



Government response to the *Report on Investigation into pork barrelling in NSW* by the Independent Commission Against Corruption

The report of the Independent Commission Against Corruption (**ICAC**) entitled *Report on investigation into pork barrelling in NSW* was published on 1 August 2022 (**ICAC Report**). The investigation is known as Operation Jersey.

As a result of Operation Jersey, the ICAC made 21 recommendations. These general corruption prevention recommendations arise from an investigation that the ICAC states commenced in 2020 after it received complaints about specific grants programs the subject of media reports in May 2020.

The NSW Government has been proactively considering the issues raised in the ICAC's Report. In November 2021, the Premier announced a wide-ranging review of grants administration in NSW (**Grants Review**) to be led by the Department of Premier and Cabinet in partnership with the Productivity Commissioner, Mr Peter Achterstraat AM. The purpose of the Grants Review was to deliver value for money for the NSW taxpayer by ensuring that the administration, assessment and assurance of grants programs in NSW is in line with best practice.

The report of the Grants Review was issued on 7 May 2022. On 7 June 2022, the Government committed to implementing all 19 recommendations arising from the Grants Review, including that an updated Good Practice Guide to Grants Administration (**Grants Administration Guide**) be issued.

The ICAC Report was finalised in August 2022, some time after the Government had finalised its response to the Grants Review. The ICAC Report notes that its recommendations are intended to supplement the work of the Grants Review.

On 19 September 2022, the Premier issued M2022-07 – Grants Administration Guide (**Premier's Memorandum**) and a new Grants Administration Guide was gazetted. The Premier's Memorandum and Grants Administration Guide implement the Government's response to the Grants Review and are consistent with many of the recommendations made in the ICAC Report. The Government's detailed response to each of the ICAC's recommendations is set out in **Annexure A**.

The Government would like to thank the staff of the ICAC and the former Chief Commissioner who led the investigation, the Hon Peter Hall KC, for their efforts.

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No	Recommendation	Government response
1	<p>That any whole-of-government guidelines concerning grants funding be issued pursuant to a statutory regulation.</p>	<p>The Grants Administration Guide is issued under a Premier’s Memorandum which is binding on Ministers, officials and ministerial staff, consistent with Grants Review recommendations 1 and 2.</p> <p>The Grants Review considered codifying the substance of the Grants Administration Guide in a regulation, but concluded that this would be an impractical and inflexible approach having regard to the content of the Guide.</p> <p>Compliance with the Grants Administration Guide is, however, a legislative requirement, consistent with recommendation 3 of the Grants Review. Clause 31 of Schedule 1 to the <i>Government Sector Finance Act 2018</i> provides that a person must not knowingly breach a mandatory requirement of the Grants Administration Guide.</p> <p>The current approach ensures that compliance is a legislative requirement, while also allowing the Grants Administration Guide to be easily updated in line with evolving best practice.</p>
2	<p>That the <i>Government Sector Finance Act 2018</i> be amended to mirror s 71 of the Commonwealth <i>Public Governance, Performance and Accountability Act 2013</i> by including obligations that a minister must not approve expenditure of money unless satisfied that the expenditure would be an efficient, effective, economical and ethical use of the money and that the expenditure represents value for money.</p>	<p>The Grants Administration Guide requires Ministers to have regard to the considerations identified by the ICAC, including value for money, in approving a grant.</p> <p>Ministers are subject to the NSW Ministerial Code of Conduct which establishes the standards of ethical behaviour required of Ministers, and imposes various duties and obligations on Ministers that are responsive to the ICAC’s recommendation. For example, under the Code, ‘A Minister, in the exercise or performance of their official functions, 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’.</p> <p>The Code is prescribed as an applicable code of conduct for the purposes of section 9 of the <i>Independent Commission Against Corruption Act 1988 (ICAC Act)</i>, meaning a suspected breach of the Ministerial Code may be investigated by the ICAC and, if substantiated, give rise to a finding of corrupt conduct.</p>

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3	That the grant funding framework, or equivalent requirements, apply to the local government sector. This should include situations where local councils are both grantees and grantors.	<p>The Grants Administration Guide applies to local councils as the recipients of NSW Government grant funding (i.e. as a grantee). Where a local council administers a grant program on behalf of the NSW Government, a NSW Government official must satisfy themselves that there are practices and procedures in place consistent with the key principles and requirements of the Grants Administration Guide, with appropriate adaptations as necessary (section 1.2 of the Guide). The Grants Administration Guide does not otherwise apply to local councils, for example in respect of grant programs administered and funded by local councils.</p> <p>The Government will consult with local government stakeholders about the broader application of the Grants Administration Guide to local councils.</p>
4	That the NSW Procurement Board considers the need for a direction, policy or guidance that specifically prohibits or deals with pork barrelling. If necessary, relevant guidance can be published on the buy.nsw website or reflected in relevant procurement training.	<p>The Grants Administration Guide introduces powerful deterrents for unlawful conduct arising from pork barrelling. In addition, existing probity requirements under the <i>Public Works and Procurement Act 1912</i>, the NSW Procurement Framework, the NSW Ministerial Code of Conduct and other integrity and oversight legislation comprehensively address the risk arising from pork barrelling in procurement.</p> <p>Further, the NSW Procurement Board will prepare appropriate guidance addressing the risks of unlawful conduct associated with pork barrelling in procurement.</p>
5	That clause 6 [sic] of the Ministerial Code be amended to read, “A Minister, in the exercise or performance of their official functions, must not act dishonestly, must act in the public interest, and must not act improperly for their private benefit or for the private benefit of any other person”.	<p>The Government supports this change as it would remove doubt as to the interpretation of section 6 of the Ministerial Code arising from the word ‘only’ and reliance on a subjective definition of the public interest.</p>

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6	That the proposed cross-agency Community of Practice develops templates and guidance that prompt the consideration of public interest, which may be consistent with the general approach adopted by the Legislative Council under its order 136A.	<p>The Grants Community of Practice (Grants CoP) has already contributed to the development of a range of resources and templates that prompt consideration of the public interest. These resources are available at: https://www.nsw.gov.au/grants-and-funding/grants-administration-guide.</p>
7	That, in addition to being documented, any input from a minister or their staff in the assessment of grants should be published on the central grants website.	<p>Officials must publish the following information about grants on the NSW Government Grants and Funding Finder at www.nsw.gov.au/grants-and-funding:</p> <ul style="list-style-type: none"> • upcoming grant opportunities • open grant opportunity guidelines • all grants awarded • the exercise of Ministerial discretion in making grant decisions that vary from the recommendation of officials, including the reasons for any such decision. <p>For each category of information listed above, officials must meet the specific information and data publishing requirements set out in Appendix A of the Guide.</p> <p>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 for privacy, or other legal or policy reasons). 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.</p> <p>The Government considers that the above publication requirements strike an appropriate balance between transparency and administrative efficiency. In addition, agencies are subject to record keeping obligations under the <i>State Records Act 1989</i>, and records regarding stakeholder input in the assessment of grants may be requested under the <i>Government (Public Information) Access Act 2009 (GIPA Act)</i>.</p>

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8	That information required for publication on the central grants website should not contain any redactions for Cabinet confidentiality.	<p>Maintaining the confidentiality of Cabinet deliberations is crucial to the public interest in ensuring a frank exchange of views among Ministers and maintaining the principle of collective Ministerial responsibility.</p> <p>In any event, the Grants Administration Guide clarifies that individual grant payments generally do not require Cabinet approval.</p>
9	That the requirement for Ministers to give reasons if they make a decision contrary to advice from public officials should be strengthened by requiring those reasons to reference the relevant selection criteria, merit and the public interest.	<p>The Grants Administration Guide requires a Minister or official who approves or declines a grant to 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. This requirement implements Grants Review recommendation 11.</p>
10	That the cross-agency Community of Practice identifies mechanisms for determining and managing situations where a Minister is in a position to award, or influence the award of, grants in their own electorate.	<p>The Grants Administration Guide states that Ministers and Members of Parliament can make suggestions for grants funding in their own electorates, consistent with their role as elected representatives, and recommends various measures to increase transparency and probity in relation to such decisions.</p>
11	That where grant schemes or opportunities seek the input of local members, the process should encompass all relevant members and not be limited to members of the political party or parties that form government. This requirement could be reflected in the Proposed Guide or supporting materials.	<p>Grants Review recommendations 9 and 10, which were supported and have been implemented, deal with this issue.</p> <p>Under the Grants Administration Guide, where a grant opportunity will involve input from Members of Parliament or other stakeholders, officials must ensure that: the grant guidelines clearly outline the role of stakeholders; there are processes in place to manage these interactions, including equitable opportunity for Members of Parliament; and that all stakeholder input is documented as part of the assessment process, where relevant.</p> <p>The Grants Administration Guide requires that, where such input is received outside of the process set out in the grant guidelines, this must be documented.</p>

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12	<p>That the proposed cross-agency Community of Practice:</p> <ul style="list-style-type: none"> • be led by a senior officer who is accountable for funding policy and practice across the NSW public sector • includes at least one nominated senior officer from each cluster • addresses pork barrelling in its proposed training materials. 	<p>The Grants CoP, which was the subject of Grants Review recommendation 4 that was supported by the Government, has been convened and is led by the Department of Premier and Cabinet (DPC).</p> <p>The Grants CoP comprises senior officers from across the public sector and will support agencies with appropriate resources. All agencies and officers involved in grants administration are responsible for establishing appropriate policies and practices and will be supported by the Grants CoP in doing so.</p>
13	<p>That, with regard to proponent-submitted business cases and cost-benefit analyses, the assessing official or agency should consider:</p> <ul style="list-style-type: none"> • the assumptions made, whether explicit or implicit • the reliability of the information provided, including any gaps • the need for additional due diligence to be performed on the proponent or related parties • overstatement of benefits or understatement of costs • opportunity costs. <p>The cross-agency Community of Practice should develop standardised templates, guides and scoring mechanisms to assist proponents and public officials who assess grant applications. These should supplement but be consistent with TPP 18-6 and TPP 17-03.</p>	<p>The Grants CoP will provide practical guidance and resources to assist with assessing grants applications consistent with the Grants Review.</p>

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14	That the cross-agency Community of Practice considers preparing a model contract for external consultants who are engaged to prepare business cases and cost-benefit analyses.	The Grants CoP will develop resources to support compliance with the Grant Administration Guide, which may include model contracts for external consultants engaged to prepare business cases and cost-benefit analyses if considered necessary.
15	That the agency responsible for the central grants website undertakes audits at two yearly intervals to ensure compliance with the requirement to provide end-to-end information on all grant programs after the website has become fully operational.	<p>The Department of Regional NSW (DRNSW) is developing a whole-of-government internal grants database and grants are publicly available through the NSW Government Grants and Funding Finder www.nsw.gov.au/grants-and-funding</p> <p>DRNSW is not an oversight body and does not have the function of auditing legal and regulatory compliance by other government agencies, noting that compliance with the publication requirements of the Grants Administration Guide is now a legal requirement.</p> <p>A more streamlined and efficient approach is for agencies' compliance with the Grants Administration Guide to be audited through their existing internal audit programs (see recommendation 18 of the Grants Review, which is supported by the Government).</p>
16	<p>That the central grants website:</p> <ul style="list-style-type: none"> • provides two main categories – one for entities providing funding and another for those seeking funding. The information should include guidance on requirements and best practice in categories; • provides information on topics such as: <ul style="list-style-type: none"> ○ what pork barrelling is ○ why it should be avoided ○ responsibilities of public officials in relation to pork barrelling ○ practical measures to avoid pork barrelling ○ how to report pork barrelling. 	<p>The central grants website is still under development.</p> <p>As noted above, Grants CoP has already contributed to the development of a range of resources and templates that promote consideration of the public interest and value for money in grants administration (see https://www.nsw.gov.au/grants-and-funding/grants-administration-guide).</p>

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17	That the central grants website has search and reporting functionality that presents data in an interactive way and allows analysis across grant schemes.	The central grants website is still under development.
18	<p>That the grant funding framework requires additional information for ad hoc and one-off funding to be published on the central grants website, including:</p> <ul style="list-style-type: none"> • the document explaining why that method has been used and outlining the risk mitigation strategies • whether the funding decision was in line with the agency’s recommendation (noting that this is already proposed in the case of ministerial decision-makers) • if the agency’s recommendation was not followed, the decision-maker’s reasons for not following that recommendation (noting that this is already proposed in the case of ministerial decision-makers). • In addition, any grant guidelines applying to ad hoc and one-off funding should be published on the central grants website. 	<p>The Grants Administration Guide requires officials to document the information identified in this recommendation.</p> <p>The exercise of Ministerial discretion in making grant decisions that vary from the recommendation of officials, including the reasons for any such decision, must be published.</p> <p>The Government considers that the measures in the Grants Administration Guide adequately satisfy the need to document and publish key grants information without imposing an overly onerous administrative burden on agencies.</p> <p>Relevant records relating to grants may be requested under the GIPA Act.</p>
19	That the central grants website requires information to be displayed about complaints and appeals processes in a prominent location.	The central grants website is still under development. The Grants Administration Guide provides that grant guidelines should include a description of complaint handling, review and access to information mechanisms (section 6.1.7).

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20	<p>That the Department of Premier and Cabinet arranges for an independent audit to be conducted to verify that the recommendations in the State Archives and Records Authority's 22 January 2021 report have been fully implemented.</p>	<p>An independent audit of the implementation of the three recommendations made by the State Archives and Records Authority (SARA) in its report <i>Recordkeeping assessment - Alleged non-compliant disposal of records relating to the Stronger Communities Fund</i> is not necessary. All recommendations have been, or are currently being, implemented.</p> <p>Recommendation 1 is addressed by DPC through an ongoing program of work for ministerial offices, including the provision of detailed advice and support for ministerial staff on the creation, capture, management and disposal of records, ongoing training opportunities for ministerial staff in consultation with SARA, and the distribution of guidance material on recordkeeping and access to information obligations.</p> <p>Recommendation 2 is in the final stages of implementation, with the Ministers' Office Handbook being updated to provide more detailed information on recordkeeping responsibilities and practices. DPC is currently conducting a complete review of the Handbook, in addition to updating the guidance on recordkeeping.</p> <p>Recommendation 3 has been implemented, with the revised General Retention and Disposal Authority GDA13: Ministers' Office records issued on 16 July 2021.</p>

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21	<p>That:</p> <ul style="list-style-type: none"> • the proposed funding framework encourages internal audit reports to be provided to an agency’s audit and risk committee on certain categories of high-risk grants • the NSW Government considers requiring the Auditor-General to conduct regular performance audits in relation to high-risk grants or grant schemes, including those that involve a high risk of pork barrelling • the Audit Office of NSW be given “follow-the-dollar” powers, as previously recommended by the Public Accounts [sic] Committee of the NSW Legislative Council. 	<p>Grants Review recommendation 18, which was supported and has been implemented in the Premier’s Memorandum and Grants Administration Guide, deals with risk management in the context of grants administration.</p> <p>Treasury Policy and Guidelines paper, Internal Audit and Risk Management Policy for the General Government Sector (TPP 20-08), establishes a framework that addresses the substance of the first component of this recommendation. TPP20-08 requires that internal audit reports be provided to an agency’s Audit and Risk Committee.</p> <p>Regarding the second component of this recommendation, section 38B of the <i>Government Sector Audit Act 1983</i> confers on the Auditor-General a broad power to conduct performance audits.</p> <p>Regarding the third component of this recommendation, the Government has committed to introducing legislation to establish “follow the dollar” powers for the Auditor-General.</p>