



# Commonwealth Grants Rules and Guidelines 2017 Frequently Asked Questions

This document is intended to clarify common questions relating to the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

## At a glance

Officials should read these frequently asked questions together with:

- The CGRGs;
- Resource Management Guide No. 411 Grants, Procurements or other financial arrangement (RMG 411);
- Resource Management Guide No. 412: Australian Government Grants – Briefing, Reporting, Evaluating and Election Commitments (RMG 412);
- Resource Management Guide No. 415: Grants and Procurement-Connected Policies (RMG 415); and
- Resource Management Guide No. 421: Publishing and reporting Grants and GrantConnect (RMG 421).

## 1. What are the CGRGs?

The revised CGRGs came into effect in August 2017, as a legislative instrument under section 105C of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

The CGRGs establish the Australian Government's overarching grants policy framework, under which non-corporate Commonwealth entities undertake grants administration.

### 1.1 Why do the CGRGs have two parts?

The CGRGs are divided into two parts, to clearly separate mandatory requirements and better practice. Part 1 outlines mandatory requirements while Part 2 explains how

accountable authorities and officials should apply the seven key principles of grants administration.

Part 1 of the CGRGs require officials to have regard to the seven key principles when they are undertaking grants administration. This allows accountable authorities and officials to flexibly develop systems of control, internal practices and procedures that ensure grants administration (including decision-making by delegates and ministers) is conducted in a manner that is consistent with the principles in Part 2.

## **2. How do I know if a financial arrangement is a grant?**

If a financial arrangement meets the definition of a grant in paragraph 2.3 of the CGRGs, and is not included in the exclusions in paragraph 2.6, then it is a grant and the CGRGs apply. RMG 411 has been developed to assist officials and accountable authorities to make these decisions.

Officials and accountable authorities must establish and document that a financial arrangement is a grant prior to applying the CGRGs. Officials should consult RMG 411 for additional guidance on considerations regarding determining the most appropriate arrangement at the policy development stage.

### **2.1 How can I tell if the activity is a procurement or a grant?**

Sometimes it can be difficult to distinguish between a grant and a procurement, particularly where a procurement is on behalf of a third party.

With a grant, the grantee receives financial assistance from the Commonwealth to help address one or more Commonwealth policy outcomes as well as achieve its own objectives (consistent with Commonwealth goals). Whereas in a procurement, the Commonwealth is usually acquiring goods and/or services that assist the Commonwealth or a third party. Officials should consult RMG 411 for assistance.

### **2.2 Is a financial arrangement made under specific legislation a grant?**

Officials and accountable authorities can make grants under specific legislation. This type of arrangement is generally regarded as a grant and subject to the CGRGs. For example, grants made under the *Medical Research Future Fund Act 2015* are generally subject to the CGRGs.

However, benefits or entitlements created under specific legislation are defined as a non-grant financial arrangement in paragraph 2.6 of the CGRGs. For example, benefits paid under the *Social Security Act 1991*.

## 2.3 My accountable authority wants to donate to a disaster appeal on behalf of the entity. Is this a grant?

Donations or gifts of relevant money generally meet the definition of a grant in paragraph 2.3 of the CGRGs. Like all payments of relevant money, a donation must be a 'proper' use and management of public resources.

However, paragraph 2.6 of the CGRGs provides that a payment of a charitable donation by a non-corporate entity from monies received from individuals for that purpose is exempt from the CGRGs. Officials should consider where the funds for the donation will be sourced from when deciding if it would be a grant or not.

## 2.4 Are sponsorships grants?

Most sponsorship arrangements will meet the definition of a grant in paragraph 2.3 of the CGRGs. However, it is possible that some sponsorships may be a procurement, for example, where the substantive purpose of the arrangement is to acquire advertising space at a competitive market rate.

## 2.5 Are ex-gratia payments grants?

Ex-gratia payments are essentially gifts of relevant money and generally meet the definition of a grant in paragraph 2.3 of the CGRGs. Like all payments of relevant money, an ex-gratia payment must be a 'proper' use of public resources.

## 2.6 How should I classify non-cash components of a grant?

A grant is the provision of financial assistance (the payment of relevant money), to a recipient outside the Commonwealth. Where you also provide access to Commonwealth materials and facilities, there is generally no need to apply a separate financial framework to that component of the grant. However, you may need to consider if you are gifting relevant property under section 66 of the PGPA Act.

Where you are acquiring goods or services on behalf of a third party, then this arrangement is a procurement and the Commonwealth Procurement Rules apply. Again, you may need to consider if you are gifting relevant property under section 66 of the PGPA Act.

## 2.7 My department provides financial assistance through cash rebates to people who have purchased household hot water systems. Is this a grant?

Subsidies and rebates, which create an entitlement to financial assistance, will generally meet the definition of a grant in paragraph 2.3 of the CGRGs. However, where the subsidy or rebate is established by specific legislation, it may fall within the "entitlement created by legislation" exclusion in paragraph 2.6 of the CGRGs.

## 2.8 My department provides financial assistance, which requires the recipient to pay interest and repay the financial assistance in certain circumstances. Is this a grant?

If the arrangement meets the definition of a grant in paragraph 2.3 of the CGRGs, and is not included in the exclusions in paragraph 2.6 of the CGRGs, then it is a grant. Arrangements that require repayments to the Commonwealth may be loans, concessional loans or investments. In determining whether an arrangement falls into one of the exclusions in paragraph 2.6 of the CGRGs, officials should have regard to the substantive purpose of the arrangement and document the reasons for adopting a particular approach.

## 2.9 Can one Commonwealth entity provide a grant to another Commonwealth entity?

As all non-corporate Commonwealth entities are part of the Commonwealth, these payments are notional payments and not grants.

A payment from a non-corporate Commonwealth entity to a corporate Commonwealth entity may be a grant, as they are legally separate to the Commonwealth. If a payment from a non-corporate Commonwealth entity to a corporate Commonwealth entity meets the definition of a grant in paragraph 2.3 of the CGRGs, and is not included in the exclusions in paragraph 2.6 of the CGRGs, then it is a grant. Paragraph 2.6 excludes payments to non-corporate Commonwealth entity's, which are made for operational purposes.

RMG 411 may assist officials in considering whether other organisations may have been eligible to apply for the grant, and the purpose of the payment. For example, providing financial assistance to the CSIRO to conduct a specific piece of research would more likely be considered a grant.

## 2.10 I am making a grant to another government. Do I need to comply with the CGRGs?

The CGRGs apply to any grants to other governments, which are not covered by the exclusions in paragraph 2.6 of the CGRGs. Payments to state and territory governments, made under paragraph 96 of the Constitution or under the *Federal Financial Relations Act 2009*, as well as payments to local government under the *Local Government (Financial Assistance) Act 1995*, are excluded from the definition of a grant in paragraph 2.6. In these circumstances, the CGRGs do not apply. Similarly, grants to overseas governments that are Official Development Assistance are excluded from the definition of a grant and the CGRGs do not apply.

## 2.11 Are there special conditions to take into account where a grant opportunity involves payments to states, territories and local governments?

Where funding is only available to states and territories then it is likely the payments are under the Federal Financial Relations legislation and will not be subject to the CGRGs. However, where local governments or other applicants, such as small business or industry, are able to apply, the payments are more likely to be a grant and subject to the CGRGs. When designing your grant opportunity, you should consider whether recipients will be treated differently and seek to minimise any inconsistencies.

## 2.12 How do I know if a payment is Official Development Assistance?

Official Development Assistance (ODA) is defined by the Organisation for Economic Co-operation and Development (OECD), available on their website <http://www.oecd.org/>. The Department of Foreign Affairs and Trade (DFAT) have responsibility for classifying payments as ODA. You should contact DFAT with questions regarding ODA.

## 2.13 How do I class a membership payment that is not Official Development Assistance?

If the membership does not meet the definition of ODA, then officials and accountable authorities should consider whether the membership is required under Australia's international treaty obligations. If it does, then it is likely to meet the exemption under paragraph 2.6 of the CGRGs. Otherwise, it could be either a procurement or a grant, depending on the substantive purpose for the financial arrangement. If it is a grant then the CGRGs apply.

# 3. What types of authority do I need?

Officials and accountable authorities must ensure that any proposed financial arrangement is in line with the Government's policy objectives and relevant authority. In addition, the proposed financial arrangement may require specific legislative authority.

## 3.1 How do I know if my arrangement needs legislative authority? How do I get legislative authority if I need it?

As a result of the High Court decision in *Williams No1*, government-spending activities that do not relate to the ordinary services and functions of government require legislative authority in addition to an appropriation. Legislative authority for grants can come from specific legislation or Schedule 1AA or 1AB of the *Financial Framework (Supplementary Powers) Regulations 1997*. The Australian Government Solicitor

provides advice on whether an activity requires separate legislative authority. Entities can contact Governance Branch at [pmra@finance.gov.au](mailto:pmra@finance.gov.au) regarding Schedule 1AA and 1AB of the FFSP Regulations.

### 3.2 Can I publish grant guidelines without legislative authority?

Yes, if necessary. Grant opportunity guidelines can be published without legislative authority. However, the government cannot commit relevant money (for example, enter into a grant agreement) without having legislative authority. Officials should consider the risks of publishing grant guidelines without legislative authority and be conscious that any guidelines published prior to receiving legislative authority should advise of the possibility that the grant opportunity may not proceed.

## 4. What is grants administration?

Paragraph 2.8 of the CGRGs notes that grants administration encompasses all processes involved in the lifecycle. The CGRGs apply to all activities and decisions, which are made by officials or accountable authorities once a determination that a financial arrangement is a grant has been made.

### 4.1 How can I use a grants administration hub?

When developing policy proposals, entities should seek to leverage whole-of-government initiatives. Entities should make the best use of existing entity structures, business processes, and ICT architecture that is compatible with relevant whole-of-government strategies and the Government's APS Transformation Agenda.

Under the Streamlining Government Grants Administration (SGGA) Program 14 entities<sup>1</sup> must implement existing and proposed in-scope granting activity via one of three administration Hubs<sup>2</sup> using the Hubs' standardised grant process and ICT grants management services.

The Business Grants Hub can be contacted at [AusIndustryEngagement@industry.gov.au](mailto:AusIndustryEngagement@industry.gov.au) and the Community Grants Hub at [support@communitygrants.gov.au](mailto:support@communitygrants.gov.au)

### 4.2 When can I consult stakeholders?

The 'collaboration and partnership' principle of the CGRGs encourages officials and accountable authorities to seek stakeholder input during the planning and design of grant opportunities. Grant opportunities can benefit from public input. However, consultation and partnership should be balanced with maintaining probity and transparency, governance and accountability as well as robust planning and design.

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<sup>1</sup> For further information please contact [grantsadmin@finance.gov.au](mailto:grantsadmin@finance.gov.au)

<sup>2</sup> Community or Business Grants Hub; or the National Health and Medical Research Council interim Hub for specialised clinical trial and research grants

Officials and accountable authorities should be careful to:

- be inclusive in consultations, so as to reduce the risk of bias;
- qualify consultations as information gathering; and
- not prejudice sound planning and design by providing advice on the expected outcomes or next steps in grant opportunities.

Consuming entities may also wish to discuss consultation with their chosen grants administration Hub.

## **5. What are the requirements for grant opportunity guidelines?**

The CGRGs require officials to develop grant opportunity guidelines for all new grant opportunities, and revised guidelines (paragraph 4.4). Finance has developed a whole-of-government suite of grant opportunity guidelines templates for officials and accountable authorities to use. The templates assist entities and Finance to quickly progress the risk assessment approach as noted in the CGRGs. These templates are available from the Grants Policy team at [grants@finance.gov.au](mailto:grants@finance.gov.au)

Consuming entities under the SGGA program can also request the template grant opportunity guidelines from their chosen grants administration hub.

A risk-based approach is in place for approval of grant opportunity guidelines. Each entity is required to liaise with the Department of Finance and the Department of the Prime Minister & Cabinet prior to seeking to publish grant opportunity guidelines. Consuming entities will have an agreed approach to developing grant opportunity guidelines with their chosen grants administration hub.

### **5.1 When and where do I publish grant opportunity guidelines?**

GrantConnect is the central point of discovery for information about all Australian Government grants. The CGRGs requires entities to publish all grant opportunity guidelines on GrantConnect (paragraph 5.2). In addition, entities may choose to develop forecast opportunities to alert potential applicants of upcoming grant opportunities. When entities develop and publish forecast opportunities, these must be published on GrantConnect. Forecast opportunities allow officials to alert the public to upcoming grant opportunities before opening for applications.

Consuming entities under the SGGA program should discuss how their Hub service arrangement will manage the requirement to publish grant opportunities on GrantConnect.

Officials should liaise with the GrantConnect Operations team at Finance to confirm and manage the service agreement, [grantconnect@finance.gov.au](mailto:grantconnect@finance.gov.au). RMG 421 provides guidance on the requirements of GrantConnect.

## 5.2 Are grant opportunity guidelines required for one-off or ad hoc grants?

Grant opportunity guidelines are required for all grants, including one-off or ad hoc grants.

At a minimum, guidelines for one-off or ad hoc grants should include the purpose or description of the granting activity, grant amounts, the objectives, the selection process, any reporting and acquittal requirements and any evaluation mechanisms.

Grant opportunity guidelines for one-off or ad hoc grants are not required to be published on GrantConnect, and are not subject to the mandatory processes relating to approval of new or revised grant opportunity guidelines.

## 6. What grant information do I have to report and where do I report it?

The CGRGs require grant opportunity guidelines to be published on GrantConnect and grants awarded to be published on GrantConnect no later than 21 calendar days after the date of effect.

### 6.1 What information do I publish on my entity's website?

GrantConnect is the central point of discovery for information about all Australian Government grants. The CGRGs require entities to publish grant guidelines and grants awarded on GrantConnect. Entities should publish a link to GrantConnect on their websites, rather than publishing grant opportunity guidelines or grants awarded on their websites. RMG 421 provides further guidance on the use of GrantConnect for officials.

### 6.2 How do I report grants awarded information?

From 31 December 2017, all entities are required to report grants awarded information, including variations to grant agreements, on GrantConnect.

For information on how to publish grant awards, or access to GrantConnect, contact the GrantConnect Help Desk, [grantconnect@finance.gov.au](mailto:grantconnect@finance.gov.au)

### 6.3 Do I need to report variations to grant agreements?

Yes. Officials should report any major variations to grant agreements on GrantConnect, especially if the variation involves changes to the grant amount or a significant revision in time. Variations providing for indexation would generally not need be reported. RMG 421 provides guidance on the requirements of GrantConnect.

## 6.4 Do I need to report variations to grant agreements within 21 calendar days?

No. It is better practice for officials to amend grants awarded reporting to reflect the variation as soon as is practicable.

## 6.5 My department is co-funding a grant with another non-corporate Commonwealth entity. Should I publish all details of the grant, or only the amount that we fund?

The entity that enters into the grant agreement should report the whole grant on GrantConnect. In the situation where two or more entities enter into the grant agreement with a grant recipient, then the lead entity should report the grant.

In cases where there is both Australian Government and private sector funding for a specific grant project, entities are required to report only on the Australian Government contribution.

All entities must publish grants awarded information on GrantConnect.

## 6.6 My department has undergone some machinery of government (MoG) changes. Should my department report the grants that were awarded by the previous entity?

Grants information must be retained for two financial years, regardless of whether the functions that relate to the grants are transferred to another entity, or cease to exist.

An entity transferring functions should agree with the entity gaining functions as to the date of transfer and then transfer the grants information accordingly.

From 31 December 2017, all entities must report grants awarded information on GrantConnect. From this date, an entity does not need to specifically request to transfer the grants reporting information following a MoG. GrantConnect is a point-in-time system, and holds the information against the entity, which awarded the grant at the time of reporting.

The Australian Public Service Commission provides comprehensive guidance on implementing MoG changes <http://www.apsc.gov.au/publications-and-media/current-publications/implementing-machinery-of-government-changes>.

There may be cases where the functions relating to the grants are being abolished or transferred to an entity outside the remit of the CGRGs. If this is the case, then officials should contact the National Archives of Australia <http://www.naa.gov.au/records-management/help/index.aspx> for further guidance.

The above does not apply to ministerial reporting requirements for grants (CGRGs paragraphs 4.10-12). The start date for ministerial reporting requirements is linked to the date on which a Minister is sworn-in as the responsible Minister.

## **7. How do I brief my Minister and what do they have to report?**

The CGRGs contain a number of requirements for briefing Ministers in paragraphs 4.6, 4.7, and for ministerial reporting in paragraphs 4.10 to 4.12.

### **7.1 What must I brief my Minister on to approve a grant opportunity?**

The CGRGs require officials to provide written advice to Ministers (including Assistant Ministers), where they exercise the role of grants approver. The minimum requirements are specified at Paragraphs 4.6 and 4.7 of the CGRGs. Accountable authorities and officials should note that a suggested format is contained in RMG 412. This information should be regarded as the minimum required. Of particular note is the requirements of paragraph 4.7, which requires officials and accountable authorities' to advise Ministers which grants fully, partially or do not meet the selection criteria.

Any specific recommendations that are requested by delegates and Ministers should be provided in addition to the requirements of the CGRGs. This can include recommendations from an external committee.

### **7.2 My Minister approved a grant in their own electorate last year, which was not reported to the Finance Minister. Do they still need to write to the Finance Minister?**

Yes. Ministers who are members of the House of Representatives are required to report all<sup>3</sup> grants they have awarded in their own electorate to the Finance Minister as soon as practicable.

### **7.3 My Minister approved a grant without a specific recommendation from officials. Do they need to report this to the Finance Minister?**

No. Your Minister may approve a grant without a specific recommendation by officials. However, they must not approve a grant without first receiving written advice from officials on the merits of the proposed grant or group of grants (CGRGs paragraphs 4.4(d) and 4.6).

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<sup>3</sup> Except for the situations described in section 4.12(c) of the CGRGs.

However, if officials recommended that a grant be rejected, then your Minister is required to report the instance to the Finance Minister in their annual report to the Finance Minister (CGRGs paragraph 4.12).

#### 7.4 My Minister approved a grant that a relevant official recommended be rejected. However, the grant did not proceed. Do they still need to report this to the Finance Minister?

Yes. The requirement to report a decision to approve a grant against officials' advice applies to the decision, and is not dependent on whether the grant ultimately proceeds, or whether a grant agreement is entered into.

Similarly, if your Minister approves a grant within their own electorate, but the grant did not proceed, your Minister must still report their decision to approve the grant to the Finance Minister.

#### 7.5 My Minister approved a grant that will benefit their electorate, and also the neighbouring electorate. Do they need to report the whole grant to the Finance Minister?

Yes. Your Minister should report to the Finance Minister<sup>4</sup> the whole grant, noting the amount of the grant that will benefit their electorate. If it is difficult to determine the exact amount that will benefit their electorate, then your Minister should note that the exact amount benefiting their electorate cannot be quantified.

### **8. Do the CGRGs impose mandatory requirements on grantees?**

The CGRGs do not place mandatory requirements on grantees. Officials should consider the key principles when determining how much information to request from grantees when conducting grants administration.

#### 8.1 Do I have to get a financial acquittal for all grants?

No. The CGRGs do not mandate that a financial acquittal is required for a grant. You should determine whether a financial acquittal is required. This decision should be based on: the risks involved; consultation with the grant recipient; the cost of compliance; and whether the grantee has provided relevant information to an Australian Government regulator and this information is available to officials.

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<sup>4</sup> Except for the situations described in section 4.12(c) of the CGRGs.

## 8.2 Do I need to get independently audited financial statements for an acquittal?

No. You should determine whether a financial acquittal is required and what level of acquittal is appropriate for a particular grant, taking into account the risks involved. Officials should be aware that independently audited financial statements may be expensive and difficult to source in rural and remote areas, or may comprise a large proportion of a low value grant.

If a recipient is regulated by an Australian Government regulator, then audited financial statements should not be required, unless the granting activity is higher risk. Officials may instead seek a certification from the recipient that the grant money was spent for the purpose agreed, including a statement on any underspends if appropriate.