

Scrutinizing grant administration: key reforms

Briefing paper

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Summary

Over the past two years, reports from the Australian National Audit Office (**ANAO**) in respect of Commonwealth grant administration have revealed substantial deficiencies. Since 2019 100% of ANAO audits in respect of grant administration have found the relevant programs to be flawed, with problems identified ranging from minor areas for improvement to serious maladministration. These grant programs have distributed more than \$5.5 billion of public money, with capacity to distribute around \$10 billion in grants and procurement.

These findings make a strong case for bolstering transparency and accountability, and Parliament's oversight function in respect of grant administration. The Commonwealth Parliamentary Association recommends that in order for parliaments to be able to undertake financial scrutiny in an effective way, they be given access to adequate financial scrutiny resources;¹ currently, the Commonwealth Parliament's ability to perform its scrutiny function is circumscribed by the inadequacy of mechanisms in place to support that function. In order to remedy this, and promote transparency and accountability, the Centre for Public Integrity calls for the following reforms in respect of grants worth more than \$100 million:

1. Grant approval criteria, including merit selection criteria and program guidelines, be set out in primary legislation.
2. Departments be required to table in Parliament documentation pertaining to grant administration at specific points of the grant making process, including at tender, selection and delivery.
3. A joint standing committee be established in order to oversee grant administration and report to the Parliament.

The need for change

The urgent need to reform oversight of government grant programs is clear from multiple ANAO Reports: since 2019, 100% of audits in respect of the administration of grants programs allocating more than \$5.5 billion in public funds have identified flaws ranging from minor areas for improvement to serious deficiencies.²

¹ Commonwealth Parliamentary Association, "*Recommended benchmarks for democratic legislatures*", <https://www.cpahq.org/media/l0jik2nh/recommended-benchmarks-for-democratic-legislatures-updated-2018-final-online-version-single.pdf> accessed 6 July 2021 at para 2.6.

² The relevant audits (all of which are available at the website of the Australian National Audit Office at <https://www.anao.gov.au/pubs>) include the following: *Award of a \$443.3 Million Grant to the Great Barrier Reef Foundation*, *Award of Funding under the Community Sport Infrastructure Program*, *Award of Funding*

In the case of the Regional Jobs and Investments Packages, the ANAO concluded that *"Applications were not soundly assessed in accordance with the program guidelines"*;³ in respect of the award of a \$433.4 million grant to the Great Barrier Reef Foundation, it reported that there was *"insufficient scrutiny of the foundation's proposal in three key areas examined"*.⁴

The agency's report into the administration of sports grants concluded that *"the award of grant funding was not informed by an appropriate assessment process and sound advice"*,⁵ and, in respect of the Supporting Reliable Energy Infrastructure Program the ANAO found that the award of funding *"was not fully informed by an appropriate assessment process and sound advice on the award of grant funding. Aspects of the approach did not comply with the Commonwealth Grant Rules and Guidelines"*.⁶

Most recently, an audit of the Commuter Car Parks Project within the Urban Congestion Fund reported that *"Project distribution reflected the geographic and political profile of those given the opportunity to identify candidate projects for funding consideration"*,⁷ and the ANAO is set to report on administration of the Safer Communities Fund in February 2022 (following allegations that government ministers redirected monies from the Fund to applicants not supported by their own Department, and frequently to applicants in safe Coalition or marginal Labor seats).⁸

It has been alleged that the manner in which some of these programs have been administered constitutes 'pork-barrelling',⁹ the consequences of which have been described in the following terms by Professor Anne Twomey AO:

under the Supporting Reliable Energy Infrastructure Program, Administration of Commuter Car Park Projects within the Urban Congestion Fund, Award of Funding Under the Regional Jobs and Investment Packages, Implementation of the Great Barrier Reef Foundation Partnership, Indigenous Advancement Strategy – Children and Schooling Program and Safety and Wellbeing, Australian Research Council's Administration of the National Competitive Grants Program, and Grant Program Management by the Australian Renewable Energy Agency.

³ Australian National Audit Office, *"Award of Funding Under the Regional Jobs and Investment Packages"*, <https://www.anao.gov.au/work/performance-audit/award-funding-under-the-regional-jobs-and-investment-packages> accessed 6 July 2021, at para 13.

⁴ Australian National Audit Office, *"Award of a \$443.3 Million Grant to the Great Barrier Reef Foundation"*, <https://www.anao.gov.au/work/performance-audit/award-4433-million-grant-to-the-great-barrier-reef-foundation> accessed 6 July 2021, at para 13.

⁵ Australian National Audit Office, *"Award of Funding under the Community Sport Infrastructure Program"*, <https://www.anao.gov.au/work/performance-audit/award-funding-under-the-community-sport-infrastructure-program> accessed 6 July 2021, at para 7.

⁶ Australian National Audit Office, *"Award of Funding under the Supporting Reliable Energy Infrastructure Program"*, <https://www.anao.gov.au/work/performance-audit/award-funding-under-the-supporting-reliable-energy-infrastructure-program> accessed 6 July 2021, at para 8.

⁷ Australian National Audit Office, *"Administration of Commuter Car Park Projects within the Urban Congestion Fund"*, <https://www.anao.gov.au/work/performance-audit/administration-commuter-car-park-projects-within-the-urban-congestion-fund> accessed 6 July 2021, at para 22.

⁸ David Crowe, *"Government diverted cash from \$31m safer communities grants to ineligible projects"*, The Age https://www.theage.com.au/politics/federal/government-diverted-cash-from-31m-safer-communities-grants-to-ineligible-projects-20210503-p570em.html?utm_medium=Social&utm_source=Twitter#Echobox=1620299708 accessed 6 July 2021; Katina Curtis, *"Dutton diverted grant money to handpicked safety upgrades in marginal seats"*, The Age <https://www.smh.com.au/politics/federal/dutton-diverted-grant-money-to-handpicked-safety-upgrades-in-marginal-seats-20210211-p571lu.html> accessed 6 July 2021.

⁹ Richard Willingham, *"Allegations of pork barrelling as car parks promised in 2019 federal election lead-up ditched"* <https://www.abc.net.au/news/2021-05-18/victoria-car-park-projects-pork-barrelling-allegations/100146922>, ABC news accessed 6 July 2021; Matthew Doran, *"Sports rorts' inquiry says federal government tried to avoid handing over evidence"*, ABC news accessed 6 July 2021.

'Pork-barrelling' undermines the fairness of elections and aids democratic decay by heightening public distrust of politicians and the efficacy of the system of government. Making grants on the basis of political advantage, rather than merit and needs, results in the unfair distribution of public funds, the funding of unworthy or unviable projects, the inefficient allocation of scarce resources, poor planning and a lack of coordination with other levels of government in providing appropriate local facilities.¹⁰

Key reforms

Central to improving the administration of government grant programs is bolstering transparency, accountability and the Parliament's ability to perform its oversight function in respect of the expenditure of public funds. Parliament's ability to fulfil this function depends on it being able to access sufficient financial information, which would be facilitated by the following key reforms. In order to avoid excessive administration burden, these reforms are proposed to apply to grant programs worth more than \$100 million.

1. Grant approval criteria established in primary legislation.

Primary legislation should include grant merit selection criteria and program guidelines, in order to enhance transparency and accountability and enable the Parliament to perform a real and meaningful role in respect of the use of public funds. In the case of the Commuter Car Parks Project, there were no established merit selection criteria or program guidelines. Rather, the ANAO reports that a series of investment principles were agreed by government, though these were not released publicly.¹¹

This measure would also help avoid scenarios like that encountered in respect of the administration of sports grants, where the ANAO concluded that the legal authority for the Minister's approval role in the process was unclear;¹² furthermore, it would ensure that there is legislative authority for government grant-making.

2. Departments table in Parliament documentation pertaining to grant administration

Parliamentary oversight of grant administration would be assisted by a requirement that Departments table in Parliament documentation pertaining to grant administration at specific points of the grant making process. Such points could include tender, selection and delivery. Reports could include detail on how selected projects deliver on the grant merit selection criteria.

This would also encourage appropriate departmental record-keeping, which was found to be deficient in the Commuter Car Parks Project audit¹³ and capable of being improved in the sports grants audit.¹⁴

¹⁰ Anne Twomey, "Constitutional Risk", *Disrespect for the Rule of Law and Democratic Decay* in *Canadian Journal of Comparative and Contemporary Law*, 2021, vol 7, 293-341.

¹¹ Above n 7, at 3.32.

¹² Above n 5, at para 8.

¹³ Above n 7, at para 10.

¹⁴ Above n 5, at para 3.

3. A joint standing committee oversee grant administration and report to Parliament

Committees can play a valuable information and transparency role – both of which are currently lacking in relation to government grant administration.

A committee whose sole functions are to oversee grant administration in relation to all portfolios, and report to the Parliament, is an essential element of any framework aiming to scrutinize expenditure of public funds. Such a committee could report on a quarterly basis throughout the administration of any grant worth in excess of \$100 million, with a discretion to report more frequently if necessary.

Any such committee must be multi-party, in order to give effect to the Commonwealth Parliamentary Association's recommendation that scrutiny committees should ensure "*meaningful opportunities for minority or opposition parties and independent MPs to engage in effective oversight of government expenditures*".¹⁵

Conclusion

The need to enhance oversight of government grant administration is clear.

In order to facilitate transparency, accountability and promote Parliament's ability to effectively scrutinize executive spending, it is essential that grant selection criteria and program guidelines be set out in primary legislation, and Parliament be enabled to access adequate financial information – via a tabling requirement and dedicated parliamentary committee – at defined points in the administration of grants.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Tony Fitzgerald AC QC, the Hon Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham and Geoffrey Watson SC. More information at www.publicintegrity.org.au.

¹⁵ Above n 1 at para 7.2.3.