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20 February 2020

Senator Anthony Chislm  
Chair, Select Committee on the Administration of Sport Grants  
Australian Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Senator Chislm

### **Independent probity advice in grants administration**

I refer to the Committee's *Terms of Reference* relating to its inquiry into the administration and award of grant funding.

This submission addresses potential measures to strengthen grants administration.

#### **About us**

Integrity Partners Australia is a professional services firm which provides independent practice advice and assurance to public, commercial and NFP entities that wish to strengthen their operational performance through improved governance and integrity risk management. Amongst other services, our practitioners are experienced in grant administration, integrity assurance and systems review. We also work with several government partners to formulate policy approaches and other initiatives designed to respond to emerging integrity risks.

#### **Grants in context**

Each year several billions of dollars is distributed throughout the Australian economy (and more broadly) by governments (and some private entities) in the form of grants to individuals, other tiers of government, private companies, and community organisations.

The awarding of grants is an important social and economic policy tool of government, variously helping to (amongst many, many other policy objectives):

- improve health outcomes
- stimulate infrastructure development and business innovation
- redress 'thin market' and geographical distribution problems in service delivery
- deliver increased agricultural performance through sustainable practice adoption
- improve access to education
- assist migrants to settle
- strengthen and support cohesive communities
- bolster research, and
- protect the environment.

### **Existing systems of grants control**

By way of international comparison, the system of grants is so important in the UK as a policy delivery tool—where more than 2,000 grant schemes in 2017–18 represented 20% (or £113 billion) of government spending—that a Grants Centre of Excellence (GCOE) was established within the UK Cabinet Office to set standards (based on risk), and now provides training and design advice to strengthen outcomes and measure effectiveness. The UK’s commitment to improving grant administration has many roots—as an efficiency measure (to ensure public money is not wasted, following a scandal of that kind), but also very much as a basis for public confidence in spending decisions, and as an anti-fraud measure.

In Australia, at the Commonwealth Government level, the *Public Governance, Performance and Governance Act 2013 (Cth)* reinforces this same expectation of transparently directing resources to their highest social and economic need, by requiring that expenditure of relevant public resources achieve value for money by being *effective, efficient, economical and ethical* (colloquially, the “4E test”). The PGPA Act (also known as the Finance Law) is administered by the Department of Finance, which also oversees grants administration policy.

In respect of grants administration by Australian Government entities and Ministers, the PGPA Act in turn enables the *Commonwealth Grant Rules and Guidelines (CGRGs 2017)*—a legislative instrument issued by the Finance Minister which codifies a number of principles and best practices that aim to assist the achievement of value for money in grant opportunity design and decision making. These principles and practices include a range of measures intended to mitigate the risk of partiality, bias or error in selection.

It is a reasonable summary of the CGRGs that selection strategies and related processes of grants administration should lead to decision-making that is:

- lawful
- fair
- consistent
- transparent, and
- accountable.

The system of Australian Government grant administration, overseen by the Department of Finance, has strengthened considerably in recent years to mitigate risk, and the department deserves due recognition for its achievements—for instance, the formation of grant “hubs” has helped to regularise processes, and simplify access. Occasional one-off audits conducted by the Auditor-General—which necessarily can only take a retrospective look at both shortcomings and areas for future improvement—have also been an important source of feedback and introspection by which grant integrity practices have continued to improve.

### **Opportunities for strengthening grant systems**

Incremental improvements in grants administration notwithstanding, one of the lessons of large government procurement—an allied area of administration to grants, and which is similarly an important economic and social policy tool—is that decision-making can quite easily be affected by irrelevant, and sometimes improper, criteria or biases. An improved understanding of the level of risk in major procurement has over the years led to a range of practices that could perhaps now inform improvements in grant administration.<sup>1</sup> One of these practices is discussed in more detail below.

One option that may be worthy of consideration by the Committee could be to require the appointment of independent probity advisors for any grant scheme that awards in excess of one million dollars. This practice is already used in some cases by the Community Grants Hub, which is administered by the Department of Social Services.

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<sup>1</sup> See, for instance, <https://www.icac.nsw.gov.au/prevention/corruption-prevention-advice-topics/procurement>

The main purpose of the probity advisor would be to observe independently that the selection strategy and process used aligns with the CGRGs and related Grant Opportunity Guidelines, and to inform the Decision-Maker (who can be a Minister or a Department official) of any probity risks associated with awarding specific grants. This system would provide real-time (as opposed to retrospective) independent scrutiny and advice for higher-risk grant activities. The scope of the probity engagement might also vary with risk (meaning that cost could be scalable).

Such a system of independent advice and monitoring would:

- recognise that not all officials have detailed experience in grant administration, and that grant processes (and probity risk) can vary significantly one to another
- ensure all officials in the grant process are aware of their obligations, including probity risks and management strategies
- provide accountability for those occasions where deviations from expected process may be warranted, such as when novel situations arise or where the Delegate proposes to exercise a decision that contemplates additional factors or a different understanding of relevance or weighting of factors
- assist the decision maker to more objectively manage risk (such as conflicts of interest)
- improve transparency and record keeping
- introduce an avenue of internal complaint or compliance checking, and
- act as a safeguard against bias, and decrease sole reliance on post-facto audit as the main integrity check.<sup>2</sup>

The system of independent probity advice we propose has added only modest cost to procurement (and to grants, when the methodology is used), while unarguably delivering vastly improved decision-making and increased levels of confidence in fair administration. Probity advising thereby also protects a competitive environment between potential vendors (or, in this case, grant applicants) and drives an environment that is more likely to encourage innovative solutions and cost savings.

### ***Recommendation***

Accordingly, we respectfully suggest there would be merit in independent probity advice being:

- mandatory for grant rounds in excess of \$1 million or where there is an elevated risk<sup>3</sup> (such as fraud, high complexity, political sensitivity, or low experience in grant administration)
- advisable for grant opportunities of over \$300,000 but less than \$1 million (and where risk factors are low), and
- optional in all other circumstances.

We note that a new version of the CGRGs has been foreshadowed in the Prime Minister's response to recent ANAO recommendations in respect of Sport Infrastructure Grants. In our opinion, rules mandating probity advice would best be achieved were the requirement to form part of the CGRGs (rather than as a Resource Management Guide). An alternative would be to make the requirement a PGPA Rule.<sup>4</sup>

<sup>2</sup> <https://www.procurepoint.nsw.gov.au/buying/professional-services/engaging-probity-advisers-and-auditors>

<sup>3</sup> It may be appropriate to engage a probity adviser:

- if the integrity of the process (or part of it) may be questioned
- if the project is politically sensitive and/or potentially controversial
- when establishing or renewing grants for goods or services that are vulnerable to, or have a history of being influenced by, corrupt practices
- to avoid a perception of bias or favouritism
- where the process is extremely complex
- where there are substantial costs involved in preparing submissions or there is substantial Government funding involved.

<sup>4</sup> <https://www.legislation.gov.au/Series/F2014L00911>

## **Conclusion**

There are many potential ways in which present grant administration could be strengthened, as the procurement analogy, and the UK system of grant administration oversight, both show.

In this submission we have suggested a system of independent probity advice-seeking. There is perhaps also a case to examine in future whether the private sector could deliver elements of grant design and administration more efficiently than the present model of primarily public service delivery—for instance, by enabling a professionalised grant administration market to evolve which uses a collaborative approach to drive delivery partnerships between the private sector and policy makers. In theory, such a private market could be developed and largely delivered from Regional areas. It is certainly the case that the encouragement by government of a professionalized private sector procurement specialisation has been a major factor in lifting probity literacy and practice, and a policy initiative that has significantly reduced risk.

However, as we have outlined above, the simplest intervention that could be made now in the current model of Australian Government's administration of grants is to mandate the widespread adoption of a system of standards-based<sup>5</sup> independent probity advice.

The cumulative size of Australian Government grants, and the significance of their policy impact, warrants putting their integrity beyond doubt. Accordingly, we respectfully commend this approach to the Committee.

Yours sincerely

(signed)

Nicholas Sellars  
**Special Integrity Advisor**

(signed)

Jane Bailey  
**Chair of Partners**

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<sup>5</sup> A system of principles-based standards to govern risk-based probity practice could be efficiently administered through a suitable Resource Management Guide (RMG), issued by the Department of Finance and informed by a Community of Practice that involves government and private sector probity practitioners. Examples of other RMGs for grants administration include:

- <https://www.finance.gov.au/publications/resource-management-guides/grants-procurements-other-financial-arrangements-rmg-411>
- <https://www.finance.gov.au/government/managing-commonwealth-resources/australian-government-grants-briefing-reporting-evaluating-election-commitments-rmg-412>, and
- <https://www.finance.gov.au/publications/resource-management-guides/publishing-reporting-grants-grantconnect-rmg-421>.