



## **Express law** *fast track information for clients*

31 January 2013

### **New Commonwealth Grant Guidelines**

**The Finance Minister has released updated Commonwealth Grant Guidelines (CGGs) which will take effect from 1 June 2013. The updated CGGs have been released early to enable agencies and non-government stakeholders to prepare for implementation. Agencies may adopt some or all of the requirements in the updated CGGs before 1 June – once they have been registered on the Federal Register of Legislative Instruments (FRLI).**

#### ***Overview***

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The updated CGGs continue to set out the government's policy framework under which *Financial Management and Accountability Act 1997* (FMA Act) agencies conduct grants administration activities.

The CGGs retain the same structure and are divided into 2 parts. Part 1 of the CGGs contains mandatory requirements and Part 2 of the CGGs explains the 7 principles of grants administration. Obligations that must be complied with are denoted by use of the term *must* or *mandatory*, while the use of the term *should* denotes better practice.

The 7 principles of grants administration remain the same. However, there have been some changes to the guidance in relation to each of these 7 principles.

Some of the more significant changes are highlighted below.

#### ***Changes to the Commonwealth Grant Guidelines***

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##### **General changes**

The CGGs provide that the objective of grants administration is to promote proper use of Commonwealth resources through collaboration with the non-government sector to achieve government policy outcomes. There is an increased emphasis throughout the CGGs on working together with the non-government sector to develop and deliver government policy outcomes.

The CGGs aim to simplify and improve grants processes. Specifically, the CGGs focus on ensuring that grant applicants or recipients, particularly those in the not-for-profit sector, are not overburdened by the grants administration process.

Agency staff should not to seek information from grant applicants and grant recipients that is collected by other Commonwealth entities and is available to agency staff. For example,

agency staff must not request information that has been or will be provided by the grant applicant or recipient to the Australian Charities and Not-for-profits Commission. Reporting processes are to be further streamlined by, for example, indicating that agency staff should not require a financial acquittal from an entity if it provides an annual audited financial statement, unless the granting activity is higher risk.

The CGGs also provide that agencies should consider the use of longer-term grant agreements, where appropriate, as they are conducive to improved partnerships, can be more likely to achieve desired outcomes and reduce the administrative costs for all parties.

### **Specific changes**

The following are some of the specific changes contained in the updated CGGs:

- the CGGs clarify that agency staff must establish and document whether a proposed activity is a 'grant' before applying the Commonwealth grants policy
- there are updates to reflect changes to the FMA Act and the *Financial Management and Accountability Regulations 1997* (FMA Regs) since the CGGs were last issued
- there are updates to reflect upcoming proposed changes to the definition of 'grant' in the FMA Regs
- the CGGs clarify that chief executives must report instances of non-compliance with mandatory requirements of the CGGs in their annual Certificate of Compliance
- the description of the activities that are covered by the term 'grants administration' has been expanded to include 'the ongoing relationship with grants recipients'
- there is now guidance about when members of expert committees or advisory panels providing advice or recommendations to an approver will be subject to the CGGs
- the list of documents that establishes and explains the overarching Commonwealth grants policy framework now includes a reference to tools and templates issued by Finance, such as the low risk grant agreement template (to be issued soon) and the *National Compact: working together*, which outlines how the Government and not-for-profit organisations will work together based on partnership and respect
- the CGGs now specify that there needs to be a legal basis for the grant and outlines the different sources of authority for the entry into an arrangement that commits public money
- the CGGs now state that agency staff must not use criteria in grant application and selection processes or clauses in grant agreements that seek to limit, prevent or ban not-for-profit organisations from advocating on policy issues
- there is a new exception to the requirement for ministers to report on grants awarded in the minister's own electorate where the grants are awarded state-wide, Australia-wide or across a region on the basis of a formula and one of these grants falls in the relevant minister's electorate
- where a minister exercises the role of an approver, the new CGGs mandate the information that, at a minimum, must be contained in the advice from agency staff to the minister
- the CGGs now require that, when developing program guidelines, agency staff must complete a risk assessment of the granting activities and associated guidelines in consultation with the Department of Finance and Deregulation and the Department of the Prime Minister and Cabinet

- the web-based reporting requirements for the publishing of information on individual grants has been extended from 7 to 14 working days
- the CGGs provide that agency staff must identify whether a grant agreement contains confidentiality provisions (consistent with Senate Procedural Orders of Continuing Effect 11 – also known as the Murray Order)
- in relation to intellectual property, the CGGs provide that agencies should generally not assert ownership in intellectual property rights resulting from activities undertaken with grant money but consider a licence for Commonwealth purposes (eg reporting to ministers)
- the CGGs reinforce that agency staff involved in developing and/or managing granting activities should have the necessary grants management, stakeholder liaison and financial management skills.

### ***What agencies need to do now***

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The updated CGGs do not take effect until 1 June 2013. Until that date, the current CGGs continue to apply. However, Finance has advised that agency staff may adopt some or all of the requirements in the updated CGGs as soon they are registered on FRLI.

If you are planning a granting activity that will commence on or after 1 June 2013 (or you are commencing an activity now that will continue beyond this date) then you need to review your documentation for consistency with the updated CGGs. AGS can assist you in doing this. Please contact one of the lawyers mentioned below.

You may also need to review and update the following for consistency and compliance with the updated CGGs:

- your agency's Chief Executive's Instructions
- your processes for managing and reporting grants
- your ministerial briefing processes
- your processes for developing grant program guidelines and any program guideline templates
- your template grant agreements and reporting requirements.

The AGS Legal Briefing on Grants and Fact Sheet *Legal issues to consider for new programs* will be updated shortly.

### **AGS contacts**

AGS has a national team of lawyers specialising in grants and funding projects. For further information on the article in this issue, or on other grants matters, please contact any of the lawyers listed below.

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