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FOI 26-27/118 Document 01

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Australian Government
Department of Finance

MINISTERIAL SUBMISSION

Copies to:
Secretary
Mr Williamson
Ms Patterson
Mr Windeyer
Mr Danks
Ms Dovers
Ms Baker
Mr Sebar

Minister for Finance

Commonwealth Grants Rules and Principles 2024

Minister's action due by: 26 June 2024 to meet the proposed timeframe for registration on the Federal Register of Legislation.

Recommendations:

That you:

i. **agree** to the proposed Commonwealth Grants Rules and Principles 2024 (CGRPs) at Attachment A;

AGREED / NOT AGREED / PLEASE DISCUSS

ii. **sign** the CGRPs instrument (at page 3 of Attachment A);

SIGNED / PLEASE DISCUSS

iii. **approve** the Explanatory Statement for registration and tabling (Attachment B);

APPROVED / NOT APPROVED / PLEASE DISCUSS

iv. **agree** to registering the CGRPs on the Federal Register of Legislation in June 2024, with a date of effect of 1 October 2024;

AGREED / NOT AGREED / PLEASE DISCUSS

v. **sign** the letter (Attachment C) to the Prime Minister advising him of updates to the CGRPs, further to your letter of 28 August 2023;

SIGNED / PLEASE DISCUSS

vi. **sign** the letter (Attachment D) to your ministerial colleagues advising them of the new CGRPs, particularly the changes applying to ministers when they approve grants;

SIGNED / PLEASE DISCUSS

vii. **note** Finance will brief you separately on a proposed Government response to the Joint Committee on Public Accounts and Audit Report 495 *Inquiry into Commonwealth Grants Administration*.

NOTED / PLEASE DISCUSS

Katy Gallagher 19/6/24

Katy Gallagher

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Key Issues:

1. On 28 August 2023, you agreed to proposed enhancements to the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs), including to rename the CGRGs to the Commonwealth Grants Rules and Principles (CGRPs) (MS23-000068 refers).

2. Since this time, we have worked with your office to develop further changes to the draft CGRPs to reflect the outcomes of consultation between parliamentary offices. The proposed CGRPs at Attachment A reflect these further changes.

3. The key changes since the previous version are to:

   (a) *require* officials to use the three categories currently contained in the CGRGs when briefing ministers as the approver of the grant, that is, to provide advice on which applications fully, partially and do not meet the selection criteria (paragraph 4.7a),

   (b) *require* officials to indicate which of the applications can be supported within the available funding (paragraph 4.7b),

   (c) *require* officials to recommend that applications that do not meet any of the selection criteria be rejected (paragraph 4.7c),

   (d) *encourage* (but not *require*) officials to include recommendations in relation to all applications (paragraph 4.7d),

   (e) *require* ministers to record the basis for not approving grants should officials recommend they be approved (paragraph 4.10c),

   (f) *require* that the Minister for Finance must table a copy of a report received under paragraphs 4.11(a) and 4.12(a) in each House of Parliament as soon as practicable after the end of each quarter (paragraph 4.13), and

   (g) *retitle* the proposed new principle from 'Competitive Merit-based processes' to 'Merit-based processes', to better reflect that there are instances where non-competitive processes are appropriate and meritorious (section 11).

4. A tracked copy of the proposed CGRPs against the August 2023 version is at Attachment E.

5. The CGRPs implement the Government's commitment to improving integrity, accountability and transparency in grants administration, and will partially implement recommendations of the Joint Committee of Public Accounts and Audit (JCPAA) and the Australian National Audit Office (ANAO) related to grants administration.

6. An assessment of how relevant JCPAA and ANAO recommendations have been addressed in the proposed CGRPs is at Attachment F.

   (a) The proposed CGRPs will not address all elements of the JCPAA recommendations, most notably that officials be required to give a clear recommendation on each grant application and prohibit the pooling of grants. Based on discussions between Finance and your office, the proposed policy outcome is that the CGRPs should *encourage*, but not *require*, recommendations on each individual grant application.

   (b) This element of the CGRPs may attract greater scrutiny following the ANAO report into the *Implementation of Parliamentary Committee and Auditor-General Recommendations – Department of Finance* (Report No 17 of 2023-24). In this report, tabled 22 February 2024, the ANAO refers to earlier ministerial briefing on the CGRPs, including your endorsement of text that mandated clear recommendations for grants recommended for funding (MS23-000068 refers).

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7. The Government response to JCPAA *Report 495 – Inquiry into Commonwealth Grants Administration* was due in December 2023, however this has been delayed pending finalisation of the CGRPs. We will brief you separately on the proposed Government response to reflect the CGRPs (if agreed).

8. The CGRPs instrument would be made under section 105C(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Following your agreement, we propose to register the new CGRPs on the Federal Register of Legislation in June 2024, to take effect from 1 October 2024.

(a) The CGRPs also reflect the changes you recently announced to the Fraud Rule in section 10 of the *Public Governance, Performance and Accountability Rule 2014*.

(b) This proposed timing will enable you to announce the changes and for Finance to advise entities of the new requirements, while also providing a transition period for entities to update systems and departmental processes.

9. In August 2023, you wrote to the Prime Minister advising him of your proposed changes to the CGRGs (MS23-000068 refers). We recommend you write to him again to advise him of your intention to make the revised CGRPs and to provide a copy. A draft letter is at Attachment C for your consideration.

10. As the proposed CGRPs involve changes to the briefing, recording and reporting requirements applying to ministers where they approve a grant, we recommend you also write to your colleagues. A draft letter and factsheet is at Attachment D.

11. Given the significant attention on grants integrity, you may choose to release a media statement advising of the changes (draft at Attachment G). Subject to your agreement, we will work with your office to finalise the details.

Financial Implications:

12. N/A

Background:

13. The CGRGs (previously the *Commonwealth Grant Guidelines*) were established in 2009 to improve the transparency and accountability of grants administration. They were updated in 2013 to introduce minimum briefing requirements where a minister is an approver; in 2014 to address the introduction of the PGPA Act (change in title to CGRGs); and in 2017 to mandate the use of GrantConnect.

14. A brief seeking agreement to register the *Commonwealth Grants Rules and Principles* on the Federal Register of Legislation was provided in September 2023, but was not agreed (MS23-000463 refers).

Consultation:

15. Finance has consulted with non-corporate Commonwealth entities that are members of the Grants Framework Working Group on earlier changes to the CGRGs. Within Finance: Budget Policy Branch; Financial Management Branch.

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Attachments:

Att A – Proposed Commonwealth Grants Rules and Principles 2024
Att B – Explanatory statement
Att C – Letter to the Prime Minister
Att D – Letter to colleagues
Att D1 – Factsheet for Ministers - CGRP changes
Att E – *Commonwealth Grants Rules and Principles 2024* (tracked against the version provided through MS23-00068)
Att F – Assessment against JCPAA and ANAO recommendations
Att G – Draft media release

Approved for electronic transmission

Tracey Carroll
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