are entitled to expect high standards of probity in the expenditure of   public money, and governments have a responsibility to ensuring funding decisions are fair, effective and transparent. Where the government grants money to others to meet an identified need and pursue a government objective, appropriate checks and balances must be in place to ensure the integrity of the process.

Strong **risk management** and assurance processes for grants administration will help give stakeholders confidence in collaborating with government, and satisfy the community that public money is being used for maximum benefit.

7.1 Oversight and assurance measures will improve grants probity

Recommendation 18	Ensure best-practice grants processes, in line with agencies' risk management frameworks and requirements under the *Government Sector Finance Act* (2018) (NSW), by requiring:
	• officials to establish processes to identify and manage risks throughout the grant lifecycle, including preparation of a risk appetite statement for all medium-to high-risk grants for approval along with the grant guidelines
	• agencies to identify and task their appropriate risk management officials with providing advice and support to officials who are planning, designing, and implementing grants
	• officials to seek probity advice (whether external or internal) for all grant programs that are complex, high risk or high value, to support the design, application, assessment, and decision-making phases
	• Chief Audit Executives to ensure their agency's internal audit program includes regular audits of grant programs to monitor and assess compliance with the Guide. The frequency of audits should be

> proportionate to the value and risk of grants activity undertaken by the agency

Officials have a responsibility to ensure their administration of grants is transparent, accountable, and fair. These are fundamental principles of probity and citizens and stakeholders want to know they are being applied.

In NSW, Section 3.6 of the GSF Act requires Government Sector agencies *to establish, maintain and keep under review effective systems for risk management, internal control and assurance (including by means of internal audits) that are appropriate systems for the agency*. The Internal Audit and Risk Management Policy for the General Government Sector (TPP20-08) is a mandatory policy to support agencies in fulfilling their GSF Act obligations. Under this policy, officials have a responsibility to self-assess expenditure programs against core requirements centred on principles of effective risk management and internal audit. Independent Audit and Risk Committee oversight of governance processes, risk management, and control frameworks is a further core requirement.

There are a range of risks that can arise in grants that officials will need to assess and manage. These may include risks relating to the complexity of the grant, conflicts of interest, fraud, agency capacity to administer grants, and grantee capacity to deliver activities.

The reports of the NSW Auditor General and the PAC Inquiry suggest a need to ensure appropriate degrees of oversight and assurance of grants administration, with probity checks and balances embedded in agency processes consistently across government.

The ICAC told the PAC Inquiry *there should be a greater focus on probity principles for high-risk grant schemes, such as those involving complicated arrangements, high values, or where the consequences of poor performance are significant.*[92] The NSW Audit Office told the PAC Inquiry that its performance audits examining grants administration processes had identified consistent gaps in monitoring whether funds were achieving their intended goals. These audits found instances of grant agencies not having sufficiently comprehensive documentation to inform agency assessments on grant performance and progress on intended goals.[93]

In its First Report, the PAC noted that while some agencies have probity checks in place to ensure grants are administered appropriately, others do not. It stressed the importance of audits to determine whether grant money has been distributed according to guidelines and with appropriate documentation.

The Review considered the Commonwealth Government's centralised hub model for grants administration for potential use in NSW. Two Commonwealth administration hubs established in 2016 process grants on behalf of several agencies. A Community Grants Hub run by the Department of Social Services and a Business Grants Hub in the Department of Industry, Science, Energy and Resources operate with oversight from the Department of Finance. The hubs aim to improve the transparency, integrity, and efficiency of grants administration across government, and promote consistent compliance with the PGPA Act and the *Commonwealth Grants Rules and Guidelines*.

A performance audit by the Australian National Audit Office in March 2022 found the hubs could not *clearly demonstrate that their establishment has led to more effective or efficient grants administration,* although a lack of available baseline data and properly constituted performance measures made it difficult to assess their impact.[94] While compliance with the *Commonwealth Grants*

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[92] Independent Commission Against Corruption. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 92. p13.

[93] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. p22. The PAC Inquiry referred to the NSW Auditor-General's testimony having indicated that 'performance audits have identified some consistent gaps in monitoring whether funds were achieving their intended goals and had demonstrated the importance of agencies keeping accurate records.'

[94] Australian National Audit Office. 2021. 'Auditor-General, Performance Audit: Operation of Grant Hubs'. p55. Report No. 21 2021–22.

Rules and Guidelines was demonstrated, hub usage by client agencies and support for their grants design was uneven, and the hubs' evaluation services were rarely used.[95]

This Review does not recommend the NSW Government adopt a centralised administration approach. It is unclear from the Commonwealth experience that, to date, the benefits of the hub approach have outweighed the costs. This Review considers it would be beneficial in NSW to maintain both grants administration skills and probity responsibilities within agencies and clusters. This would allow for better alignment with existing risk management, policy, and business processes largely managed at that these levels.

The Review also considered the UK approach to central oversight for higher risk grants by a Complex Grants Advice Panel, an independent, cross-government panel of experts, which provides advice to administrators on the efficiency, effectiveness, and risk of proposed grants. The Review considered that this degree of central oversight was not appropriate in NSW for the same reasons. However, **Recommendation 4** draws on best practice elements of the UK approach and recommends capacity building across the NSW Government through the development of a Community of Practice to disseminate skills and expertise.

The NSW Auditor-General has highlighted the value of clearly articulating in a risk appetite statement the type and level of risk agencies are willing to accept for grants:

Without an agreed risk appetite statement for the grants, it is unclear whether the actions and any compromises taken, controls, and the amount of fraudulent applications received are within expected limits for customer experience, external fraud, reputational and program and project management risk.[96]

The UK oversight approach requires agencies to prepare risk appetite statements for higher risk grants to document '*the management decision and the rationale'* around significant risks. In the PAC Inquiry, the NSW Auditor-General declared strong support for a similar approach in NSW for improved transparency of grant risk management. Service NSW subsequently developed a risk appetite statement for its 2021 COVID-19 stimulus programs that outlined the objectives, guiding principles, appetite, and target residual risk rating.[97]

To complement existing risk requirements, the Review recommends a new mandatory requirement for agencies to prepare risk appetite statements for grants they assess as medium-to-high risk. This reflects best practice and is a proportionate and efficient way to manage risk through the grant lifecycle, while ensuring a suitable level of transparency.

The Commonwealth Grants Rules and Guidelines mandates oversight requirements:

Central agency oversight. Officials involved in the development of grant opportunity guidelines are required to complete a risk assessment of the grants and associated guidelines, in consultation with the Department of Finance and the Department of the Prime Minister and Cabinet.[98]

Central grants administration. A Community Grants Hub and Business Grants Hub provide centralised administration of Commonwealth Government grants under the Streamlining Government Grants Administration Program, with the aim of delivering simpler, more consistent, and efficient grants.

Probity and risk management. Under Section 7 of the Commonwealth Guide:
- Grants administration processes should be proportional to the scale and risk profile of the grant opportunity
- Agencies 'have a duty to establish and maintain systems relating to risk and control' consistent with the PGPA Act. [99]

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[95] Australian National Audit Office. 2021. 'Auditor-General, Performance Audit: Operation of Grant Hubs'. p62. Report No. 21 2021–22.
[96] Audit Office of NSW. 2021. 'Auditor-General's Report, Performance Audit: Grants Administration for Disaster Relief'. p14.
[97] Audit Office of NSW. 2021. 'Auditor-General's Report, Performance Audit: Grants Administration for Disaster Relief'. p14.
[98] Australian Department of Finance. 2017. 'Commonwealth Grants Rules and Guidelines'. p11.
[99] This reflects Section 16 of the *Public Governance, Performance and Accountability Act 2013 (Commonwealth)* which requires that agencies '*must establish and maintain an appropriate system of risk management and oversight.'*

> ✈ **The UK Government's Guidance for General Grants provides for high-level oversight:**

Complex Grants Advice Panel. The UK guidance mandates grants '*that are high risk, novel, contentious or repercussive, as well as those undergoing a step change in scope or funding*' [100] be submitted to an independent, cross-government panel of experts for scrutiny and advice '*on the efficiency and effectiveness of the proposed grant and the balance of opportunities versus risks associated with losses from fraud and error*'.[101] If an agency lists a grant as high risk but does not refer it to the Panel, the reason must be provided in the business case.

Grants champion. Each Department must appoint a grants champion who holds responsibility for disseminating information on grants management, helps promote compliance and is the department's first point of contact on grant matters. [102]

Probity and grant risk management by Agencies. Under Principle 6 of the UK scheme, *all government grants should be managed within an effective and proportionate control framework*. [103] Agencies are required to have an agreed risk appetite for grants– and '*where a business area decides to accept – tolerate – a significant risk or issue, it should document the management decision and the rationale*.'[104] The UK scheme also provides best practice guidance for risk appetite statements and fraud risk assessments.[105]

This Review recommends that probity and assurance processes for NSW grants be aligned with the principles of best practice in the UK and Commonwealth approaches but tailored to suit NSW Government agency and cluster levels of responsibility, as discussed earlier in this section.

Consistent with the requirements of TPP 20-08, the Review recommends that the following layers of control and oversight be built into agency systems and processes. These measures are principles-based and the detail of approach should be implemented in each grant-giving agency in line with their internal risk management frameworks. This will help ensure grants are established with high standards of probity, which should be a key consideration at the planning and design stage. Under this approach:

- **Officials must establish processes to identify and manage risks for all grant activities**, including preparation of a **risk appetite statement for all medium-to-high risk grants** for approval with the grant program guidelines. A formal articulation of risk appetite is an emerging best practice feature of risk management frameworks, particularly where probity and compliance are of critical importance.

- **Agencies must identify and task the appropriate officials, such as the risk officer or team, with providing a central support function for grants.** They should provide appropriate advice and support on the planning, designing, and implementing of grants and ensure their administration is ethical and well-aligned with the Guide and the agency's risk framework. This would not transfer responsibility and accountability, which should remain with the officials administering grants.

- **Officials must seek probity advice for complex, high-risk or high-value grants**, for the duration of the guideline development, promotion, application, assessment and decision-making stages. This advice could be internally sourced or, if more appropriate or practicable, from an external adviser. officials should apply thresholds for complexity, risk, and value consistent with their agency's expenditure and risk management protocols. A probity advisor's assessment and recommendation should be included in the assessment team's advice submitted for the decision maker's approval. Probity advisors are already used by several agencies and provide added assurance that grants are being administered to high levels of integrity. Enlisting probity advice, either internal or external, does not outsource accountability, however, and is not a substitute for good administration practice.

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[100] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Three: Complex Grants Advice Panel (CGAP)'. p4.
[101] UK Government Cabinet Office. 2021. 'Government Functional Standard, GovS 015: Grants'. p9.
[102] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement One: Senior Officer Responsible for a Grant'. p9-10.
[103] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Introduction'. p6.
[104] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Seven: Risk, Controls and Assurance'. p8-9.
[105] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Seven: Risk, Controls and Assurance'. p9.

- **Chief Audit Executives must ensure that their agency's internal audit program includes regular audits of grant programs to monitor and assess compliance with the Guide.** The frequency of audits should be proportionate to the value and risk of grants activity undertaken by the agency. The GSF Act identifies internal audits as a core risk control and assurance measure. These audits help agencies maintain confidence that grants, like any expenditure program, are on track and can help identify substandard practices for correction.

7.2 Fraud risk should be managed to community expectations

Recommendation 19 When administering grants, officials must develop and implement fraud controls that are proportionate to the value and risk of the grant and consistent with NSW public sector risk management requirements.

The risk of fraud in grants administration can have significant adverse impacts for public confidence and is an ongoing challenge for governments worldwide. NSW Government agencies face rising challenges in combating fraud at a time when the electronic processing of grants has become fundamental to the delivery of timely and well-targeted grant support, particularly for emergency relief.

The NSW Auditor-General has noted the higher fraud risk for larger-scale grants, such as the rollout of emergency grants with tight timelines. For example, the NSW Government provided COVID-19 small business grants to meet an urgent need for business support but was later alerted to suspected fraudulent activity. Due to the urgency, systems and controls for detecting fraud were not finalised until after the first round of grant applications.[106] Service NSW and DCS have strengthened processes to detect and minimise fraud in response to identified external fraud risks.[107] Service NSW said the total value of suspected payments to fraudulent applicants is estimated at $16.23 million, while fraud detection measures helped prevent around $40 million in suspected fraudulent claims being paid.[108]

The PAC has stressed the importance of suitable controls for minimising grantee fraud risk:

> *While we acknowledge the challenge of distributing disaster relief quickly, this cannot be at the expense of transparency and accountability. We found that many grant programs were administered with no systemic fraud controls in place.*[109]

Best practice grants administration involves officials and grantees implementing proportionate controls to help minimise and mitigate fraud risk at the planning and design phase of a grant, then actively managing fraud risk throughout its implementation until acquittal.

As outlined in Section 7.1, the NSW Auditor-General has highlighted the value of clearly articulating in a risk appetite statement the type and level of risk agencies are willing to accept for grants and some agencies have started to adopt this approach for higher risk grants. Notably, Service NSW developed a risk appetite statement for its 2021 COVID-19 stimulus programs.[110]

In line with Recommendation 18, the draft Guide at **Appendix A** would require agencies to adopt this approach for all medium- to high-risk grant programs, including preparing a risk appetite statement

106 Audit Office of NSW. 2021. 'Auditor-General's Report, Performance Audit: Grants Administration for Disaster Relief'. p4.
107 Audit Office of NSW. 2021. 'Auditor-General's Report, Performance Audit: Grants Administration for Disaster Relief'. p2.
108 NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10. Para 2.92.
Audit Office of NSW. 2021. 'Auditor-General's Report, Performance Audit: Grants Administration for Disaster Relief'. p4.
109 NSW Public Accountability Committee. 2022. 'Integrity, efficacy and value for money of NSW Government grant programs'. Final Report. Report No 10. p viii.
110 Audit Office of NSW. 2021. 'Auditor-General's Report, Performance Audit: Grants Administration for Disaster Relief'. p14.

that clearly identifies the risk appetite range – and why this is appropriate. For example, officials should clearly indicate when they accept a higher level of fraud risk for a grant program, such as those for time-critical, emergency relief.

📖 Section 5.7 of the draft Grants Administration Guide:

Notes that officials should:
- establish appropriate internal controls for grants administration, such as making different officers responsible for assessing grant applications, giving financial approval for the expenditure, and making the grant decision
- guard against the fraudulent use of grant money, unlawful activities and other inappropriate conduct
- guard against actual or perceived conflicts of interest by officials and Ministers.

The approach to fraud risk management in the draft Guide is consistent with best practice jurisdictions. The UK guide, for example, requires agencies to document any decisions to tolerate significant risk, explain those decisions, and seek Community of Practice guidance on risk appetite statements.[111] The Commonwealth Government and other states and territories have adopted similar principles-based guidance for fraud risk management.

🗺️ The Commonwealth Grants Rules and Guidelines:

Under Section 13.3 of the Commonwealth Guide, agencies must:
- *ensure that entity fraud procedures and practices comply with the fraud risk management and controls* (under relevant Commonwealth Rules), *including as it relates to grants administration*
- *take all reasonable measures to prevent, detect, and deal with fraud relating to the entity.*[112]

✈️ The UK Government's Guidance for General Grants:

Under Principle 6 of the UK scheme, *all government grants should be managed within an effective and proportionate control framework, including being subject to timely and proportionate due diligence, assurance, and fraud risk assessment.*[113]
As outlined above, the UK Guide requires agencies to have an agreed risk appetite for grants and *'where a business area decides to accept – tolerate – a significant risk or issue, it should document the management decision and the rationale.'*[114]
The UK scheme also provides best practice guidance for risk appetite statements and fraud risk assessments.[115]

7.3 Extra Auditor-General powers may be needed to improve accountability

'Follow the dollar' powers in the grants administration context refers to the ability to audit the expenditure of government funds regardless of where or by whom those funds are spent. Currently, the NSW Auditor-General cannot conduct a performance audit of public funds in the hands of non-government entities, such as a grantee.

The PAC Inquiry recommended the government *increase the powers and remit of the Auditor-General of NSW to include 'follow the dollar' powers, consistent with other Australian state and territory jurisdictions.*[116] The PAC made a similar recommendation in 2018 following its inquiry into the *Impact*

[111] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Seven: Risk, Controls and Assurance'. p9-10.
[112] Rule 10 of the Public Governance Performance and Accountability Rules 2014 (Commonwealth) requires that Agencies '*take all reasonable measures to prevent, detect and deal with fraud relating to the entity, including by: conducting fraud risk assessments regularly...developing and implementing a fraud control plan that deals with identified risks as soon as practicable after conducting a risk assessment; and having an appropriate mechanism*' for preventing, detecting and investigating incidents of fraud or suspected fraud.
[113] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Introduction'. p6.
[114] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Seven: Risk, Controls and Assurance'. p8-9.
[115] UK Government Cabinet Office. 2021. 'Guidance for General Grants, Minimum Requirement Seven: Risk, Controls and Assurance'. p9.[116] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. Recommendation 4.
[116] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. Recommendation 4.

of the WestConnex project, noting that the Auditor-General was unable to audit the financial statements of the Sydney Motorway Corporation holding the significant WestConnex road assets once it had been privatised.[117]

The ICAC and the PAC have stressed the value of ensuring the role and powers of the Auditor-General complement requirements of officials and Ministers in the new Guide. They argue these powers will improve overall accountability of the way public funds are used.[118] The ICAC has also said 'follow the dollar' powers for the NSW Auditor-General would help enable greater transparency and public scrutiny on the use of grant expenditure and help encourage best practice grants administration by officials and grantees.[119]

In evidence to the PAC Inquiry, the NSW Auditor-General acknowledged that the Audit Office is constrained in not having these powers and this puts it *at odds with other audit offices around Australia and New Zealand in not having that mandate.*[120]

Comparable jurisdictions have established 'follow the dollar' audit powers. The Commonwealth [121], Victoria[122], Western Australia[123], and New Zealand[124] provide such audit powers, although there are limitations in some cases.[125]

This Review emphasises that designing and implementing robust monitoring and acquittal processes in grants administration is the primary means for ensuring the probity and effectiveness of grant activities. Section 6 of the draft Guide at **Attachment A** confirms the important role of officials in this regard, including establishing a monitoring and evaluation plan that is proportionate to risk, and which allows for the tracking of grant progress, management of risks, and identifying areas for improvement. Appropriate levels of agency monitoring and oversight can help reduce instances where the Auditor-General might see a need to extend the audit of grants administration to third parties.

NSW Treasury is currently examining how 'follow the dollar' powers may be applied in NSW as part of the NSW Government's response to the 2018 PAC WestConnex inquiry. Such powers must be fully considered in a broader context than just grants, as the issue extends to other forms of government expenditure, such as procurement and the commissioning of services.

Consequently, thorough consultation is required with a range of entities that would be impacted by the introduction of such powers, including third-party recipients of government funds. It is important that entities transacting with the NSW Government fully understand their likely responsibilities under performance audits and the potential costs associated with compliance. Being subjected to audit should not create a disincentive for these entities to provide services to and on behalf of the government. This is especially the case for smaller organisations with limited resources whose viability may rely heavily on grant support.

This Review has concluded that further consideration of the value of implementing 'follow the dollar' powers is required. These powers have the potential to improve the end-to-end integrity of NSW Government grants administration, but there must be due regard for the impact on the range of affected stakeholders.

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[117] NSW Public Accountability Committee. 2018. 'The Impact of the WestConnex Project'. Final Report. p38 & 42.
[118] Independent Commission Against Corruption. 2020. 'Submission to inquiry into the Integrity, efficacy and value for money of NSW Government grant programs'. Submission 92. p17.
[119] Independent Commission Against Corruption. 2022. 'Letter to the Review of Grants Administration in NSW'. p6.
[120] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. p23.
[121] *Auditor-General Act 1997*. Sections 18 & 18B.
[122] Audit Act 1994 (Vic). Section 14 & 15.
[123] *Auditor General Act 2006 (WA)*.
[124] *Public Audit Act 2001 (NZ)*. Section 25 & 27.
[125] NSW Public Accountability Committee. 2021. 'Integrity, efficacy and value for money of NSW Government grant programs'. First Report. Report No 8. Para 2.88.

Appendix A: Draft Grants Administration Guide

Premier and Cabinet

Grants
Administration
Guide

May 2022   nsw.gov.au

Contents

1

1. Overview

1.1 Purpose

Grants are a way of distributing public money to achieve government policy outcomes for the benefit of the community.

The NSW Government is committed to ensuring that all public money is spent fairly, effectively and transparently. Grants administered by the NSW Government must:

- deliver value for public money in achieving their stated objectives

- involve robust planning and design

- adopt key principles of transparency, accountability and probity

- deliver a high-quality customer experience.

This Guide provides:

- an overview of the grants administration process

- overarching principles that apply to all NSW Government grants

- specific requirements that must be complied with when administering grants.

The Guide aims to harmonise grants administration processes across government and ensure that the key principles of transparency, accountability and probity are embedded in the way NSW Government grants are delivered.

Further materials to support the grants administration process, including templates and more detailed process guidance, will be developed to supplement this Guide and made publicly available online.

1.2 Who is required to comply with this Guide?

This Guide applies to:

- Ministers

- officials, being government sector employees within the meaning of the *Government Sector Employment Act 2013* (NSW), excluding employees of State Owned Corporations (**SOCs**)

- Ministerial staff.

The Guide applies to all grants administered by the government sector. The Guide does not apply to local government or SOCs. However, where local government or other third parties administer grants on behalf of the NSW Government, officials **must** satisfy themselves that there are practices and procedures in place for the administration of the grants consistent with the key principles and requirements of the Guide, with appropriate adaptations as necessary.

Boards and other committees established under NSW legislation may be involved in grants administration, including by providing advice to Ministers or officials who exercise the expenditure functions of government. The Guide applies to Ministers and officials carrying out those functions. All parties involved in grants administration for or on behalf of the NSW Government are encouraged to adhere to the Guide.

1.3 Is compliance with the Guide mandatory?

The Guide is issued under a Premier's Memorandum. Premier's Memoranda are binding on Ministers and agencies and compliance is required and expected. For government sector employees, failure to comply may result in disciplinary action under the *Government Sector Employment Act 2013* (NSW).

Ministerial staff must comply with this Guide in accordance with the terms of their employment under the *Members of Parliament Staff Act 2013* (NSW). In addition, under the NSW Office Holder's Staff Code of Conduct, staff must comply with all applicable laws, applicable codes of conduct and Premier's Memoranda.

The Guide provides best practice guidance and includes some mandatory requirements. Where a requirement is mandatory, this is indicated by the use of the word '**must**' or the words '**must not**' in relation to that requirement. Mandatory requirements are primarily located in Part 6 and are summarised in Part 3 of the Guide.

1.4 Legislative and policy framework

The Guide sits alongside other requirements that apply to the expenditure of public money in NSW, as well as laws and policies that govern ethical behaviour. The Guide does not affect the requirements of those laws and policies, and officials, Ministers and Ministerial staff must ensure that they comply with all relevant laws and policies when administering grants. Key requirements of that legislative and policy framework are set out below.

1.4.1 *Government Sector Finance Act 2018* (NSW) (**GSF Act**)

The GSF Act requires that the expenditure of money must be 'authorised', namely:

- with lawful authority, and

- in accordance with any delegation.[1]

Officials are to be guided by the values of accountability, integrity and transparency when managing public money, as follows:

- Accountability: take reasonable care so that use of government resources and related money is efficient, effective and prudent.

- Integrity: place public interest over private interest and not use position or information improperly for financial or personal gain.

- Transparency: ensure that any real or perceived conflicts of interest are effectively avoided, managed and disclosed.[2]

Additionally, the GSF Act imposes obligations on the accountable authority to implement:

- financial management policies and procedures

- effective systems for risk management, internal control and assurance (including by means of internal audits) that are appropriate systems for the agency

- arrangements for ensuring compliance with the GSF Act

and to ensure compliance with such policies and procedures.[3]

Various policies, including Treasury Policy Papers (**TPPs**), support requirements of the GSF Act. Where these policies are relevant to grants administration, they are mentioned in the Guide.

1.4.2 *Government Sector Employment Act 2013* (NSW) (**GSE Act**)

The Ethical Framework established under the GSE Act prescribes the core values of integrity, trust, service and accountability, and sets out the principles of expected behaviour of officials including:

- acting professionally with honesty, consistency and impartiality

- placing the public interest over personal interest; providing transparency to enable public scrutiny

- being fiscally responsible and focusing on efficient, effective and prudent use of resources.[4]

1.4.3 *State Records Act 1998* (NSW) (**SR Act**)

The SR Act requires public offices (including agencies and Ministerial offices) to keep full and accurate records of the activities of the office. It is an offence to, among other things, abandon, dispose of, damage or alter a State record.

1.4.4 *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**)

The GIPA Act provides for the proactive release of government information by agencies and gives members of the public an enforceable right to access government information held by an agency (which includes Ministerial offices). Access to government information is only to be restricted if there is an overriding public interest against disclosure.

1.4.5 *Independent Commission Against Corruption Act 1988* (NSW) (**ICAC Act**)

The ICAC Act provides for the Independent Commission Against Corruption (**the ICAC**) to investigate corrupt conduct involving or affecting public authorities and public officials. The ICAC's jurisdiction extends to government agencies, local councils, Ministers, members of Parliament (**MPs**) and persons employed under the *Members of Parliament Staff Act 2013*.

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1   GSF Act, section 5.5.
2   GSF Act, section 3.7(1).
3   GSF Act, section 3.6(1).
4   GSE Act, section 7.

While it can take many forms, corrupt conduct includes conduct involving a breach of public trust, the dishonest or partial exercise of official functions, or conduct that affects the honest or impartial exercise of official functions (s 8(1)).[5] Conduct by a Minister or MP that breaches an applicable code of conduct may also be investigated by the ICAC.[6]

1.4.6 NSW Ministerial Code of Conduct

The Ministerial Code of Conduct[7] establishes the standards of ethical behaviour required of Ministers, including imposing a duty to act honestly and in the public interest. In the exercise or performance of their official functions, a Minister must not act dishonestly, must act only in what they consider to be the public interest, and must not act improperly for their private benefit or for the private benefit of any other person.[8]

The Ministerial Code of Conduct also deals with conflicts of interest, including by providing that a Minister must not, without the written approval of the Premier, make or participate in the making of any decision or take any other action in relation to a matter in which the Minister is aware they have a conflict of interest.[9]

The Ministerial Code of Conduct is prescribed by the ICAC Regulation for the purposes of section 9 of the ICAC Act, meaning that a substantial breach of the code could amount to corrupt conduct under the ICAC Act.

1.4.7 Other laws and policies

The NSW Office Holder's Staff Code of Conduct sets out the ethical standards that apply to Ministerial staff, including the obligation to:

- behave honestly and with integrity

- acknowledge that staff do not have the power to direct public servants in their own right and that public servants are not subject to their direction

- recognise that executive decisions are the preserve of Ministers or authorised officials, and not staff acting in their own right

- comply with all applicable laws, applicable codes of conduct and Premier's Memoranda (including this Guide and the record keeping requirements under the SR Act).

1.5 Structure of the Guide

The Guide is structured as follows:

- Parts 1 and 2 of the Guide provide an overview and a list of key definitions.

- Part 3 sets out the responsibilities of Ministers, Ministerial staff and officials, which are considered in further detail in Parts 5 and 6.

- Parts 4 and 5 detail the key concepts and principles that underpin grants administration in NSW.

- Part 6 steps out the process for administering grants and the specific requirements that apply to Ministers, Ministerial staff and officials in relation to grants.

1.6 Acknowledgement

The Guide has been developed by close reference to the *Commonwealth Grants Rules and Guidelines 2017* (**CGRGs**). The Guide adopts a similar approach to the CGRGs – setting out key principles and mandatory requirements – and draws on the concepts and requirements contained in the CGRGs. The Commonwealth was consulted during the drafting of the Guide.

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5   ICAC Act, section 8(1).
6   ICAC Act, section 9.
7   Contained in the Appendix to the *Independent Commission Against Corruption Regulation 2017* (NSW) (**ICAC Regulation**).
8   Ministerial Code of Conduct, section 6.
9   Ministerial Code of Conduct, section 7(2).

2

2. Definitions

Agency	Means government sector agency under the *Government Sector Employment Act 2013* (NSW)
Assessment team	The person or persons responsible for assessing individual grants against the grant guidelines
CGRG	*Commonwealth Grants Rules and Guidelines 2017* (Cth)
Eligibility criteria	The conditions which must be met by an applicant to qualify for a grant
Grants administration	Refers to the processes that an agency puts in place to deliver grants. It includes planning and design; promotion; assessment and decision-making; the making of a grant; the management of grant agreements; the ongoing relationship with grantees; reporting; and review and evaluation
Grant lifecycle	Refers to the stages of grants administration, from planning and design to evaluation
Grant guidelines	Refers to a document containing the relevant information required for potential grantees to understand: the purpose, outcomes and objectives of a grant; the application and assessment process; the governance arrangements (including roles and responsibilities); and the operation of the grant
Grant	As defined in Part 3 See also table 1 for definitions of competitive, non-competitive and one-off or ad hoc grants[10]
Grant opportunity	The grant process or program where grant(s) are made available to grantees and potential grantees
Grantee	Means the individual or organisation selected to receive a grant
Officials	Means persons employed in the government sector under the *Government Sector Employment Act 2013* (NSW), excluding employees of State Owned Corporations
Ministerial staff	Means persons employed under the *Members of Parliament Staff Act 2013* (NSW) by Ministers as a member of their staff

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10 The key principles and mandatory requirements set out in the Guide must be met for all grants. Where relevant, the Guide provides appropriate exceptions, such as exceptions that apply for non-competitive grants.

3

3. Your responsibilities

		Reference in Guide
Ministers	• Be familiar and comply with the principles and grants administration processes set out in this Guide, as well as applicable laws and policies that guide ethical behaviour	
	• Promote compliance with this Guide by officials and Ministerial staff	
	• Comply with the following mandatory requirements:	
	– Ministers who are involved in the grants administration process must administer the grant in accordance with the grant guidelines	**6.3**
	– A Minister must not approve or decline a grant without first receiving written advice from officials on the merits of the proposed grant or group of grants (see exceptions at 6.3 *Receiving and assessing grant applications* for non-competitive grants)[11]	**6.3**
	– A Minister (or other decision-maker) who approves or declines a grant must record the decision in writing, including the reasons for the decision (and any departure from the recommendation of officials), having regard to the grant guidelines and the key principle of achieving value for money, and manage these records in accordance with the requirements of the SR Act (see exceptions at 6.3 *Receiving and assessing grant application*s for non-competitive grants)	**6.3**
	– A Minister (or delegate) may approve the awarding of a grant, or opening of a grant opportunity, using a method other than a competitive, merit-based assessment process. The decision-maker must have regard to the advice of officials and must document the reasons for selecting the alternative process	**6.1**
Officials	• Be familiar and comply with the principles and grants administration processes set out in this Guide, as well as applicable laws and policies that guide ethical behaviour	
	• Provide full and frank advice to Ministers about grants, grants processes and decision-making	
	• Comply with the following mandatory requirements:	
	Planning and designing grant opportunities	
	• Officials must put in place practices and procedures to ensure that grants are administered consistently with the key principles and requirements in the Guide	**5**

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11 The exceptions for non-competitive grants at 6.3 *Receiving and assessing grant applications* do not apply to one-off, ad hoc grants. The principles and requirements in the Guide that apply to competitive grants apply in the same way to one-off, ad hoc grants (including the requirements that the Minister must receive written advice from officials and must record the reasons for the decision).

	Reference in Guide
• Where local government or other third parties are engaged to administer grants on behalf of NSW Government, officials must satisfy themselves that there are practices and procedures in place for the administration of the grants consistently with the key principles and requirements of the Guide, with appropriate adaptations	**1.2**
• Officials must demonstrate at the planning and design stage how a grant opportunity will deliver value for money by identifying benefits and costs (economic, social, environmental and cultural)	**5.5**
• Officials must identify and manage risks for all grants, in accordance with agencies' responsibilities under the GSF Act	**6.1**
• Officials must develop and implement fraud controls that are proportionate to the value and risk of the grant and consistent with NSW public sector risk management requirements	**5.7**
• Officials must seek probity advice (whether external or internal) for all grant opportunities that are complex, high-risk or high-value (consistent with the agency's expenditure and risk management frameworks), to support the design, application, assessment and decision-making phases	**6.1**
• When designing the assessment process, officials must consider and develop a plan for managing any conflicts of interest that might arise	**6.1**
• Where a method other than a competitive merit-based selection process is to be used, officials must document why that method will be used and outline the risk mitigation strategies. This must be approved by the relevant Minister (or head of agency or delegate)	**6.1**
• Officials must prepare clear, consistent grant guidelines that contain information about a grant, including the details set out below at 6.1 *Planning and designing the grant opportunity*	**6.1**
• Where it is anticipated that a grant opportunity will involve input from MPs or other stakeholders, officials must ensure that the grant guidelines clearly outline the role of stakeholders and the engagement process, and that all stakeholder input is documented, including how it was considered in the assessment process	**6.3**
• Where significant changes are made in relation to a grant opportunity, officials must revise the grant guidelines accordingly	**6.1**
• Officials must ensure that information about grant opportunities, including the grant guidelines and any revised versions, is published on the NSW Government Grants and Funding Finder[12]	**6.2**

12 Until agencies can publish all information on the NSW Government Grants and Funding Finder site (nsw.gov.au/grants-and-funding), officials should publish the information on the agency's website.

- Where grants are provided on a one-off or ad hoc basis, the grant guidelines are not required to be published. However, officials must ensure that information about the grant is made available on the NSW Government Grants and Funding Finder no later than 45 calendar days after the grant agreement takes effect, or, if there is no grant agreement, no later than 45 calendar days after the first payment is paid to the grantee — **6.1**

Assesment and decision-making

- Officials must administer a grant in accordance with the grant guidelines — **6.3**

- In limited circumstances where eligibility criteria are to be waived, officials must ensure the reasons are documented and the waiver must be approved by the decision-maker (whether as part of the final approval or otherwise) — **6.3**

- Where the Minister is the decision-maker, officials must provide written advice which includes, at a minimum, the matters outlined at 6.3 *Receiving and assessing grant applications* (see exceptions at 6.3 for non-competitive grants) — **6.3**

- An official who approves or declines a grant must record the decision in writing, including the reasons for the decision (and any departure from the recommendation of the assessment team) having regard to the grant guidelines and the key principle of achieving value for money, and manage these records in accordance with the requirements of the SR Act (see exceptions at 6.3 for non-competitive grants) — **6.3**

- Officials must ensure that (where relevant) all decisions in the assessment process are documented, as set out below at 6.3 *Receiving and assessing grant applications* (see exceptions at 6.3 for non-competitive grants) — **6.3**

Providing grants and publishing grant information

- Officials must ensure that grantees are subject to clear and specific written terms and conditions for a grant. This should be by way of a funding agreement, unless not practicable — **6.4**

- Officials must ensure that information on the decisions made in relation to grants awarded is published on the NSW Government Grants and Funding Finder no later than 45 calendar days after the grant agreement takes effect or, if there is no grant agreement, no later than 45 calendar days after the first payment is paid to the grantee (see exceptions at 6.5 *Publishing grant information)* — **6.5**

- Where there is a legal obligation to maintain confidentiality over certain grant information, officials must publish as much information as is permitted and the reasons for not publishing the information fully must be documented by officials (see exceptions at 6.5 *Publishing grant information)* — **6.5**

		Reference in Guide
	• Where there is a policy exception to the requirement to publish grant information, officials must publish as much information as is reasonably practical. The approval of the Minister must be obtained and the reasons for not publishing the information fully must be documented by officials and published (see exceptions at 6.5 *Publishing grant information*)	**6.5**
Ministerial staff	• Be familiar and comply with the principles and grants administration processes set out in this Guide, as well as applicable laws and policies that guide ethical behaviour	
	• Comply with the following mandatory requirements:	
	– Ministerial staff must put in place practices and procedures to ensure that Ministerial involvement in grants administration is conducted in a manner that is consistent with the key principles and requirements in the Guide	**5**
	– Where a Minister is the decision-maker, Ministerial staff must ensure that the decision is recorded in writing and the records are managed in accordance with the requirements of the SR Act	**6.3**

As noted above, where local government or other third parties administer grants on behalf of the NSW Government, practices and procedures must be in place to ensure that grants administration is conducted in a manner that is consistent with the key principles and requirements of the Guide, with appropriate adaptations as necessary.

Additionally, where boards and other committees established under NSW legislation are involved in grants administration, the Guide applies to Ministers and officials carrying out grants administration functions, with appropriate adaptations as necessary.

4

4. What is a grant?

For the purposes of the Guide, a 'grant' is an arrangement for the provision of financial assistance by the NSW Government (or on behalf of the NSW Government) whereby money:

- is paid to a grantee other than the NSW Government

- is intended to help address one or more of the NSW Government's policy outcomes

- is intended to assist the grantee to achieve its objectives

- does not result in the return of goods or services by the grantee of an equivalent value to the NSW Government (i.e. it is a non-reciprocal exchange).

A 'grant' does not include:

- the purchase of goods and services for the direct use or benefit of the NSW Government (i.e. procurement or tender)

- engaging another party to carry out work on behalf of the NSW Government (i.e. commissioning)

- a gift of public property

- ex gratia and act of grace payments made to persons who have suffered a financial or other detriment as a result of the workings of government

- a payment to a person of a benefit or an entitlement established by legislation

- an arrangement that is explicitly for the purpose of the transfer of funds and/or assets between NSW Government entities or SOCs

- a tax concession or offset

- a loan provided on commercial terms

- a payment of remuneration, compensation or damages

- a payment from the Commonwealth where the NSW Government is used as an intermediary to distribute funds to other parts of government or to non-government entities

- a scholarship

- a sponsorship arrangement in which the NSW Government provides money to an organisation or individuals to carry out a particular event or activity in return for sponsorship rights.

The Guide applies to all payments that meet the above definition, including payments made:

- as a result of a selection process, regardless of whether that process is open, closed, targeted, competitive or non-competitive

- where particular criteria are satisfied

- on a one-off or ad hoc basis.

The above definition informs the scope of the Guide. Other NSW legislative instruments or policies such as the *Public Works and Procurement Act 1912* (NSW) may apply to other financial arrangements which do not fit within the definition.

5. Key principles of grants administration

The GSE Act establishes the government sector core values of integrity, trust, service and accountability. These values underpin the work of government and should be embedded in grants administration. This includes requirements to be fiscally responsible, to focus on efficient, effective, and prudent use of resources, and to provide transparency to enable public scrutiny.

The CGRGs set out 7 key principles to be applied in administering grants:

Key principles of grants administration

- Robust planning and design
- Collaboration and partnership
- Proportionality
- An outcomes orientation
- Achieving value with relevant money
- Governance and accountability
- Probity and transparency

These key principles are adopted in this Guide and are set out in further detail below. The principles reflect the government sector core values and provide a strong foundation for grants administration.

Officials **must** put in place practices and procedures to ensure that grants are administered in a manner that is consistent with the following key principles and requirements in the Guide. Similarly, Ministerial staff must put in place practices and procedures to ensure that Ministerial involvement in grants administration is conducted in a manner that is consistent with the key principles and requirements in the Guide.

5.1 Robust planning and design

Effective planning and design facilitates fair, effective and transparent grants administration. It helps ensure that grants meet identified needs and deliver value for money. Planning and implementation issues should be considered before commencing a grant opportunity. The specific issues to be addressed will depend on the grant, including its complexity and scale.

Grant planning is also about being strategic in establishing the grant and having regard to activity across the government sector in identifying a particular need that could be met through a grant. Officials should make use of all available information and existing evidence in devising and implementing grants, including through collaboration and partnership.

Officials should have regard to whether a grant is the best vehicle to achieve the intended policy objectives. This involves developing a range of feasible options that would meet the intended objectives. For instance, it may be more effective, in certain circumstances, to provide a direct service or commission a contracted service rather than establish a grant.

If a grant is the appropriate mechanism, officials should then consider different options for the design of the grant to determine the best approach for achieving the objectives.

Planning a grant should include having regard to:

- the rationale for the grant initiative and how the grant initiative will meet government objectives, including expected outcomes and benefits and how to measure these

- the potential for co-design with prospective grantees and/or other stakeholders to best meet identified needs

- the expected costs and benefits of the grant initiative and the risks and sensitivities associated with these

- any taxation or accounting treatments required in respect of the grant

- commercial considerations, including consideration of an appropriate funding strategy and grant agreement

- management issues, including:

  - the approach to engaging and communicating effectively with stakeholders

  - risk identification and management

- accountability, probity and transparency in administering the grant

- appropriate application and selection processes to be used

- the role of decision-makers

- appropriate performance measures

- monitoring and evaluation (which may be under a benefits realisation planning framework)

- appropriate documentation, including guidelines and application information

- applicable legal, policy and governance requirements (see 1.4 *Legislative and policy framework*), such as the GSF Act and NSW Government appraisal and evaluation policies (see 6.1 and 6.7).

Once the parameters of a grant have been established, officials should consider the risks associated with the grant opportunity. This entails identifying the risks that may arise and taking steps to avoid or mitigate those risks. This should be built into the grants process.

Risk management activities will vary depending on the grant. Some risks can be appropriately mitigated or managed through the grant agreement, while other risks are better managed across the grant life cycle. Administration processes should be proportionate to the scale and risk profile of the grant. Specific mandatory requirements regarding risk management are outlined further below at 6.1 *Planning and designing the grant opportunity*.

Officials should ensure that the party who is best placed to manage a specific risk is identified and tasked with managing that risk. In a jointly funded or delivered grant opportunity, it may be appropriate to share the responsibility for some risks. Active risk management should occur throughout the grant life cycle.

See 6.1 *Planning and designing the grant opportunity* for information on how to plan and design a grant and specific policy requirements.

5.2 Collaboration and partnership

Collaboration and partnership with stakeholders is an important part of grants administration. The needs of stakeholders should be considered in the development of grant opportunities, and it should not be assumed that the same approach will suit all grant opportunities.

Officials should consider the interaction of the grant with other government or non-government funded activities, particularly where there are similar policy outcomes.

Where policy responsibility or grants administration is shared between different agencies or levels of government, or where an agency or third party is responsible for the grants administration of another agency or entity, a focus on collaboration and partnership is critical.

Consultation and cooperation with government and non-government stakeholders can:

- improve the design and delivery of grants

- identify and reduce fragmentation and unnecessary duplication in grants

- improve the responsiveness, flexibility and relevance of grants

- reduce administration costs for government and non-government stakeholders

- support the appropriate sharing of responsibility for costs and risks among stakeholders

- support the development of appropriate outputs, accountability requirements, governance structures and documentation for the grant

- assist potential grantees to understand the grants administration process.

Co-design of grants with stakeholders may be appropriate in some cases, enabling stakeholders to have input on the design of the grant opportunity to meet their needs more effectively.

Effective collaboration and partnership with grantees is important throughout the grants administration process. A well-designed grant agreement will help establish the basis for effective working relationships based on collaboration between the grantee and the agency, and a shared understanding of objectives and expectations. Longer term grant agreements may be conducive to improved partnerships between grantees and agencies and should be considered where appropriate.

In pursuing collaboration and partnership opportunities, due regard should be had to any issues that may arise in respect of probity, conflict of interest and the potential for competitive advantage.

5.3 Proportionality

Grants may vary in scale and complexity. Effective grants administration requires a customised approach for each grant opportunity according to the value and complexity of the grant and the associated risks.

Officials should tailor grant guidelines, application processes, assessment processes, grant agreements, and reporting and acquittal requirements taking into account the potential risks and specific circumstances. In doing this, officials should consider:

- the capability and experience of applicants and grantees

- the intended policy outcomes

- the purpose, value and duration of a grant

- the nature and type of deliverables

- governance and accountability requirements

- the nature and level of the risks involved

- the effect of any application or process requirements for grantees on the accessibility of the grant.

Officials should determine the volume, detail and frequency of reporting requirements proportional to the risks involved and the intended policy outcomes.

Officials should also consider opportunities to reduce the burden of reporting requirements while managing risk, including by having regard to information that is otherwise available (for example, information that is otherwise collected by government and available to the relevant officials or publicly available) and by aligning grant reporting requirements with a grantee's internal reporting requirements (such as the annual reporting cycle), where appropriate.

Officials should balance the rigour of acquittal procedures against the level of risk involved with the grant activity, the grantee and the costs of compliance. For example, officials should consider that independently audited financial statements may be expensive and difficult to obtain for certain grantees, or the cost may represent a large proportion of a low-value grant.

Any considerations of proportionality made by officials in the planning and design of grant opportunities should be documented, particularly to explain the approach taken towards identified risks. Officials should review these decisions prior to opening further grant rounds.

5.4 Outcomes orientation

Grants administration should be designed and implemented with a focus on achieving outcomes and benefits consistent with government objectives. To ensure an outcomes orientation, officials should comply with *TPP 18-06 NSW Government Business Case Guidelines,* which outline requirements for grants over a certain value and provide helpful guidance for officials administering grants of any value.

TPP 18-06 recommends:

- developing **objectives that are outcomes and benefits-focused** and that are:
  - linked to NSW Government, cluster and agency priorities or State Outcomes
  - measurable and clear about how and when objectives are expected to be achieved
  - clearly communicated to key stakeholders, including grantees
  - reviewed regularly to ensure they remain relevant and appropriate
- documenting how the grant's **inputs and activities are expected to lead to the desired outcomes and benefits** (see 6.1 *Planning and designing the grant opportunity* for further information)
- planning for **monitoring and evaluation**, which includes establishing **appropriate performance measures** for evaluation to assess whether intended outcomes and benefits are being realised. Officials should ensure these measures are specified in grant guidelines and agreements.

Following the implementation of a grant opportunity, officials should implement an outcomes evaluation to assess if and how it led to intended changes and met objectives (see 6.7 *Grants evaluation*). The outcome evaluation can also inform an economic evaluation, which assesses value for money.

Officials should work collaboratively with grantees to ensure a shared understanding of the objectives and intended outcomes and benefits of grants, and the approach to monitoring these. Officials should consider what support or resources might assist grantees to identify and monitor grant outcomes and benefits.

Grants administration should also be designed and implemented to enable grantees to focus on achieving outputs, outcomes and benefits for the beneficiaries of grants, namely the individuals, organisations or community that benefit (directly or indirectly) from the grant.

5.5 Achieving value for money

Determining value for money in grants administration requires an assessment of the lifetime benefits of a grant opportunity against its lifetime costs. These costs and benefits will be affected by a range of factors including how they are distributed among different groups across the community, the efficiency with which outputs are produced, and the appropriateness and effectiveness of the grant in achieving outcomes and objectives.

Achieving value for money is important to ensure the benefits of grants are maximised for the people of NSW. Value for money should be a key consideration across the grant life cycle, from its initial design through to implementation and evaluation.

Some ways officials may deliver value for money in grants administration include:

- efficient and effective grants design and delivery
- working with stakeholders to develop or modify grant opportunities
- using processes and procedures proportional to the grant's value and risk
- promoting the ethical use of public resources
- managing risk to minimise unintended consequences, such as wasteful or fraudulent use of resources
- maintaining flexibility to respond to changing circumstances
- supporting grantees to achieve value for money in their grant activities
- monitoring whether funds are being used for the intended purposes, and programs or projects remain on track.

Ways in which grantees may contribute to delivering value for money include:

- considering the most efficient and innovative means of carrying out grant activities
- considering how government objectives and their identified needs can be mutually achieved
- adopting an effective approach to identifying and managing risks
- collaborating with officials in monitoring and evaluation processes.

To inform decisions about whether a grant opportunity should proceed, officials **must** demonstrate at the planning and design stage how it will deliver value for money by identifying expected lifetime benefits and costs. This should include

consideration of all benefits and costs – economic, social, cultural and environmental – both monetary and non-monetary. The approach taken to assess value for money should be proportionate to the value and risk of the grant. A grant's lifetime begins at implementation and ends when significant benefits and costs are no longer realised.

TPP 18-06 NSW Government Business Case Guidelines requires a business case to be completed for any new grant program or individual grant over a certain value. A business case involves the comparison of feasible options for achieving the policy objectives, including consideration of the costs, benefits and risks of each option. Business cases may also be appropriate for proposals that may not involve significant expenditure but have a significant impact on the community, economy or environment.

Similarly, *TPP 17-03 NSW Government Guide to Cost-Benefit Analysis* requires a cost–benefit analysis (**CBA**) for new grant programs or individual grants over a certain value. A CBA should consider a range of realistic options to achieve the stated objective. A CBA offers the most comprehensive means of assessing value for money; it incorporates the complete range of expected benefits and costs across the grant life cycle. It can consider economic, social, cultural and environmental benefits and costs, as well as their distribution across the community. Benefits and costs that cannot be quantified can be accounted for qualitatively. A CBA should also account for risk and uncertainty in expected benefits and costs through sensitivity analysis.

While these NSW Government policies are not mandatory for smaller grant opportunities, they provide helpful guidance for officials.

The benefit–cost ratio (**BCR**) and the net present value (**NPV**) are key metrics produced in a CBA. A BCR greater than one and a positive NPV indicate that quantified benefits outweigh the quantified costs. These metrics are not the sole means of demonstrating value for money but, where CBAs are required, decision-makers should be provided with these metrics in the formal advice from the assessment team. Decision-makers should also consider non-monetary benefits and costs, distributional analysis (i.e. how costs and benefits are distributed across different groups or parts of the community), and the appropriateness of the proposed grant activity in meeting government objectives. A CBA includes information on these qualitative components, and gathering community perspectives through research and consultation is critical to these considerations.

For smaller or time-critical grant opportunities, value for money may be assessed with more streamlined approaches, such as rapid CBAs, which are based on the same principles but requires less precision. Agencies should first liaise with NSW Treasury to check whether a rapid CBA is appropriate. Where it is not practicable to quantify or monetise benefits, other appraisal methods may also be considered, such as a cost-effectiveness analysis.

Officials should also consider value for money at the individual grant level. This may not be practicable for high-volume grants such as those for emergency relief. The approach taken to assess value for money in grant applications should be proportionate to the value and risk of the grant, and the capability of the applicant. Officials should consider what support and resources might assist applicants to make assessments in a cost-effective manner. This may include providing guidance on how to capture data and identify key benefits and costs, or providing CBA templates and logic models, where appropriate.

5.6 Governance and accountability

Good grants administration is underpinned by solid governance structures and clear accountabilities. Ministers, officials, agencies and grantees should all be accountable for their roles in grants administration. Accountability in grants administration is relevant both to the process of grants administration, and the achievement of government outcomes.

Officials should develop policies, procedures and documentation necessary for the effective and efficient governance and accountability of grants administration. This should include the development of grant guidelines and associated operational guidance for administering grant activities. It is particularly important that such guidance clearly sets out who is responsible for different aspects of the grants process, including those responsible for making recommendations and the designated decision-maker.

It is important to ensure that those with responsibilities in relation to a grant have the right experience and skills. For example, officials involved in developing and/or managing grants should have the necessary grants management, stakeholder liaison and financial management skills, while officials involved in assessing applications should be appropriately skilled and have access to procedural instructions and/or training before processing grant applications. Additionally, external subject matter experts may be able to provide valuable expertise, including as part of the assessment team.

Record keeping is a key component of good governance and accountability. Good record keeping supports better decision-making. For example:

- officials are better able to assess risks where they have records about previous and current grantees and their performance

- documented reasons for decisions in awarding or not awarding grants supports equitable grants assessment, particularly when selection processes are conducted over an extended period of time.

Ministers, Ministerial staff and officials must comply with their record keeping obligations under the SR Act.

Officials should ensure that grant agreements are well drafted, easy to understand and fit for purpose, as this will contribute to good governance and accountability. Officials should also ensure that grant agreements are supported by ongoing communication, active grants management and performance monitoring requirements, which are proportional to the risks involved.

5.7 Probity and transparency

Probity relates to ethical behaviour. Grants administration must be conducted honestly, impartially and with integrity and accountability.

Transparency refers to those involved in grants administration, including Ministers, officials and grantees, being open to scrutiny about grants administration processes. This involves providing reasons for decisions and the exchange of information between agencies, the Parliament, grantees and the community. Transparency provides assurance that grants administration is being carried out appropriately and in accordance with any applicable requirements. It also supports oversight of the expenditure of public money through grants.

It is noted that accountability and transparency are related concepts. Accountability involves grantees, officials and decision makers being able to demonstrate and justify the use of public resources. This necessarily involves all parties keeping appropriate and accessible records.

Probity and transparency in grants administration are achieved by ensuring that:

- decisions relating to grants are impartial, appropriately documented and published, publicly defensible and lawful

- grants administration incorporates appropriate safeguards against fraud, unlawful activities and other inappropriate conduct.

This includes establishing appropriate internal controls for grants administration. For example, making different officers responsible for assessing grant applications, giving financial approval for the expenditure and making the grant decision ensures that there are checks and balances at various stages of the grants administration process.

Additionally, it is important to establish and adhere to transparent and systematic application and selection processes, which are competitive and merit-based where appropriate and are used to allocate grants based on clearly defined criteria.[13]

These processes must guard against actual or perceived conflicts of interest. A conflict of interest arises when a reasonable person might perceive that a Minister's or an official's private interests could be favoured over their public duties. Officials involved in grants administration should not have a direct or indirect interest that may influence the administration of a particular grant activity.

When designing the assessment process, officials **must** consider and develop a plan for managing any conflicts of interest that might arise. Mechanisms should be in place to manage potential conflicts of interest, such as a register of interests and procedures for declaring interests. For Ministers and officials, these mechanisms are already in place under the *Code of Ethics and Conduct for NSW Government Sector Employees* (in the case of officials) and the Ministerial Code of Conduct (in the case of Ministers), and the procedures used in grants administration should reflect these.

Additionally, officials **must** develop and implement fraud controls for grants administration that are proportionate to the value and risk of the grant and consistent with NSW public sector risk management requirements (see 6.1 *Planning and designing the grant opportunity*). This should include providing a risk appetite statement for all medium-risk to high-risk grants.

Reported information should be assessed as part of the acquittal process for grantees to ensure appropriate use of grant money. Officials should be aware of the procedures to follow when fraud or misappropriation is suspected.

Appropriate probity and transparency measures help to ensure that the public interest is prioritised in grants processes. The public interest, sometimes referred to as the 'common good', concerns what is in the best interests of the community, rather than

13 Note that the Guide contemplates circumstances where a method other than a competitive merit-based selection process may be used, subject to approval.

the private interest of individuals. Acting in the public interest is essential for government decisions about the use and expenditure of public money.

While the use of government funds, including the allocation of grants, may give rise to a political benefit (sometimes referred to as pork-barrelling), it must still serve a public purpose. Grants that benefit private interests at the expense of, or without due consideration of, the public interest are improper and may amount to a breach of public trust.

Conduct arising from pork-barrelling may be unlawful depending on the circumstances. The conduct may be unlawful where it amounts to, for example, corruption, bribery, maladministration or records mismanagement/destruction. Criminal sanctions following prosecution may also arise.

The current integrity-based legislation in NSW (described in section 1.4 above) provides legally enforceable sanctions for unlawful or improper conduct in the context of grants administration (which involves decisions by Ministers and officials about the allocation and spending of public money). In addition to this existing legal framework, this Guide is directed to ensuring that the public interest remains paramount in the administration of NSW Government grants.

6

6. Process of grants administration

The key principles outlined in Part 5 underpin the grants administration process in NSW. This part of the Guide provides a high-level overview of that process, outlines best-practice considerations and specifies key requirements, including mandatory requirements where specified.

The key principles and mandatory requirements set out in the Guide must be met for all grants. Where relevant, the Guide provides appropriate exceptions, such as exceptions that apply for non-competitive grants.[14]

6.1 Planning and designing the grant opportunity

Careful planning is required to ensure that grants achieve government objectives and are administered effectively. The importance of planning and design in developing grants is highlighted at Part 5.1 above.

6.1.1 Considering objectives and initial planning

The following NSW government policy guidelines set out mandatory requirements, recommendations and general guidance for officials designing grants:

- *TPP 18-06 NSW Government Business Case Guidelines,* which require a business case for grants over a certain value and to a level of detail proportionate to the size and risk of the grant

- *TPP 17-03 NSW Government Guide to Cost-Benefit Analysis,* which requires CBA be undertaken for larger grants over a certain value.

These guidelines should be consulted for current value thresholds that trigger the requirement to comply. However, the guidelines listed above provide useful guidance for officials planning grants of any value.

A business case demonstrates how a proposed grant has been designed to meet government objectives, and includes 3 stages:

1. problem definition

2. strategic business case

3. detailed business case.

Key elements within these stages include: a case for change, options development, CBA, financial impact analysis, commercial analysis and management analysis. A business case also outlines how monitoring and evaluation will be carried out.

Importantly, a business case helps to ensure that the design of any new grant opportunity is based on sound evidence of the nature and extent of the identified problem, and evidence of policy responses proven to be effective in addressing the issue.

As part of the business case officials should:

- develop a **logic model**[15] that maps the relationships between the rationale for the grant and a grant's expected inputs, activities, outputs, outcomes and benefits

- develop a **theory of change,** which describes the causal links between the inputs, outputs, outcomes and benefits, as well as the assumptions regarding these links.

For smaller grant opportunities, a formal business case may not be required, but these components should still be considered in grant planning.

Often, grants are necessary to:

- provide immediate, targeted relief to businesses and communities affected by a natural disaster

- provide immediate relief, support and assistance in other emergency situations

- support medium to long-term recovery and resilience.

The timeframe for planning these types of grants may be compressed to meet urgent community needs. While full business cases and CBA may not be possible for these types of grants, officials should still consider the key elements outlined above, including how the grant opportunity will meet government objectives, to the fullest extent practicable within the time constraints they face.

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14 See table 1, at 6.1 *Planning and designing the grant opportunity*.
15 It may also be described as a Program Logic or Investment Logic map.

6.1.2 Assessing and managing risk

A key element of planning and designing a grant opportunity is to assess and manage risk. Officials **must** ensure that grants administration processes identify and manage risks for all grants, in accordance with agencies' responsibilities under the GSF Act.

Grants administration risks can be categorised into 3 broad categories:

- **program risks** relating to the planning, design and implementation of the grant by the agency, such as:
  - the scale of the grant
  - the complexity of the grant
  - whether it is a novel or new approach
  - the agency's capacity to administer the grant
- **grantee risk** relating to the grant recipient, such as:
  - the grantee's industry or sector
  - the grantee's experience and capacity to deliver the grant activities
  - the history of the grantee
- **governance risks** relating to the governance of the grant, such as:
  - the relationship between the grantor and grantee
  - the relationship between the parties to the grant agreement
  - the grantee's accountability procedures.

Risk management should be proportional to the program risk level (low, medium or high), which depends on the likelihood and consequence of the risks occurring. Grants that can typically carry higher risks are grants that have a high dollar value, are complex or are awarded via a non-competitive process.

Officials **must** seek probity advice (whether external or internal) for all grant opportunities that are complex, high-risk or of high value, to support the design, application, assessment and decision-making phases. Thresholds should be applied for complexity, risk and value consistent with the agency's expenditure and risk management frameworks.

These resources provide further guidance on identifying and managing risk:

- **NSW Treasury Risk Management Toolkit** provides principles-based guidance on how agencies can develop and maintain risk management frameworks and processes.
- ***Internal Audit and Risk Management Policy for the General Government Sector*** (TPP20-08) helps agencies to meet obligations under the GSF Act.
- ***Supplier due diligence: a guide for NSW public sector agencies*** is an ICAC publication that helps agencies in conducting due diligence checks on potential suppliers.

6.1.3 Developing key elements of a grant opportunity

There are a number of ways in which grants can be offered, which can be broadly categorised as follows:

	Type of grant process	Description
Competitive	Open, competitive	Applications must be submitted by a specified date. Eligible applications are then assessed on their comparative merits against nominated criteria.
	Targeted, competitive	Open to a smaller number of potential grantees based on the specialised requirements of the grant activity.
Non-competitive	Closed, non-competitive	Applicants are invited to submit applications that are assessed individually, without reference to the comparative merits of other applications.
	Open, non-competitive	Applications are assessed individually against the selection criteria, without reference to the comparative merits of other applications.
	Demand-driven or 'first-in, first-served'	Applications that satisfy stated eligibility criteria are approved, up to the limit of available funding.
One-off or ad hoc grants	One-off or ad hoc grants	Grants determined on an ad hoc or targeted basis, usually by Ministerial decision.

Table 1. Types of grant process

The following sections of the Guide set out the process for all grants. Where relevant, the Guide provides appropriate exceptions, such as exceptions that apply for non-competitive, demand-driven grants.

Following the planning and design phase, officials should develop the following key elements of the grant and assessment process:

- selection criteria, comprising eligibility criteria and (where relevant) assessment criteria

- assessment process – including an assessment stage and a decision-making stage. For competitive grants, this will involve an assessment team making a recommendation to the decision-maker, who then makes a final decision. In the case of large-scale non-competitive grants (such as demand-driven or 'first in, first, served' grants), the assessment process may be modified and may not involve the typical two stages in the same way.

Each of these key elements is considered further below.

6.1.4 Determining selection criteria (eligibility and assessment criteria)

All grants should have clear eligibility criteria which outline the minimum requirements an applicant must meet to be eligible for funding. The criteria should enable applicants to consider whether they are eligible before applying for a grant. This should include specifying the evidence the applicant will need to submit to satisfy the eligibility criteria, where relevant.

Eligibility criteria may include specifications such as eligible entities or applicant types, eligible project activities or funding uses, eligible locations, or required co-contribution amounts. To support applicants' understanding of what may or may not be eligible, the guidelines should include examples – such as eligible and ineligible entities, applicant types, activities, funding uses, locations or co-contribution amounts – where this may assist applicants.

For non-competitive grants, applications should be assessed against the eligibility criteria and, where relevant, the assessment criteria, including checking the evidence submitted with the application. For competitive grants, applicants who meet the eligibility criteria should then be assessed against the assessment criteria by comparison with other applicants.

Assessment criteria should be designed to permit an objective assessment of relevant factors. The criteria should enable assessment of the relative extent to which applications meet the criteria, rather than binary factors. Criteria should encompass considerations such as:

- consistency of the proposal with the objectives of the grant opportunity

- capability, experience and skills of the applicants

- deliverability of the project, including demonstrating that the applicant has the capacity and expertise to deliver the project within budget and timeframes

- technical aspects of the proposal – the infrastructure and technical capacity to fulfil the project requirements, including by reference to evidence such as a business case

- financial arrangements

- economic benefit

- ability to demonstrate community support.

Where factors such as the geographical distribution of grantees or the spread of project/activity types are to be taken into account, this should be specified in the assessment criteria. Consideration should be given to whether the criteria are to be given equal weighting.

6.1.5 Selecting an appropriate assessment process

The assessment process should be determined at the outset of the grants administration process. Information about the assessment process should be included in the grant guidelines.

In the case of competitive grants, a two-stage assessment process that includes an assessment stage and a decision-making stage should be used to determine successful grants recipients. An assessment team should make a recommendation in writing to the designated decision-maker who then makes a final decision.

The composition of the assessment team depends on the scale and nature of the relevant grant, having regard to the proportionality principle. Assessment teams can benefit from external subject matter experts, including non-officials, and from involving officials who have not been involved in the design of the grant opportunity. Having two separate teams of officials involved in the design of and the assessment process for a grant opportunity respectively also enables officials involved in the design stage to communicate with potential applicants, for example, to test the key elements of the proposed grant opportunity, without compromising the impartiality of the assessment process. Depending on the composition of the assessment team and the complexity of the grant opportunity, the assessment process may be structured so that one group of officials carries out the initial consideration of the eligibility and assessment criteria, to inform the final funding recommendations made by a separate group of officials. Members of the assessment team may also consult with relevant subject matter experts to inform the assessment. As noted above, these details should be documented and captured in the grant guidelines.

Key factors to be considered by officials when deciding the most appropriate assessment process include:

- the likely number and type of applications

- the nature of the grant activity, such as the complexity of the projects and any technical or other expertise required

- the value of the grant

- the need for timeliness and cost-effectiveness in the decision-making process while maintaining rigour, equity and accountability

- the risk profile of the grant opportunity.

The assessment process may include weighting against criteria, or other process, and this information should be included in the grant guidelines for transparency.

When developing an assessment process, officials **must** consider and develop a plan for the management of any conflicts of interest that might arise (see above at 6.5 regarding principles relating to conflicts of interest). This should adhere to existing conflict of interest requirements and procedures, including those that apply in the relevant agency and under the Ministerial Code of Conduct where relevant.

One-off or ad hoc grants generally do not involve planned selection criteria and assessment processes, but are instead designed to meet a specific need, often due to urgency or other circumstances. One-off grants are determined on an ad hoc basis, usually by Ministerial decision. These grants are generally not available to a range of grantees or on an ongoing basis.

Grants offered through a non-competitive process may involve applicants being assessed individually against criteria rather than by comparison with other applicants' submissions. In the case of non-competitive grants, the assessment process may be modified and may not involve a two-stage assessment and decision-making process (involving an assessment team making a recommendation to a decision-maker) (see 6.3 *Receiving and assessing grant applications*).

Where a method other than a competitive, merit-based selection process is to be used (including one-off or ad hoc grants), officials **must** document why that method will be used and outline the risk mitigation strategies. This **must** be approved by the responsible Minister (or head of agency or delegate).

6.1.6 Identifying the designated decision-maker

A key consideration in establishing a grant opportunity is determining who will be the decision-maker. A Minister or an official (or board, committee or other body) may play this role and either may be an appropriate decision-maker depending on the circumstances.

Practical considerations such as timing constraints, the extent of administrative work involved and potential conflicts of interest will be relevant in selecting the decision-maker For example, where there is likely to be a large number of applicants, it may not be practical for Ministers and other heads of agencies to carry out the necessary conflict of interest checks for each applicant or proposed grantee (noting that the Ministerial Code of Conduct deals extensively with the obligations of Ministers in relation to conflicts of interest).

There is no legal or policy requirement that grant payments must be approved by Cabinet or a Committee of Cabinet. The convention of Cabinet confidentiality may impede transparency in the grants administration process. Seeking Cabinet approval for specific grant payments is also inconsistent with the doctrine of individual Ministerial responsibility (i.e. the principle that Ministers are accountable to the Parliament for the day-to-day administration of matters arising within their portfolios) and can create uncertainty about who is ultimately accountable for those decisions (i.e. the agency that administers the grant opportunity and makes the recommendation, the responsible Minister, or the Cabinet as whole). Cabinet and Cabinet Committees can still play a role in approving the allocation of funding for grant opportunities, approving grant guidelines, and receiving reports on outcomes and benefits.

6.1.7 Developing grant guidelines and associated materials

Potential grantees need reasonable access to adequate information to enable them to decide whether or not to apply for a grant and then, if they do, to complete the grant application. Grant guidelines are an important component of grants administration documentation and should be given careful consideration and approved at the appropriate level.

Officials should ensure that grant guidelines clearly inform potential grantees of their eligibility and of the terms and conditions they will need to meet during the grant life cycle, such as financial and performance reporting. Where possible, the proposed grant agreement should be included with the grant guidelines so that this can be taken into account by potential grantees.

Officials **must** prepare clear and consistent grant guidelines that contain the following minimum information:

- the purpose and objectives of the grant

- selection criteria (comprising eligibility and assessment criteria) and assessment process

- grant value

- opening and closing dates

- application outcome date

- source agency or agencies

- the decision-maker.

Operational guidance must clearly specify who is responsible for different aspects of the grants process, including identifying those responsible for making recommendations and the designated decision-maker. It is appropriate to identify those persons by reference to their role or grade, rather than by name.

Where relevant, grant guidelines should also include:

- requirements for evidence and documentation in support of an application

- indicative reporting and acquittal requirements

- a description of complaint handling, review and/or access to information mechanisms.

Grant guidelines are required for all grants, including one-off or ad hoc grants. The format and complexity of guidelines may vary depending on the grant. In the case of one-off or ad hoc grants, guidelines should include, at minimum:

- the purpose and objectives of the grant

- any eligibility and evidence requirements

- grant value

- source agency or agencies

- the decision-maker.

Officials should consider testing the proposed settings of a grant opportunity with stakeholders. See 5.5 *Achieving value for money* for further information.

Where possible, changes to the grant guidelines should be minimised once a grant opportunity has opened. However, where significant changes have been made in relation to a grant opportunity, such as changes affecting the assessment of applications, officials **must** revise grant guidelines accordingly and publish the revised guidelines. It may be appropriate to advise applicants whose applications

have already been received of the changes and provide them with an opportunity to modify their applications. All application documentation should clearly emphasise the eligibility and assessment criteria so that applications can be assessed in a consistent, transparent and accountable way. The design of the application form should assist potential grantees to provide information in respect of all selection criteria.

Application forms and associated information should be easy to understand and provide all necessary information. Guidance should include contact points and details for further information.

Online grants management platforms may be the most effective way to administer grants, with significant potential benefits for agencies, applicants and grantees. Online platforms can streamline application processes and all subsequent interactions between the applicant and the agency.

6.2 Promoting the grant opportunity

Details of the grant opportunity should be promoted and made publicly available. Officials should choose methods that will promote open, transparent and equitable access to grants, ensuring that publicly available grants are notified in ways that provide all potential grantees with a reasonable opportunity to apply. Increasing awareness of the grant opportunity can also lead to an improvement in the quantity and quality of applicants, which can in turn lead to improved outcomes and benefits.

Careful consideration should be given to the importance of increasing awareness of grants in key target groups. Appropriate and effective promotion of grants can include print and broadcast media, news features and editorials, newsletters and direct mail, workshops or other special events, public launches or announcements, the internet, social media and the use of local officers.

Officials **must** ensure that key information about open grant opportunities is published on the NSW Government Grants and Funding Finder via nsw.gov.au/grants-and-funding.[16] The minimum requirements are detailed grant guidelines that include the information outlined at 6.1 *Planning and designing the grant opportunity* (also set out in **Appendix A**).

Where grants are provided on a one-off or ad hoc basis, grant guidelines must be drafted and approved but are not required to be published. However, officials **must** ensure that information about the grant is made available on the NSW Government Grants and Funding Finder (see Part 6.5 *Publishing grant information* below).

6.3 Receiving and assessing grant applications

Officials and Ministers who are involved in the grants administration process **must** administer the grant in accordance with the grant guidelines.

The process for the receipt and assessment of grant applications should follow these general steps:

- **Eligibility cull** – Grant applications should be considered and culled against the eligibility criteria (see below for approval required for the waiver of eligibility criteria). Ineligible applications should not proceed in the assessment process. Only the eligibility criteria are relevant at this stage, not the assessment criteria. The outcomes of the eligibility cull should be documented and, where relevant, referred to the assessment team and/or decision-maker.

- **Assessment against assessment criteria** – A committee or panel (assessment team) should assess the applications against the assessment criteria. The assessment team will assess the grant applications against the assessment criteria and document its decisions, including reasons for decisions.

- **Recommendation** – The assessment team makes recommendations in writing to the designated decision-maker. In doing so, the assessment team will detail the procedures followed and the performance of the applications against the assessment criteria.

- **Decision-making** – The decision-maker considers the recommendations of the assessment team (and, where relevant, the outcomes of the eligibility cull). Decisions must be recorded and any departure from the assessment team's recommendation must be documented with written reasons and published.

- **Announcement** – Public announcement of the decision may be made and information about grants awarded must be published (see 6.5 *Publishing grant information*, including for exceptions). Announcements should not be made regarding grants awarded before the grantee has been informed. Written advice to unsuccessful applicants (where practicable, with reasons for the application being unsuccessful) should be provided on or before the announcement.

In undertaking the assessment process, officials **must** ensure that all decisions in the selection process are documented, including (where relevant):

- the outcomes of a cull of applications against eligibility criteria (including where an ineligible

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16   Until agencies can publish all information on this site, officials should publish the information on the agency website.

application has proceeded to assessment and the reasons for waiving the eligibility criteria. See below for approval required for the waiver of eligibility criteria)

- the recommendations made by the assessment team, including reasons for those recommendations

- the decisions made by the designated decision-maker, including any departure from the assessment team's recommendation and reasons for that.

Where a Minister is the decision-maker, Ministerial staff **must** ensure that the decision is recorded in writing and the records are managed in accordance with the requirements of the SR Act.

6.3.1 Briefing the decision-maker

Where the decision-maker is a Minister, officials **must** provide written advice which, at a minimum:

- outlines the application and selection process, including the eligibility and assessment criteria used to select the recommended grantees

- includes the merits of the proposed grant or grants having regard to the grant guidelines and the key principle of achieving value for money

- identifies the recommended grantees

- identifies proposed funding amounts for each recommended grantee

- includes relevant input from key stakeholders (such as MPs, the responsible Minister, Ministerial staff and other Ministers) and the consideration given to that input in the assessment process.

(See exceptions below for non-competitive grants.)

While officials do not have to rank all applications when briefing the designated decision-maker on the merits of a specific grant or group of grants, officials should, at a minimum, indicate:

- which grant applications fully meet the assessment criteria

- which applications partially meet the assessment criteria

- which applications do not meet any of the assessment criteria.

Where a probity advisor has been engaged to provide independent assurance to the decision-maker, this assessment is to be provided to the decision-maker.

Where there is an assessment team making recommendations to a decision-maker, those recommendations should be made in writing.

6.3.2 Requirements for decision-makers

A Minister **must not** approve or decline a grant without first receiving written advice from officials on the merits of the proposed grant or group of grants (see exceptions below for non-competitive grants).

A Minister or an official who approves or declines a grant **must** record the decision in writing, including the reasons for the decision (and any departure from the recommendation of officials), having regard to the grant guidelines and the key principle of achieving value for money, and manage these records in accordance with the requirements of the SR Act (see exceptions below for non-competitive grants).

Decision-makers may approve or decline grants in variance from the recommendation of officials. If a decision-maker has decided to approve or decline a particular grant where this would depart from the recommendation of the assessment team, the decision maker **must** declare this in the relevant documentation, including the reasons for the departure.

Decision-makers should not approve a grant that has been assessed as ineligible. In limited circumstances, a decision may be made to waive eligibility criteria, for example, where not doing so would:

- lead to perverse or unfair outcomes

- be contrary to the policy intent, or

- damage the reputation and integrity of the grant program.

If so, the reasons for waiving the eligibility criteria must be documented and the waiver must be approved by the decision-maker (whether as part of the final approval or otherwise).

6.3.3 Input from Ministers, MPs and others

Where it is anticipated that a grant opportunity will involve input from MPs or other stakeholders (such as other levels of government or industry representatives), officials **must** ensure that the grant guidelines clearly outline the role of stakeholders; there are processes in place to manage this interaction (including equitable opportunity for MPs); and all stakeholder input is documented as part of the assessment process, where relevant. Where such input is received outside of the process set out in the grant guidelines, this must be documented.

6.3.4 Assessment processes for non-competitive grants

For non-competitive grants, particularly high-volume grants, the assessment process may differ from the above in some respects. For example, high-volume, non-competitive grants (including demand-driven or 'first-in, first-served' grants), may not involve a two-stage assessment and decision-making

process (involving an assessment team making a recommendation to a decision-maker) in the same way as occurs for competitive grants. This process may instead occur on a program-wide level and the recommendation to and/or consideration by the decision-maker may be adapted appropriately. There must nonetheless be processes in place (whether automated or otherwise) for the consideration of whether the eligibility criteria are met.

In these cases, the agency needs to clearly identify the:

- designated decision-maker, who must be satisfied that the funds are being assessed and administered in accordance with the approved criteria and policy intent. This may entail approving program-wide policies and processes for assessment, risk management, quality assurance and auditing, and escalation of any compliance issues

- assessor(s), responsible for ensuring grants are administered in accordance with approved criteria.

Where automated systems are used, such as for high-volume grants, records from the relevant system should be retained as part of the documentation of the grant administration process (and be made available for internal auditing and fraud control in appropriate cases).

These exceptions do not apply to one-off, ad hoc grants.

6.3.5 One-off and ad hoc grants

In the case of one-off, ad hoc grants, the Minister is generally the decision-maker. The principles of this Guide relevant to decision-makers apply equally for these types of grants (and the exceptions for non-competitive grants are not applicable), including:

- A Minister **must not** approve or decline a grant without first receiving written advice from officials on the merits of the proposed grant or group of grants.

- A Minister who approves or declines a grant **must** record the decision in writing, including the basis for the approval having regard to the grant guidelines and the key principle of achieving value for money.

6.4 Providing grants

Once a grant is offered to the successful applicants and the unsuccessful applicants have been advised, the terms and conditions of the grant are to be formalised in writing. Officials **must** ensure that grantees are subject to clear and specific terms and conditions for a grant.

This should be by way of a grant agreement (also referred to as a funding agreement), unless not practicable. While there is no required format for a grant agreement, officials should ensure that the chosen form is fit for purpose having regard to the nature of the grant and grantee, the risks associated with the grant and the principle of proportionality. Officials should ensure that the chosen form of grant agreement supports proper use and management of grant money.

Officials should ensure that grant agreements are legally enforceable, well-drafted and provide:

- agreed terms and conditions with regard to the use of the grant

- a clear understanding between the parties on required outcomes

- appropriate accountability for grant money, including monitoring and acquittal requirements

- the performance information and other data that the grantee may be required to collect as well as the criteria that will be used to evaluate the grant, the grantee's compliance and the grantee's performance.

There may be some circumstances in which administering grant agreements for each grantee may not be practicable, such as for emergency relief and high-volume grants required to be delivered in a timely manner to a large number of recipients. In such instances, grantees must, at a minimum, agree to be bound by clear and specific terms and conditions as a condition of receiving the grant.

All offer letters and written agreements must require grantees to acknowledge the financial support by the NSW Government.

6.5 Publishing grant information

Effective disclosure and publishing of grants administration are essential for transparency and public accountability. Reliable and timely information on grant decisions supports public confidence in the quality and integrity of grants administration.

Officials **must** publish the following information about grants to best-practice customer experience standards on the NSW Government Grants and Funding Finder at nsw.gov.au/grants-and-funding[17]:

- upcoming grant opportunities

- open grant opportunity guidelines

- all grants awarded

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17 Until agencies can publish all information on this site, officials should publish the information on the agency website.

- the exercise of Ministerial discretion in making grant decisions that vary from the recommendation of officials, including the reasons for any such decision

- program evaluations.

For each category of information listed above, officials **must** meet the specific information and data publishing requirements set out in **Appendix A**.

Officials **must** ensure that information on the decisions made in relation to grants awarded is published no later than 45 calendar days after the grant agreement takes effect (subject to the exceptions below). If there is no grant agreement, then the period of 45 calendar days commences when the first payment is paid to the grantee. This timeframe aligns with the timeframe for registering government contracts under the GIPA Act.

There may be circumstances where officials determine that publishing a grant decision would be contrary to one of more of the following:

- legal requirements under the *Privacy and Personal Information Protection Act 1998* (NSW) (**PPIP Act**) and/or the *Health Records and Information Privacy Act 2002* (NSW) (**HRIP Act**)

- other statutory requirements

- the terms of a grant agreement.

In those circumstances, there is a **legal obligation** to maintain confidentiality over certain grant information. The approval of the Minister to maintain confidentiality in this circumstance is not required; however, the relevant officials **must** publish as much information as is permitted. For example, it may be possible to omit the name of the grantee and other personal information but to publish other grant details. The reasons for not publishing the information fully **must** be documented by officials.

In some circumstances, there may be a **policy exception** to the requirement to publish information on grants awarded, for example, where officials consider that publishing a grant decision would:

- not be practical or feasible in the circumstances, or

- adversely affect the achievement of government policy outcomes.

In those circumstances, the approval of the Minister not to publish the information **must** be obtained and relevant officials **must** publish as much information as is reasonably practicable. The reasons for not publishing the information fully **must** be documented by officials and published.

Notwithstanding the above exceptions, officials **must** publish the following overarching information about grants awarded: the name of the grant or a description of the grant, the number of grants recipients, the total value of the grant opportunity and the decision-maker.

Where grants are provided on a one-off or ad hoc basis, grant guidelines must be approved but are not required to be published. However, officials **must** ensure that information about the grant(s) awarded is made available on the NSW Government Grants and Funding Finder no later than 45 calendar days after the grant agreement takes effect, including the name of the recipient, the amount paid and the grant activity (subject to the legal or policy exceptions outlined above). As above, if there is no grant agreement, then the period of 45 calendar days commences when the first payment is paid to the grantee.

6.6 Monitoring and acquitting grants

Grants administration does not end with the signing of a grant agreement and payment of grant money. Grant agreements should be supported by ongoing communication, active grants management and performance monitoring, which are proportional to the risks involved.

Providing clear guidance and support to grantees for the acquittal process is generally more cost effective for agencies than identifying and remedying issues at a later stage. Accordingly, agencies should provide grantees with appropriate guidance and templates, as well as avenues for obtaining further guidance from the agency.

Reliable, timely and adequate evidence is required to demonstrate that the grant has been expended in accordance with the terms and conditions of the grant agreement. Monitoring of payments and progress towards outcomes, benefits and government objectives is integral to good governance and risk management.

Agencies should ensure that they are adequately resourced to carry out ongoing grants monitoring and management to respond to changing circumstances and ensure continued compliance with the requirements of the Guide. This includes, for example, identifying new or changing risks. This may involve consideration at both the individual project level, which may require amendments to the funding agreement, and consideration of the grant opportunity overall.

6.6.1 Monitoring

Monitoring is an ongoing and systematic process of collecting and analysing information about a grant opportunity, for the purpose of:

- tracking progress of grant activities

- establishing whether funds were dispersed correctly and used for intended purposes

- assessing outcomes, benefits and value for money (see *6.7 Grants evaluation*).

Officials should monitor individual grants as well as the overall grant opportunity.

Developing a monitoring and evaluation framework is required in the business case for new grant opportunities. Officials should adhere to *TPP 18-06 NSW Government Business Case Guidelines*.

The need for data collection from grant recipients should be weighed against the associated costs of collecting such information. When determining what information should be collected, it is important to consider the purpose of the information, how it relates to the grant acquittal or evaluation, and how practicable it is to collect the data. The information collected should be:

- well-defined

- only what is necessary

- presented in a form that is clear and easy to understand

- coordinated between agencies to reduce duplication (subject to any restrictions on sharing information, such as under the PPIP Act).

A grantee's responsibilities to collect and share data should be clearly defined. Officials should establish performance measures for acquittal and evaluation and specify them in grant guidelines and agreements. Progress reports against agreed performance measures or milestones, or site visits by officials, may help to track progress, outcomes and benefits.

6.6.2 Acquittal

An acquittals process is a key part of continuous financial monitoring that accounts for how funds have been spent. Officials should conduct an acquittal for individual grants, assessing grantees' compliance with the terms and conditions set out in the funding agreement, or other relevant documentation. Funding agreements should include adequate safeguards to prevent misuse of grant funds and stipulate what should happen to funds that are not fully expended.

Where conducting an acquittal for each grant is not practicable, such as in high-volume grant opportunities for emergency relief, appropriate alternative methods for verifying how grant money has been spent should be applied. The approach taken to acquit grants should be proportionate to the size and risk of the grant. When assessing small grants, a financial assessment that includes a grantee's declaration on how grant funds have been spent may be sufficient. For larger or more complex grants, a more rigorous acquittal process is required that may include the provision of invoices for all activities undertaken and other evidence of how funds have been spent.

6.7 Grants evaluation

An evaluation is a systematic and transparent process of collecting and analysing information that can be used to assess the appropriateness, efficiency, effectiveness and/or net social benefits of a grant opportunity. Evaluating grants is important for:

- determining whether a grant is on track to meet objectives and government priorities, and any performance improvement needed

- identifying outcomes and benefits, including assessing how the grant has improved the welfare of the NSW community

- contributing to a broader knowledge base to help inform the design and appraisal of future grant opportunities.

There are 3 main types of evaluation:

- **process evaluation,** to consider how an initiative is delivered, whether it has been implemented as intended, and any issues arising in its implementation

- **outcome evaluation,** to examine if and how an initiative is leading to intended changes

- **economic evaluation,** to identify and measure the impacts of an initiative relative to its costs, for providing an assessment of value for money or net social benefit.

The NSW Government publication *Treasury Policy and Guidelines: Evaluation* sets out mandatory requirements, recommendations and guidance for agencies to plan for and conduct evaluation.[18] The guidelines state that, regardless of the size of an initiative, it is good practice to plan for monitoring and evaluation. They provide recommendations for tailoring evaluation to the size, strategic significance and risk of an initiative. The guidelines require that, for government investments of significant size, including grants, evidence of costs, outcomes, benefits and value for money are to be reported.

Consistent with the guidelines, agencies should:

- prioritise grant evaluations according to their value, risk and significance in contributing to government objectives (e.g. State Outcomes or cluster objectives)

- schedule evaluations at intervals appropriate to the grant's implementation timeframe, particularly where grants are ongoing or long term

- scale evaluation activities so they are proportional to the size and risk of the grant

- allocate sufficient resources for evaluation

- evaluate grant programs and activities before extending or expanding them, or initiating new, similar grant opportunities.

Evaluations should be transparent. Agencies should proactively and publicly release the findings of program evaluations, unless there is an overriding public interest against disclosure of the information, in line with the GIPA Act.[19]

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18 Until the release of *Treasury Policy and Guidelines: Evaluation* in 2022 officials should refer to *TC18-03 Program Evaluation* and the *Program Evaluation Guidelines 2016.*
19 Agencies may also choose to release a plain English executive summary and statement of findings on their website. Grant administrators may choose to collate evaluations for publication, to limit requirements on smaller organisations to undertake publishing.

7

7. Review of the Guide

This Guide will be reviewed on an ongoing basis to ensure it achieves its purpose and to assist in identifying appropriate modifications that may be required.

Review record

Date	Action	Version
April 2022	Publication	1.0

Version 1.0

APPENDIX

A

Appendix A: Publication of grants information and data

The information and data publication requirements for NSW Government grants, which are subject to the exceptions outlined in 6.5 *Publishing grant information*, are:

Category	Data item

Open grant opportunities	• Grant guidelines, including:
	  – Purpose and objectives
	  – Selection criteria and assessment process
	  – Grant value
	  – Opening and closing dates
	  – Application outcome date
	  – Source agencies
	  – Decision-maker

Upcoming grant opportunities	• High-level program parameters and purpose • Estimated grant value • Expected opening and closing dates • Source agencies
Grants awarded	• Program name and function • Recipient name • Recipient location • Program delivery location • Funding amount • Program term • Program benefit–cost ratio (where cost–benefit analysis (CBA) is required) • Number of applicants • Number of recipients • Source agencies • Decision-maker
Ministerial discretion	• Occasions in which a Minister awards or declines a grant in variance from the recommendation of officials, and the reasons for doing so
Program evaluation	• Program name • Grantee name and funding value • Program evaluation, including findings, analysis and methodology • Name of parties that undertook the evaluation (e.g. NSW agency or external consultant)

Additional data publishing requirements:

- 'Grant value' for upcoming and open opportunities should be a specific amount, or if this is not possible, a range with specific minimum and maximum amounts provided.

- 'Funding amount' for grants awarded should include the overall value of a grant, as well as the dollar value awarded to any 'downstream' recipients, subject to the exceptions referred to above. For example, a grant awarded to an organisation to cover the transport costs of its delegation to a conference should report both the total value of the grant to the organisation and the value to each delegate.

- All grant dates, including indicative dates, should be specified as a day, month and year. It is not sufficient to provide an entire month or quarter for opening, closing or decision dates.

- 'Source agency' should include the primary agency responsible for administering the grant, as well as any partner agencies or organisations. Contributions to funding the grant should be reported for each agency in addition to the total grant value.

- Grants data must be made available in a machine-readable format (e.g. CSV) with quantitative data items formatted to allow for computation. For example, a grant value of one thousand dollars must be presented as '1,000' and not as 'one thousand' or '1 thousand'.

- Data must be retained on a publicly available platform, such as the NSW Government Grants and Funding Finder[20], for at least 7 years.

- Future updates to data items should not diminish the capacity of users to make comparisons of grant spending over time or across agencies.

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20 Until agencies can publish all information on this site, officials should publish the information on the agency website.

Premier and Cabinet

Contact us

T   02 0000 0000
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Appendix B: Responding to the Review Terms of Reference

Purpose

The purpose of this Review is to identify opportunities to deliver value for money for the NSW taxpayer by ensuring that the administration, assessment, and assurance of grants in NSW is in line with best practice.

The Review has achieved its purpose by:

- undertaking consultation with stakeholders on how grants practices can be improved to deliver value for money, transparency, and accountability. The NSW Productivity Commissioner has consulted MPs (including PAC members), NSW and Commonwealth agencies that routinely administer grants, and integrity agencies, including the NSW Auditor-General and the ICAC. DPC has also consulted a working group comprising government sector grants administrators about the operational impacts of the draft Guide and particular recommendations of this Review.

- analysing grants administration practices and processes in other jurisdictions to identify best practice and considering how best to adapt those models for the NSW context.

- updating the current *Good Practice Guide to Grants Administration* to provide process guidance on seven stages in the grants cycle: 1) planning and design; 2) promotion; 3) receiving and processing grant applications; 4) providing grants; 5) publishing grant information; 6) monitoring and acquitting grants; and 7) grants evaluation. This process information along with guiding principles of grants administration would enable grants to be managed consistently across NSW in a way that is transparent and underpinned by strong probity practices

- specifically addressing value for money in the draft Guide and building it into the grants process. The draft Guide notes that determining value for money in grants administration requires an assessment of the lifetime benefits of a grant opportunity against its lifetime costs. Value for money is a key consideration across the full lifecycle of a grant, in its design, and through implementation to evaluation.

Objectives

The objectives of the Review as set out in its Terms of Reference are to:

- ensure that all grants administered by the NSW Government:
  — deliver value for public money in achieving their stated purpose or purposes
  — are robust in their planning and design
  — adopt key principles of transparency, accountability, and probity
  — deliver a high-quality customer experience.
- produce an updated *Good Practice Guide to Grants Administration*.

These objectives have been specifically addressed through the draft Guide, which includes principles of robust planning and design, achieving value for money, governance and accountability, and probity and transparency which must be adhered to by Ministers, ministerial staff, and officials when administering grants.

The draft Guide itself has been developed with the customer experience in mind. It is produced for government users and the community, and it distils in a user-friendly way the key principles that guide grants administration and the processes for administering a grant.

Mandatory requirements for Ministers, ministerial staff, and officials are set out at the beginning of the draft Guide so it is clear what aspects of the draft Guide must be adhered to as distinct from best practice guidance.

The Review recommends that further materials to support the grants administration process, including templates and training materials, are developed to supplement the draft Guide and support a high-quality customer experience.

Scope

The Review's Terms of Reference require it to have regard to:

- guidelines from other jurisdictions that have been identified as best practice
- recommendations made by NSW parliamentary, integrity, and oversight bodies
- best practice risk assessment and frameworks for grants administration and assurance
- the existing NSW policy and legislative context.

This Report documents consideration of best practice in other jurisdictions. The draft Guide expressly acknowledges that it has been developed with close reference to the *Commonwealth Grants Rules and Guidelines*, which were identified by numerous stakeholders as best practice. The draft Guide adopts a similar approach to the *Commonwealth Grants Rules and Guidelines* – setting out key principles and mandatory requirements – and draws on the concepts and requirements contained in the Guidelines. The Commonwealth was consulted during the drafting of the updated Guide.

The Review considered:

- existing laws and policies that apply to grants administration – Chapter 2 of this report
- grants administration requirements applying under the *Commonwealth Grants Rules and Guidelines* – Appendix C
- the PAC's recommendations and the Auditor General's recommendations – Appendix E.

Overall, this Review led by DPC in partnership with the NSW Productivity Commissioner, Peter Achterstraat AM, has delivered an updated *Good Practice Guide to Grants Administration*, as well as recommendations for enhancements to grants administration in NSW. In doing so, the Review has addressed the purpose, scope, and objectives of its Terms of Reference.

Appendix C: Comparison of Commonwealth and NSW requirements

The table below compares the mandatory requirements of the *Commonwealth Grants Rules and Guidelines 2017* with those specified in the draft *Grants Administration Guide* and identifies the reasons for differentiation, where relevant.

Table 6 – Comparison of Commonwealth and NSW requirements

	Commonwealth Grants Rules and Guidelines (CGRG)	**Draft Grants Administration Guide (the Guide)**	**Reasons for differentiation**
Officials and accountable authorities	Officials **must** comply with the CGRG (**2.10**).	Compliance with the Guide is mandatory (**1.3**).	N/A
	Accountable authorities **must** comply with the Constitution, the PGPA Act, the PGPA Rule, and any other relevant law (**3.2, 3.4, 3.5, 4.3**).	Officials, Ministers and ministerial staff **must** ensure that they comply with all relevant laws and policies when administering grants (**1.4**).	N/A Compliance with other legislation is not a mandatory requirement under the Guide – the source of that requirement is the existing legislative framework, not the Guide itself. However, the same principle applies and the Guide states that it is necessary to adhere to these other requirements.
	Officials **must** advise their Ministers on mandatory requirements (**3.3, 3.10**).	Officials and ministerial staff **must** put in place practices and procedures to ensure that grants are administered consistently with the key principles and requirements in the Guide (**5**). The responsibilities of officials, Ministers and ministerial staff include to be familiar and comply with the principles and grants administration processes set out in this Guide, as well as applicable laws and policies that guide ethical behaviour (**3**).	There is no practical difference because: • appropriate practices and procedures must be in place to facilitate compliance with the Guide. • all persons involved in grants administration are required to be familiar and comply with the Guide.
	Officials **must** provide written advice which *must* at a minimum (**4.6**): • explicitly state that the approval required relates to a grant • provide information on the PGPA Act and Rule and the CGRG	Where the Minister is the decision maker, officials **must** provide written advice which includes, at a minimum (**6.3**): • outlines the application and selection process, including the selection criteria used	Officials are to brief Ministers on matters relevant to the grant decision to be made by the Minister.

• outline the application and selection process • include the merits of the proposed grant relative to the Guidelines.	• includes the merits of the proposed grant or grants having regard to the grant guidelines and the key principle of achieving value for money • identifies the recommended grantees • identifies proposed funding amounts for each recommended grantee • includes relevant input from key stakeholders, including MPs, the responsible Minister, ministerial staff, and other Ministers.	
Approval by an accountable authority or Official **must** be recorded in writing as soon as practicable (**3.9, 4.5**).	Officials **must** ensure that (where relevant) all decisions in the assessment process are documented (**6.3**). An official who approves or declines a grant **must** record the decision in writing, including the reasons for the decision (and any departure from the recommendation of the assessment team) having regard to the grant guidelines and the key principle of achieving value for money, and manage these records in accordance with the requirements of the SR Act (**6.3**).	N/A
Officials **must** establish and document whether a proposed activity is a grant prior to applying the CGRG (**4.2**).	For the purposes of the Guide, 'grant' is defined in **Section 4** which makes clear that the Guide applies only to grants that meet the definition.	N/A
Officials **must** (**4.4**): • develop grant opportunity guidelines • have regard to the seven key principles • ensure guidelines are consistent with the CGRG • advise the relevant Minister on their relevant requirements.	Officials **must** prepare clear, consistent grant guidelines that contain the following minimum information (**6.1**): • the purpose and objectives of the grant • selection criteria (comprising eligibility and assessment criteria) and assessment process • grant value • opening and closing dates • application outcome date • source agency or agencies the decision maker. Officials **must** administer a grant in accordance with the grant guidelines (**6.3**). Officials **must** put in place practices and procedures	The Guide does not specifically require that grant guidelines are consistent with the Guide, but there are other requirements - including detailed requirements about the required content of such guidelines - which are to the same effect.

to ensure that grants are administered consistently with the key principles and requirements in the Guide (**5**).

Where the Minister is the decision maker, officials **must** provide written advice which includes the minimum matters specified (set out above) (**6.3**).

Accountable authority **must** ensure third party administration is in writing and promotes proper use and CGRG compliance (**4.8**).	Where local government or other third parties are engaged to administer grants on behalf of NSW Government, officials **must** satisfy themselves that there are practices and procedures in place for the administration of the grants consistently with the key principles and requirements of the Guide, with appropriate adaptations (**1.2**).	N/A
When determining what the acquittal or reporting requirements are, Officials **must** have regard to information collected by Australian Government regulators (**4.9**).	No mandatory equivalent however the Guide provides that officials should consider opportunities to reduce the burden of reporting requirements while managing risk, including by having regard to information that is otherwise available (for example, information that is otherwise collected by government and available to the relevant officials or publicly available) and by aligning grant reporting requirements with a grantee's internal reporting requirements (such as the annual reporting cycle), where appropriate (**5.3**). The Guide also recommends that information collected from grant recipients should be coordinated between agencies to reduce duplication (subject to any restrictions on sharing information, such as under the PPIP Act (**6.6**).	N/A
Where a method, other than a competitive merit-based selection process is planned to be used, Officials **should** document why a different approach will be used (**11.5**).	Where a method other than a competitive merit-based selection process is to be used, officials **must** document why that method will be used and outline the risk mitigation strategies. This **must** be approved by the relevant Minister (or head of agency or delegate) (**6.1**). The Minister **must** have regard to the advice of officials and **must** document the reasons for selecting an alternative process (**6.1**).	N/A

No mandatory equivalent.	Where it is anticipated that a grant opportunity will involve input from MPs or other stakeholders, officials **must** ensure that the grant guidelines clearly outline the role of stakeholders and the engagement process, and that all stakeholder input is documented (**6.3**).	This requirement is directed to ensuring grants administration is transparent and that stakeholder input in receiving and assessing grants is properly documented.
No mandatory equivalent, however, the CGRG provides that Officials should have regard to all relevant planning issues, including the need to design grant opportunities to achieve value with relevant money (**7.5**), which is set out in further detail at section **11**.	Officials **must** demonstrate at the planning and design stage how a grant opportunity will deliver value for money by identifying benefits and costs (economic, social, environmental, and cultural) (**5.5**).	This requirement is intended to ensure value for money is considered in the grants planning and design stage.
No mandatory equivalent, however risk management considerations are discussed throughout the CGRG.	Officials **must** identify and manage risks for all grants, in accordance with agencies' responsibilities under the GSF Act (**6.1**).	This is to emphasise existing risk management requirements, to be applied in the context of grants administration.
Accountable authorities **must** ensure that entity fraud procedures and practices comply with the fraud risk management and controls for Commonwealth entities Rule, including as it relates to grants administration (**3.4**).	Officials **must** develop and implement fraud controls that are proportionate to the value and risk of the grant and consistent with NSW public sector risk management requirements (**5.7**)	This is to emphasise existing risk management requirements, to be applied in the context of grants administration.
No mandatory equivalent.	Officials **must** seek probity advice (whether external or internal) for all grant opportunities that are complex, high-risk or high-value (consistent with the agency's expenditure and risk management frameworks), to support the design, application, assessment and decision-making phases (**6.1**)	This is to ensure that additional assurance measures are in place for complex, high-risk and high-value grants.
No mandatory equivalent, however the CGRG provides that accountable authorities should put in place appropriate mechanisms for identifying and managing potential conflicts of interest for grant opportunities and Officials should conduct grants administration in a manner that minimises concerns about equitable treatment (**3.8-3.9**)	When designing the assessment process, officials **must** consider and develop a plan for managing any conflicts of interest that might arise (**6.1**).	This is to emphasise existing conflict of interest requirements, to be applied in the context of grants administration.
No mandatory equivalent, however the PGPA Act deals with "arrangements" which	Officials **must** ensure that grantees are subject to clear and specific written terms and conditions for a	This is to ensure that all grants have terms and conditions recorded in writing.

		grant. This should be by way of a funding agreement, unless not practicable (**6.4**).	
	are defined to include a contract, agreement, deed or understanding.		
Ministers	Ministers **must** comply with the relevant legislative requirements under PGPA Act and Rule and the CGRG (**3.3**).	Compliance with the Guide is mandatory (**1.3**).	N/A
	Ministers **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 (**4.10**).	Ministers who are involved in the grants administration process **must** administer the grant in accordance with the grant guidelines (**6.3**). A Minister who approves or declines a grant **must** record the decision in writing, including the reasons for the decision (and any departure from the recommendation of officials), having regard to the grant guidelines and the key principle of achieving value for money, and manage these records in accordance with the requirements of the SR Act (**6.3**). Where a Minister is the decision maker, ministerial staff **must** ensure that the decision is recorded in writing and the records are managed in accordance with the requirements of the SR Act (**6.3**).	N/A
	Must not approve grants without first receiving written advice from Officials on merits of proposed grant (**4.10**).	A Minister **must** not approve or decline a grant without first receiving written advice from officials on the merits of the proposed grant or group of grants (**6.3**).	N/A
	When approving a grant within own electorate, Minister **must** write to Finance Minister (**4.11**).	No mandatory equivalent.	Mandatory recordkeeping and publication requirements, among other things, ensure that ministerial decision-making about grants is transparent. Ministers also have existing requirements to manage conflicts of interest, in particular under the Ministerial Code of Conduct. It is noted that at a Minister's electorate is a matter of public record, so a declaration that a grant 'is in' their electorate is unnecessary. It might also be difficult to determine whether a grant is 'in' an electorate in any case (for example, does the applicant have to be from the electorate, or does the grant have to benefit the electorate? What if the grant benefits several electorates?).

			For the above reasons, no express requirement has been included in the Guide on this matter.
	Ministers **must** report annually to Finance Minister on all approved grants where the recommendation was to reject. If the decision relates to the Minister's own electorate, that information **must** be included when writing to the Finance Minister (**4.12**).	Decision makers may approve or decline grants in variance from the recommendation of officials. If a decision maker has decided to approve or decline a particular grant where this would depart from the recommendation of the assessment team, the decision maker **must** declare this in the relevant documentation, including the reasons for the departure (**6.3**).	It is more practical for a Minister to declare information in documentation, with reasons, than report to another Minister. Any variance from the recommendation of the assessment team, whether to approve or decline a grant, **must** be documented with reasons. This is broader than the Commonwealth requirement.
	No mandatory equivalent.	In the case of one-off, ad hoc grants, the Minister (**6.3**): • **must** not approve or decline a grant without first receiving written advice on the merits of the proposed grant or group of grants • **must** record the decision in writing, including the basis for the approval having regard to the grant guidelines and the key principle of achieving value for money.	The Guide emphasises that the requirements of the Guide relevant to decision makers apply equally for one-off, ad hoc grants. This is directed to ensuring transparency and accountability in ministerial decision-making extends to one-off, ad hoc grants.
Other mandatory requirements	Grant opportunity guidelines **must** be made publicly available on *GrantConnect* (unless one-off or ad hoc) or affects policy outcomes (**5.2**).	Officials **must** ensure that information about grant opportunities, including the grant guidelines and any revised versions, is published on the NSW Government Grants and Funding Finder (**6.2**). Where significant changes are made in relation to a grant opportunity, officials **must** revise grant guidelines accordingly (**6.1**). Where grants are provided on a one-off or ad hoc basis, the grant guidelines are not required to be published. However, officials **must** ensure that information about the grant is made available on the NSW Government Grants and Funding Finder no later than 45 calendar days after the grant agreement takes effect.	All grant guidelines **must** be published, with the exception of one-off or ad hoc grants.
	An entity **must** report on *GrantConnect* information on individual grants no later	Officials **must** ensure that information on the decisions made in relation to grants awarded is published on the NSW Government Grants and	Limited exceptions to the publication requirement are provided in the Guide *to* make the requirement workable and

	than 21 calendar days after the grant agreement (**5.3**). Where Officials determine that public reporting of grants in accordance with the CGRG is contrary to the *Privacy Act 1988* , other statutory requirements, or the specific terms of a grant agreement (**5.6**): • Officials **must** publish as much information as legally possible • The reasons for not reporting fully **must** be documented by officials. • Officials should also take all reasonable steps to ensure that future grant agreements contain provisions that do not prevent the disclosure of information.	Funding Finder no later than 45 calendar days after the grant agreement takes effect (**6.5**). The exceptions to this requirement are: • Where there is a policy exception to the requirement to publish grant information, officials **must** publish as much information as is reasonably practical. The approval of the Minister **must** be obtained and the reasons for not publishing the information fully **must** be documented by officials and published (**6.5**) • Where there is a legal obligation to maintain confidentiality over certain grant information, officials **must** publish as much information as is permitted and the reasons for not publishing the information fully **must** be documented by officials (**6.5**).	practicable, but with the requirement to obtain ministerial approval in the case of policy exceptions. The requirement to publish within 45 calendar days adopts the same timing that applies under the GIPA Act for the recording of information on an agency's government contracts register.
	No mandatory equivalent.	All offer letters and written agreements **must** require grantees to acknowledge the financial support by the NSW Government (**6.4**).	This is to make clear that the grant constitutes the provision of public money by the NSW Government who has responsibility for ensuring public money is spent efficiently, effectively, economically, and ethically.

Appendix D: Publication of grants data

Table 7 details recommended minimum publication requirements for all NSW Government grants data across the five key categories: open opportunities; current opportunities; awarded grants; use of ministerial discretion; and program evaluations. The table sets out the required data points, the current source of information (if available), and other relevant considerations. Specific reporting requirements for most data items are provided below to ensure that the content and format of grants information is consistent across agencies and over time.

As discussed in **Section 4.9**, subject to the legal and policy exceptions outlined, all NSW government grants data should be published on a whole-of-government grants website run by the Department of Customer Service. During the transition period, agencies should publish data on their website, subject to the same reporting requirements. Data on both awarded grants and use of ministerial discretion against officials' advice should be published no more than 45 days after the funding agreement takes effect. Program evaluations should be published within 45 days following final signoff.

Table 7 – Minimum grant publication requirements

Category	Data item	Current source	Other considerations

Open opportunities	• Grant guidelines, including:
	  o Purpose & objectives
	  o Selection criteria & assessment process
	  o Grant value
	  o Opening and closing dates
	  o Application outcome date
	  o Source agencies
		NSW Government Grants & Funding website (Beta version) and/or agency website.	Grants data on agencies' website during transitional period must be available from standalone tab.

Upcoming opportunities	• High-level program parameters and purpose • Estimated grant value • Expected opening and closing dates • Source agencies	Not consistently publicised.	Establish how the monitoring agency will maintain visibility over 'upcoming' grant opportunities, such as imposing a requirement that agencies upload to their agency website, and/or the NSW Government Grants & Funding website.
Grants awarded	• Program name & function • Recipient name • Recipient location (postcode) • Program delivery location • Funding amount • Program term • Program benefit-cost ratio (where CBA is applicable) • Number of applicants • Number of recipients • Source agencies • The decision maker	Annual reports; Service NSW performance dashboard (for a small selection of grants).	• Establish clear principles to ensure recipient confidentiality where necessary – for example, to protect vulnerable members of the community – but enable maximum publication of de-identified information. • Consider use of a unique grants portal ID that can preserve anonymity while permitting grant recipients to be tracked across agencies and over time. • Establish clear guidelines to determine 'recipient location' - such as in instances where the recipient organization is headquartered in a capital city but operates satellite offices. • Establish clear guidelines to determine 'number of recipients', such as in cases where a grant is received by an organisation but dispersed to associated individuals.

Ministerial discretion	• Occasions in which a Minister awards or declines a grant against advice from officials, including grant recipient, value, and location. • Reasons for the decision by the Minister that explain why the grant was accepted or rejected against official's advice	Not consistently publicised.	
Program evaluation	• Program name • Grantee name and funding value • Program evaluation, including findings, analysis, and methodology • Name of parties that undertook the evaluation (e.g. NSW agency or external consultant)	Not consistently publicised; on agency websites.	• Some data used in program evaluations will not be able to be released to the public. • Contracts with external consultants commissioned to undertake program evaluations should specify that the same publication requirements apply as for evaluations done by internal agency staff.

Additional data reporting requirements:

- 'Grant value' for upcoming and open opportunities should be a specific amount, or if not possible, a range with specific minimum and maximum amounts provided.

- 'Funding amount' for grants awarded should include the overall value of a grant, as well as the dollar value awarded to any 'downstream' recipients (subject to the legal and policy exceptions above). For example, a grant awarded to an organisation to cover the transport costs of its delegation to a conference should report both the total value of the grant to the organisation and the value to each delegate.

- All grant dates, including indicative dates, should be specified as a day, month, and year. It is not sufficient to provide an entire month or quarter for opening, closing, or decision dates.

- 'Source agency' should include the primary agency responsible for administering the grant, as well as any partner agencies or organisations. Contributions to funding the grant should be reported for each agency in addition to the total grant value.

- Grants data must be made available in a machine-readable format (e.g. CSV) with quantitative data items formatted to allow for computation. For example, a grant value of one thousand dollars must be presented as '1,000' and not as 'one thousand' or '1 thousand'.

- Data must be retained on a central, publicly available platform, such as the NSW Government Grants and Funding Finder, for at least seven years.

- Future updates to data items should not diminish the capacity of users to make comparisons of grant spending over time or across agencies.

Appendix E: Responding to Public Accountability Committee and NSW Auditor-General recommendations

The PAC conducted an inquiry into the integrity, efficacy, and value for money of NSW Government grant programs. The Committee issued two reports:

- First Report – March 2021
- Final Report – February 2022.

The NSW Auditor-General conducted a performance audit examining the integrity of grant program administration with a focus on the Stronger Communities Fund and the Regional Cultural Fund. The Auditor-General's report was released in February 2022.

This Review has had regard to the two reports of the PAC and the Auditor-General's report. The recommendations from these reports are set out in the tables below together with information about how these recommendations have been responded to by this Review.

Public Accountability Committee – First Report

Recommendation	Review response
Recommendation 1 That the NSW Government review and update the *Good Practice Guide to Grants Administration* and related circular to ensure it aligns with current best practice including: - minimum requirements including publication of guidelines, clear chains of authority and decision-making and adequate recordkeeping - guidelines around the role of MPs and discretion of Ministers and other decision makers.	A product of this Review, as required by its Terms of Reference, is an updated *Good Practice Guide to Grants Administration*. The draft Guide (at Appendix A) includes clear requirements about: - publication of guidelines (section 6.2) - decision-making (sections 6.1, 6.3, 6.5) - record-keeping (throughout the Guide) - the role of MPs (section 6.3) - the discretion of Ministers and other decision makers (throughout the Guide).
Recommendation 2 That the NSW Government ensure that key requirements of the *Good Practice Guide to Grants Administration* are enforceable.	The Review has addressed the question of enforceability of the Guide in this report (see section 3.5). This Review addresses enforceability of the Guide through the following recommendations: **Recommendation 2** Issue the draft *Grants Administration Guide* at Appendix A under a Premier's Memorandum, which is binding on Ministers, officials, and ministerial staff and can be readily updated in line with evolving best practice. **Recommendation 3** Make compliance with the draft *Grants Administration Guide* at Appendix A a legislative requirement.
Recommendation 3 That the NSW Government create and maintain a central website, similar to the Australian Government's *Grant Connect* website for: - all grant application information, including guidelines, objectives, and eligibility - an annual calendar with open and closing dates along with projected times of project announcements.	**Recommendation 13** calls for the development of a whole-of-government database and public website providing up-to-date information on: - upcoming grant opportunities - all open grant opportunities and their guidelines - all grants awarded - a record of ministerial grant decisions that vary from the recommendations of officials, and the reasons for the decisions - grant program evaluations. As is noted in this report (section 4.9.2), the DCS has made grants discoverable to the public through its NSW Government *Grants and Funding Finder* (www.nsw.gov.au/grants-and-funding). The Guide requires that agencies upload the five categories of grants information listed above to this website (sections 6.2 and

6.5) and the Review recommends agencies do this as soon as practicable.

The Department of Regional NSW is leading the development of a whole-of-government internal grants database that will complement the *Grants and Funding Finder* website.

Recommendation 4 That the NSW Government: • increase the powers and remit of the Auditor-General of NSW to include 'follow the dollar' powers, consistent with other Australian State and Territory jurisdictions • enable the Auditor-General of NSW to conduct more regular performance audits on the design and guidelines of government grant programs.	This Review has considered the possibility of implementing 'follow the dollar' powers and has concluded that, while these powers have the potential to improve the end-to-end integrity of NSW Government grants administration, there must be due regard for the impact on the range of affected stakeholders. Where relevant to its terms of reference, the Review has responded to findings and recommendations of the recent Auditor-General performance audit on the integrity of grants administration. The Review recognises the importance of the Auditor-General's performance audits directed to determining that government activities are carried out effectively, economically, and efficiently and in compliance with all relevant laws.
Recommendation 5 That the NSW Government ensure all grant programs have, as an absolute minimum, the following legally binding and mandatory elements: • a designated decision maker • eligibility criteria • a process for identifying and assessing proposed projects against those criteria • program guidelines that are clear, detailed and publicly available.	The draft Guide addresses these as mandatory requirements: • a designated decision maker (section 6.1) • selection criteria (section 6.1) • a process for identifying and assessing proposed projects or programs against those criteria (sections 6.1 and 6.3) • grant guidelines that are clear, detailed and publicly available (sections 6.1, 6.2 and 6.5).
Recommendation 6 That the Board of the State Records and Archives Authority reconsider its decision not to pursue further action against the Premier of NSW, the Hon. Gladys Berejiklian, MP, and her Office, in light of its findings that the Office of the Premier breached the *State Records Act 1998* by destroying working advice notes regarding the Stronger Communities Fund tied grants round.	This is not a matter for this Review.
Recommendation 7 That the Legislative Council refer its concerns regarding the inappropriate design and maladministration of the Stronger Communities Fund tied grants round to the Audit Office of NSW, along with this report and committee transcripts of evidence for investigation.	This is not a matter for this Review.
Recommendation 8 That the Legislative Council refer its concerns regarding the inappropriate design and maladministration of the Stronger Communities Fund tied grants round to the Independent Commission Against Corruption, along with this report and committee transcripts of evidence for investigation.	This is not a matter for this Review.
Recommendation 9 That the Legislative Council send a message to the Legislative Assembly to establish a Joint Select Committee to inquire into and report on the NSW Budget process and parliamentary oversight.	This is not a matter for this Review.

Recommendation 10 That the NSW Government, in close consultation with Local Government NSW, overhaul its current model of grant funding to local councils to move towards providing the bulk of its funding through a funding formula that: • is linked to local councils' existing strategic planning documents and priorities • acknowledges the additional costs and needs of regional and remote councils • is predictable and provides multi-year funding commitments • is regularly and publicly reviewed to ensure it meets the needs of the sector.	Funding approaches beyond grants are not a matter for this Review. In response to concerns expressed by local government in the grants context, the Review recommends a cross-agency "community of practice" explore opportunities for better coordination of grant programs as well as more holistic approaches to ensure alignment with broader strategic and customer-focused outcomes (Recommendation 4 and section 5.2 of this Report).
Recommendation 11 That the NSW Government consider using staged application processes for large grants so that applicants submit an initial expression of interest and are shortlisted to progress through to a full application.	The draft Guide addresses this recommendation through the key principles of robust planning and design, and proportionality.
Recommendation 12 That the NSW Government ensure that no local government grant funding announcement is made before the recipient has been informed and accepts.	The draft Guide states at 6.3 that public announcement of a grant decision should not be made before the grantee has been informed, and that written advice should be provided to unsuccessful applicants (where practicable, with reasons for the application being unsuccessful) on or before the announcement.
Recommendation 13 That the NSW Government review and standardise eligibility classifications across grant programs, including investigating whether to include a third category of 'gateway city' in its classification of regions.	This may be further explored through the Community of Practice (recommendation 4) who will lead implementation of operational dimensions of grants administration.
Recommendation 14 That the Department of Premier and Cabinet table half-yearly reports to the Legislative Council on all current grant processes, including: • guidelines for open and upcoming grant programs and any revisions to these guidelines • total amount available for the round and approximate amounts available to each applicant • updates on amounts paid for each project for the last quarter. Further, that the Department of Premier and Cabinet publish this information on an online dashboard and update it regularly.	See **Recommendation 13**. The draft Guide requires information about and promotion of all NSW Government upcoming and open grants to be made publicly available on the Department of Customer Service website (nsw.gov.au/grants-and-funding): see sections 6.2 and 6.5 of the Guide. The Review recommends that grant-giving agencies upload as soon as is practicable information across the grant lifecycle to this site (section 4.9.2).
Recommendation 15 That the NSW Government ensures the Office of Local Government is audited for each grant funding round it administers, including checks to ensure whether the Office has complied with the relevant guidelines, ensured programs are subject to probity audits, and kept accurate and sufficient records.	The Review has not considered specific grants or the performance of particular agencies with respect to grants administration. Recommendation 18 of this Review provides that Chief Audit Executives are to ensure their agency's internal audit program includes regular audits of grant programs to monitor and assess compliance with the Guide. The frequency of audits should be proportionate to the value and risk of grants activity undertaken by the agency.

Public Accountability Committee – Final Report

Recommendation	Review response
Recommendation 1 That this committee calls on the NSW Government to respond as a matter of urgency to its first and now its final report on grants administration in NSW, in particular, the recommendations of a systemic change.	This is not a matter for this Review.
Recommendation 2 That Service NSW ensure that: • the current level of fraud, both paid and unpaid, are thoroughly investigated and money recovered • capable and resilient fraud control measures and identification systems are put in place to detect fraud on future grant programs and retrospectively as a matter of urgency.	This is not a matter for this Review.
Recommendation 3 That the NSW Government urgently allocate resources, including adequate funding and staffing, to ensure that it mitigates the risk of fraud across all future government grant programs, including the implementation of sufficient fraud control measures and identification systems.	The combined effect of the draft Guide and the recommendations of this Review ensure that measures are in place during the life cycle of grants to mitigate risk of fraud. Recommendation 18 is directed to best-practice grants processes, in line with agencies' risk management frameworks. Under that recommendation, Officials are required to prepare a risk appetite statement for all medium- and high-risk grants, and seek probity advice (whether external or internal) for all grant programs that are complex, high risk or high value. Further, the Chief Audit Executive is to ensure their agency's internal audit program includes regular audits of grant programs to monitor and assess compliance with the Guide. Recommendation 19 also provides that, when administering grants, officials must develop and implement fraud controls that are proportionate to the value and risk of the grant and consistent with NSW public sector risk management requirements.
Recommendation 4 That the Minister for the Arts publish reasons whenever the Minister deviates from a grant application recommendation made by Create NSW or an Artform Advisory Board.	The draft Guide includes the following mandatory requirements for Ministers: • A Minister who approves a grant must record the decision in writing, including the basis for the approval having regard to the grant guidelines and the key principle of achieving value for money, and store these records in accordance with the requirements of the SR Act (section 6.3). • Where a Minister has decided to approve or decline a particular grant where this would depart from the recommendation of the assessment team, the Minister must record this in the relevant documentation, including the reasons for the departure (section 6.3). Under the draft Guide: • Officials must ensure that information on the decisions made in relation to a grant contrary to officials' advice is published on the NSW Government *Grants and Funding Finder* website no later than 45 calendar days after the grant agreement takes effect (section 6.5). • There may be circumstances where officials determine that publishing a grant decision may be contrary to a legal obligation or subject to a policy exception. The approach in these circumstances is provided at section 6.5 of the draft Guide.

Recommendation 5

That Create NSW publish an online list of all applications recommended to the Minister for the Arts for funding when funding announcements are made, including:

- name of the applicant
- a broad description of the project
- the ranking of each application by the assessment panel.

Section 6.3 of the draft Guide imposes certain mandatory requirements with respect to documenting decisions including where the decision maker departs from the recommendation of the assessment team.

Section 6.5 of the draft Guide provides for publishing of grant information.

Recommendation 6

That Create NSW review all arts-related grant application forms and processes with a view to simplifying and streamlining the process.

Implementation of the draft Guide and the establishment of a Community of Practice as recommended in this Review would support this process.

Recommendation 7

That the NSW Government ensure that arts organisations, peak bodies, and individual artists are considered in separate funding streams with targeted application requirements and criteria for each distinct group.

This is not a matter for this Review.

Recommendation 8

That the NSW Government reinstate devolved funding programs under the Arts and Cultural Funding Program.

This is not a matter for this Review.

Recommendation 9

That the NSW Government revise its provision of grant funding to peak bodies and restore dedicated funding for these bodies outside of a grants process. If this recommendation is not supported, the committee instead recommends that Create NSW return to funding peak bodies with multi-year, rather than annual, funding.

Funding approaches beyond grants are not a matter for this Review.

In response to concerns expressed by arts organisations in the grants context, the Review recommends a cross-agency "community of practice" explore opportunities for better coordination of grant programs, and more holistic approaches to ensure alignment with broader strategic and customer-focused outcomes (Recommendation 4 and section 5.2 of this Report).

Recommendation 10

That all NSW Government grant schemes follow a mandatory set of guidelines which detail the process for award of the grant, the criteria considered and the requirements for public reporting of the guidelines, criteria, decision making process and final outcomes. Such guidelines are to provide different streams for different grant processes, with all grants subject to common requirements of integrity, transparency and prioritising of the public good.

This is addressed by the draft Guide, which is a product of this Review, required by the Terms of Reference.

Recommendation 11

That, where the decision maker for a grant program is a public servant, the committee notes the submission of the Independent Commission Against Corruption that in certain circumstances Ministers or ministerial staff attempting to influence that decision could prove to be a breach of public trust. It is recommended that the NSW Government strengthen its processes to make sure that this does not occur.

Under the draft Guide, Ministers and ministerial staff are subject to mandatory requirements directed to transparency and accountability in grants decision making and grants processes. Importantly, Ministers must take advice from officials about the merits of grants and record their grants decisions in writing. Ministerial staff must put in place practices and procedures to ensure that ministerial involvement in grants administration is conducted in a manner that is consistent with the key principles and requirements in the Guide. They must also ensure where the Minister is the decision maker that the decision is recorded in writing in accordance with SR Act obligations.

Ministers and ministerial staff are bound by codes of conduct that seek to regulate ministerial interference: see NSW Ministerial Code of Conduct and the NSW Office Holder's Staff Code of Conduct (see section 4.6 of this Report).

Where the decision-making Minister, or their staff, provide input on the assessment of grant applicants, officials should record any discussions or input. Any actions taken

as a result, such as changes to the ranking of applicants, should be documented in the brief outlining the assessor's recommendations.

Recommendation 12	The Guide provides, relevantly, the following mandatory requirements for Ministers and officials:
That the NSW Government ensure that when a Minister who is a decision maker for a grants process does not agree, in whole or in part, with a written recommendation of the agency administering the grants program, the Minister is required to do so in writing, providing full and adequate reasons. Such a decision should be made public, for example, by publishing on a centralised grants website.	• Ministers who are involved in the grants administration process must administer the grant in accordance with the grant guidelines. • A Minister must not approve a grant without first receiving written advice from officials on the merits of the proposed grant or group of grants. • A Minister who approves a grant must record the decision in writing, including the basis for the approval having regard to the grant guidelines and the key principle of achieving value for money, and store these records in accordance with the requirements of the SR Act. • Where a Minister has decided to approve a particular grant where this would depart from the recommendation of the assessment team, the Minister must declare this in the relevant documentation, including any relevant reasons for the departure. • Officials must ensure the reasons for decisions that depart from officials' advice are published on the NSW Government *Grants and Funding Finder* website no later than 45 calendar days after the grant agreement takes effect. • Where officials determine that publication of grant information could adversely affect the achievement of government policy outcomes, the responsible Minister must approve the agency not publishing the information and report this to the Premier.
Recommendation 13	• This is not a matter for this Review.
That the Public Accountability Committee conducts a further inquiry into the integrity, efficacy, and value for money of NSW Government grant programs, including whether recommended reforms from key bodies have been implemented.	

Auditor-General's Report

Recommendation	Review response
The Department of Premier and Cabinet should: 1. Develop a model for grant administration that must be used for all grant programs administered in NSW that: • is based on ethical principles outlined in the *Government Sector Employee Act* (2013) such as impartiality, equity, and transparency • ensures assessments and decisions can be made against clear eligibility criteria, and limits politically-biased outcomes • ensures accountability for decisions and actions of all those who are involved in the program including public servants, elected representatives and political staff • includes minimum mandatory administration and documentation standards including for interactions between Ministers, ministerial staff, and public servants • requires any ministerial override of recommendations to be documented, with transparent consideration of probity and conflict of interest.	The draft Guide responds to this recommendation: see sections 1, 5 and 6.

The Department of Planning and Environment should:	The draft Guide will support this process.
Ensure that guidelines prepared for all grant programs are published and include a governance framework that includes accountabilities and key assessment steps.	

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