

Protocol

Grants Administration in NSW Ministerial Offices

Ministers and their staff must comply with the Grants Administration Guide.

Compliance with the Grants Administration Guide is required

Ministers and their staff have legal and policy obligations to administer grants lawfully and ethically

- The Grants Administration Guide (**the Guide**) is issued under a Premier's Memorandum, which is binding on Ministers and agencies, and compliance is required and expected.
- Ministerial staff must comply with the Guide in accordance with the terms of their employment under the *Members of Parliament Staff Act 2013* (NSW), as well as the NSW Office Holder's Staff Code of Conduct, which requires staff to comply with all applicable laws, codes of conduct and Premier's Memoranda.
- Compliance with the mandatory requirements in the Guide is also a legislative requirement under section 10.3A(1) of the *Government Sector Finance Act 2018* (NSW) (**GSF Act**).
- The Guide sits alongside other laws and policies that apply to the expenditure of public money in NSW. Two key legal requirements in the GSF Act are:
 - a Minister must not approve a grant unless satisfied that the grant is an efficient, effective, economical, and ethical use of money, and achieves value for money (section 10.3A(2) of the GSF Act)
 - when approving or declining a grant, a person must have regard to the key principles of grants administration specified in the Guide (section 10.3A(3) of the GSF Act).
- Ministers and their staff must ensure that they comply with all relevant laws and policies when administering grants. See section 1.4 of the Guide for an overview of those requirements.

Compliance with this Protocol will support Ministerial offices to comply with the Guide

- Most of the mandatory requirements in the Guide apply to Ministers and Officials. There are four requirements that apply to Ministerial staff:
 1. Ministerial staff must ensure that they comply with all relevant laws when administering grants (**section 1.4**).
 2. Ministerial staff must comply with their record keeping obligations under the *State Records Act 1998* (NSW) (**SR Act**) (**section 5.6**).
 3. Ministerial staff must put in place practices and procedures to ensure that Ministerial involvement in grants administration is conducted in a manner that is consistent with the key principles and requirements in the Guide (**section 5**). Essentially this means that Ministerial staff must take steps to support their Ministers to themselves comply with the Guide.
 4. Where a Minister is the decision-maker, Ministerial staff must ensure that the decision is recorded in writing and the records are managed in accordance with the requirements of the SR Act (**section 6.3**).

- This Protocol identifies the requirements of the Guide that apply to and/or are supported by Ministerial staff. It specifies steps and considerations in the grants administration process that should be taken or made by Ministerial staff to ensure compliance with those requirements.
 - The practices and procedures set out in this Protocol are broken down into three categories:
 1. Ensuring that offices are familiar with the requirements of the Guide
 2. Supporting the Minister as decision-maker in complying with the Guide
 3. Other considerations
 - Implementation of and compliance with this Protocol will enable Ministerial staff to ensure that practices and procedures as are required by section 5 of the Guide are established and followed.
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1. Ensuring familiarity with the requirements of the Guide

- The first step in facilitating compliance with the Guide is ensuring that Ministerial offices are familiar with the Guide.
 - The Guide is available on the nsw.gov website and should be reviewed by those Ministerial staff with responsibilities for briefing the Minister on matters relating to grants.
 - The Guide is supported by resources that have been made available and continue to be developed for the purpose of assisting those responsible for administering grants with implementing the Guide. These resources, which are available on <https://www.nsw.gov.au/grants-and-funding/grants-administration-guide>, include templates, factsheets and training materials. Ministerial staff should access and use these resources in familiarising themselves with the Guide and as necessary in relation to grants matters.
 - For more information about the Guide, Ministerial staff should contact the Cabinet Office (TCO) on the contact details below.
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2. Supporting the Minister as decision-maker

- Certain mandatory requirements in the Guide apply to Ministers in their role as decision-maker for a grant.
- Ministerial staff should support their Minister to ensure that the following mandatory requirements are complied with:
 - The Minister must ensure that they comply with all relevant laws when administering grants (**section 1.4**)
 - The Minister must comply with their record keeping obligations under the SR Act (**section 5.6**)
 - The Minister must not approve a grant that has been assessed as ineligible, unless they make a decision to waive the eligibility criteria (**section 6.3.2**)
 - The Minister must administer the grant in accordance with the grant guidelines (**section 6.3**).
 - The Minister must not approve or decline a grant without first receiving written advice from agencies on the merits of the proposed grant(s) (see exceptions for non-competitive grants) (**section 6.3.2**).
 - The advice from agencies must include, at a minimum (**section 6.3.1**):
 - the application and selection process, including the eligibility and assessment criteria used to select the recommended grantees

- the merits of the proposed grant or grants having regard to any grant guidelines, the selection criteria, and the key principle of achieving value for money
 - the recommended grantees
 - the proposed funding amounts for each recommended grantee
 - whether funds are available for the grant or grants
 - any relevant input from key stakeholders (such as MPs, the responsible Minister, Ministerial staff, and other Ministers) and the consideration given to that input in the assessment process
- Where the Minister approves or declines a grant they must record the decision in writing, including the reasons for the decision (and any departure from the recommendation of agencies), having regard to the grant guidelines (if any), the selection criteria, and the key principle of achieving value for money (**section 6.3.2**). The Minister’s final decision(s) on the grant(s) to be awarded may be recorded using a template attestation available online as noted in section 1 above.
 - These records must be managed in accordance with the requirements of the SR Act (**section 6.3.2**) (see exceptions for non-competitive grants, **section 6.3.4**). **The requirement to ensure that these decisions are recorded in writing and that records are managed in accordance with the *State Records Act* also applies directly to Ministerial staff.**
- In addition to the requirements under the Guide, in making a grant decision, Ministers must comply with section 10.3A(2) and (3) of the GSF Act outlined above. TCO recommends that the requirements of those provisions are addressed in the agency advice on a grant referred to above. Accordingly, TCO has prepared briefing templates that include sections for advice on (a) the extent to which the recommended grant(s) is an efficient, effective, economical, and ethical use of money, and achieves value for money, and (b) the key principles of grants administration in relation to the recommended grant(s).
 - Ministerial staff may seek assistance and advice from their agencies and TCO in supporting their Minister’s compliance with the Guide, and in complying with the mandatory requirements under the Guide that apply directly to Ministerial staff.
 - Relevantly, TCO provides ongoing training and support on the SR Act to Ministers and their staff and can be contacted for this purpose on the contact details below.

3. Other considerations

- Staff of public sector agencies (referred to as ‘Officials’ in the Guide) must administer grants in accordance with the Guide.
- While Officials are responsible for the quality and accuracy of briefings and advice provided to the Minister, Ministerial staff can support compliance with the Guide by being familiar with the following mandatory requirements for Officials:

Planning and design of the grant

- Is it clear from the advice and the grant guidelines provided by agencies whether the grant delivers value for money (**section 5.5**)? Agencies should have identified the benefits and costs (economic, social, environmental and cultural) of the grant.
- Is it clear from the advice and the grant guidelines provided by agencies that they have developed ways to manage risks, fraud, and conflicts of interest during the grant lifecycle (**sections 5.7 and 6.1**)?

- For grant opportunities that are complex, high-risk or of high value, has the agency conducted checks of the applicant (the potential grant recipient) that are proportionate to the value and risk of the grant (**section 6.1.2**)? Checks may include criminal checks, internal conflict checks, or ASIC searches, among others.
- Has the agency confirmed that probity advice has been sought for complex, high-risk or high value grants (**section 6.1.2**)? If so, has the probity advisor’s assessment been provided to the Minister?
- Where a grants process other than a competitive merit-based selection process is to be used (including for one-off or ad hoc grants), has the agency obtained Ministerial approval to use this process (**section 6.1.5**)? Note that agencies must record in writing why the alternate method (approved by the Minister) will be used, and the risk mitigation strategies to be implemented.
- Has the agency developed clear grant guidelines that contain required information about the grant (**section 6.1.7**), and which clearly outline the role of stakeholders and how they should be engaged in the grants process (**section 6.3.3**)? Note that it is not mandatory to develop guidelines for one-off or ad hoc grants.
- In the case of one-off or ad hoc grants, has the agency documented relevant information including the decision-maker for the grant, whether in the grant guidelines or otherwise (**section 6.1.7**)?
- Do the grant guidelines record what support is made available to applicants by agencies and the relevant details of that support, or, where guidelines are not required, is this otherwise documented (**section 6.1.8**)? Where support has been given to a grant applicant, has this been documented, along with the reasons for giving that support (**section 6.1.8**)?
- If significant changes have been made in relation to a grant opportunity, have the guidelines been revised accordingly and have the revised guidelines been published (except in the case of one-off or ad hoc grants, for which guidelines are not mandatory and need not be published) (**section 6.1.7**)?
- Has all stakeholder input (including from Members of Parliament (**MPs**)) been documented by agencies, including how the input was considered in the assessment process (**section 6.3**)?
- Has information about the grant and the guidelines been published by the agency on the NSW Government Grants and Funding Finder as required under the Guide(**section 6.2**)?
- Where local government or other third parties are engaged to administer grants on behalf of NSW Government, is there any indication that agencies have satisfied themselves that there are practices and procedures in place for the administration of the grants consistently with the key principles and requirements of the Guide, with appropriate adaptations (**section 1.2**)?

Assessment and decision-making (where the Minister is the decision-maker)

- Has the grant been administered in accordance with the grant guidelines (**section 6.3**), where applicable? Agencies should make this clear in their advice to the Minister.
- If eligibility criteria are to be waived, are the reasons for doing so documented by the agency and has approval from the Minister been sought or previously obtained (**section 6.3.2**)?
- In the case of one-off or ad hoc grants, has the grant been assessed against the criteria specified at **section 6.1.4**?
- Has the agency provided written advice to the Minister on the merits of the proposed grant(s) (**section 6.3.1**)? See above the advice agencies must give the Minister, and the associated record-keeping requirements.
- Have all decisions in the assessment process been documented by agencies (**section 6.3.2**)?

Providing grants and publishing information

- Are there clear and specific written terms and conditions for the grant (**section 6.4**)? Agencies will usually acquit this mandatory requirement by a funding agreement.
- There may be a policy exception to the requirement to publish grant information. Has the approval of the Minister been obtained and the reasons for not publishing the information fully documented by agencies and published (**section 6.5**)? Agencies must nonetheless publish as much information as is reasonably practical.
- Be aware that:
 - agencies must ensure that information on the decisions made in relation to grants awarded is published on the NSW Government Grants and Funding Finder no later than 45 calendar days after the grant agreement takes effect or, if there is no grant agreement, no later than 45 calendar days after the first payment is paid to the grantee (**section 6.5**).
 - if there is a legal obligation to maintain confidentiality over certain grant information, agencies must publish as much information as is permitted and the reasons for not publishing the information fully must be documented (**section 6.5**).
 - grants information required to be published under the Guide (**section 6.5** and **Appendix A** to the Guide) is open access information under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**), which must be made publicly available unless there is an overriding public interest against disclosure of the information. The open access information requirements under the GIPA Act will be satisfied where agencies adhere to the publication requirements under section 6.5 of the Guide.
- Consider whether the grant is for emergency relief – if it is, has the agency provided emergency relief grants information to the Auditor-General by the time specified in the Guide (**section 6.5.1**)?
- If Ministerial staff are concerned that a mandatory requirement of the Guide has not been complied with, they should inquire with the relevant agency and brief the Minister accordingly.
- As noted above, there are other laws and policies that apply to the expenditure of public money in NSW that must also be complied with in administering grants, including the requirements of section 10.3A(2) and (3) of the GSF Act outlined above. Ministerial staff should familiarise themselves with those requirements, including by reviewing the outline in section 1.4 of the Guide, and seek advice where necessary.

Contact us

For advice and support regarding compliance with the Grants Administration Guide please contact TCO:

T: 02 9228 5555

E: governance@tco.nsw.gov.au

For advice and support regarding compliance with *State Records Act* obligations please contact TCO:

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