

EPA Grants Management Policy

February 2018

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The NSW Environment Protection Authority (EPA) provides grants to local government, businesses and community groups to help them deal with environmental issues.

As a regulator, it is essential that the EPA is exemplary in its ethical practices.

The EPA aims to achieve best practice in grants management and contract management.

1. Introduction

The Environment Protection Authority provides grants to local government, businesses and community groups to help them deal with environmental issues. Grants may be provided for regional waste programs, infrastructure, recycling equipment, litter prevention and clean-up, industrial ecology, remediation of contaminated facilities and research.

The NSW Independent Commission Against Corruption considers the function of allocating public grants to be high risk from a corruption prevention perspective.

Two of the principles that guide implementation of the government sector core value of accountability are:

- being fiscally responsible and focusing on efficient, effective and prudent use of resources
- providing transparency to enable public scrutiny.

As a regulator, it is essential that the EPA is exemplary in its ethical practices and aims to achieve best practice in grants management and contract management.

2. Objectives

This policy is designed to provide more detailed guidance about grants administration procedures and contract management of grant agreements, consistent with the Department of Premier and Cabinet's *Principles for the Funding and Working Relationship Between Government and Grants Recipients*; the *Good Practice Guide to Grants Administration* and the Audit Office's *Better Practice Contract Management Framework*.

3. Scope and application

This policy supersedes and replaces the EPA Grants Policy published in July 2014.

This policy is applicable to all EPA staff including ongoing, temporary or casual employees, labour hire (contractors who are working as though they were an EPA staff member) and seconded staff. It does not apply to contractors who are not representing the EPA but are providing professional services to the EPA.

Grants funded from the *Waste Less, Recycle More* program and which are within the scope of the Service Agreement between the EPA and the NSW Environmental Trust 2017-2021 (January 2017) are governed by the provisions of the Service Agreement.

With respect to any other grants where another entity is the grantor, this policy applies to EPA staff except to the extent that the grants policy of the other entity is inconsistent, in which case the policy of the other entity applies, but only to the extent of any inconsistency with this EPA policy.

No inconsistency arises where the grants policy of the other entity is absent, or is silent on a matter covered by this EPA policy.

This policy is not applicable to payments to other government agencies merely to undertake work on behalf of the EPA. Such arrangements are usually governed by a specific Memorandum of Understanding.

4. Definitions

Agreement management plan	An EPA plan setting out key information about obligations, milestone dates and the processes for managing specific Agreement clauses
Grant approver	The EPA officer with delegated authority to approve the making of a specific grant to a specific grantee
Grant Deed of Agreement	The document which, once executed, defines the legal rights and obligations of the grantor and the grantee
Grantor	The entity giving a grant
Grantee	The entity receiving a grant
Major project	An EPA project with a total cost of at least \$5 million or with significant reputational risk for the EPA
Technical Review Committee	The committee responsible for assessing grant applications and, unless there is a two-stage process, making recommendations to the grant approver

5. Relevant legislation and policy guidance

Legislation and/or mandating instruments that this policy supports are:

- *Independent Commission Against Corruption Act 1988*
- *Public Finance and Audit Act 1983*
- *Government Information (Public Access) Act 2009*
- *Government Sector Employment Act 2013*
- EPA Code of Ethics and Conduct
- EPA Statement of Business Ethics
- Principles for the Funding and Working Relationship Between Government and Grant Recipients (Department of Premier and Cabinet) [DPC Grants Principles](#)
- Premier's Memorandum M2015-01 Local Decision Making: an Aboriginal community governance initiative under the Government's plan for Aboriginal Affairs: *Opportunity, Choice, Healing, Responsibility, Empowerment* (OCHRE) <https://arp.nsw.gov.au/m2015-01-local-decision-making>
<http://www.aboriginalaffairs.nsw.gov.au/pdfs/OCHRE/Good-Governance-Guidelines-March-2016.pdf>
- Premier's Circular C2016-01 Program Evaluation <https://arp.nsw.gov.au/c2016-01-program-evaluation>
- Audit Office of NSW Better Practice Contract Management Framework http://www.audit.nsw.gov.au/ArticleDocuments/197/Better%20Practice%20Contract%20Management%20Framework_b.pdf.aspx

6. Policy statement

The objective of grants management is to promote the efficient, effective and prudent use and management of public resources through collaboration with government and non-government stakeholders to achieve government policy outcomes.

This objective is achieved through:

1. the policy and reporting framework set out in this document
2. applying the eleven key principles for better practice grants management, detailed in part 2:
 - a. robust planning and design
 - b. linking grant objectives with government policy outcomes
 - c. achieving value for money
 - d. consultation and cooperation with stakeholders
 - e. promoting awareness of the availability of grant funding and the application and assessment processes
 - f. clear eligibility criteria
 - g. robust assessment processes
 - h. robust and segregated approval process
 - i. documentation of the grant agreement
 - j. establishing a management plan
 - k. effective monitoring and reporting on progress and compliance
 - l. public reporting
3. the requirement for staff with responsibility for grants management to record in writing and disclose to the grant approver prior to a grant being approved, the reasons why there was any variation in applying any of the principles
4. application of the provisions of the *Government Information (Public Access) Act 2009* to relevant documents.

7. Principles for better practice

If any of the detailed principles of this policy are not applied, then staff with responsibility for grants management must record in writing and disclose to the grant approver prior to a grant being approved, the reasons why any of the detailed principles were not applied.

It is desirable to streamline assessment, approval, monitoring and acquittal procedures to the minimum procedures necessary to manage risks, ensure accountability and ensure value for money.

7.1 Robust planning and design

EPA staff with responsibility for grants management should:

- address all relevant planning and implementation issues before commencing grant program/s
- establish the rationale for how the grant / program aligns with government policy outcomes and EPA's strategic objectives
- specify clear, non-conflicting objectives for the grant / program
- identify and assess relevant risks, which may include:
 - quantum of grant funds available
 - complexity or uniqueness of grant program
 - design issues – timeframes, opportunities for another level of government to shift costs to the State, or for the grant to substitute for prior level of effort
 - EPA's capacity and resourcing to manage the grant program and conduct due diligence inquiries about applicants
 - implementation issues, including communications
 - experience, capacity and credit worthiness of applicants
- identify the party best able to manage specific risks, assign risks to that party and actively monitor to ensure that they manage those risks
- tailor grant program guidelines, application processes, grant agreements and accountability and reporting requirements based on the specific circumstances and risk assessments of the grant program
- document how success of the grant/s will be measured, with performance measures which are obtainable, clear and easy to use and understand
- identify and assess risks involving:
 - the grantor (EPA)
 - the design of the grant / program
 - potential grantees
 - the activities to be funded by the grant / program
- identify the approver/s for grant decisions and the legislative and mandatory policy requirements to be satisfied for approval/s to be given
- comply with all financial delegations and contract management delegations, including the authority to execute (sign) a contract or deed
- plan the scheduling of grant procedures to align with EPA's financial year and budgeting timetables
- consider whether the grant / program reaches the thresholds for a "major project" for risk reporting to the EPA Executive, and if so, advise the Director, Corporate Services
- document and provide details of grant approvals and grant payments required for disclosure in the EPA Annual Report.

EPA staff with responsibility for managing grants for Aboriginal communities and organisations should plan and design grants in ways that will meet the OCHRE principles for local decision making.

7.2 Focus on government policy outcomes

EPA staff with responsibility for grants management should:

- apply the NSW Government Program Evaluation Guideline January 2016 http://arp.nsw.gov.au/sites/default/files/NSW%20Government%20Program%20Evaluation%20Guideline%20January%202016_1.pdf
- determine what change / outcome is expected because of the grant and then measure the actual change / outcome
- ensure that the operational objectives of grants are clear and specific, link to the policy outcomes set by government and include quantitative, qualitative and milestone information expressed in such a way that it is clear how and when objectives have been achieved
- clearly specify outcome, output and input measures
- frame performance indicators that are useful in monitoring significant risks
- frame performance indicators that are reliant on data provided by the grantee only where the grantee's capacity to produce accurate, reliable and complete data has been validated by the EPA or by a reputable, independent third party, such as an auditor or an assurance provider.

7.3 Value for money

EPA staff with responsibility for grants management should:

- ensure achieving value for money is a prime consideration in all phases of grants management
- where appropriate, work with stakeholders to improve the efficiency of the design and delivery of the grant program
- use competitive, merit-based selection processes, unless specifically agreed otherwise.

7.4 Consultation and cooperation with stakeholders

EPA staff with responsibility for grants management should:

- work collaboratively with government and non-government stakeholders to achieve common objectives, to
 - improve the design and delivery of grant programs
 - reduce administration and compliance costs
 - aid in the development of appropriate outcome and output measures, accountability requirements and grants documentation
- consider testing the clarity of grant program guidelines with stakeholders prior to their release

- consider providing an outline of the proposed grant agreement together with the grant opportunity guidelines so that applicants can consider the outline of the proposed agreement at the time they are considering applying for a grant.

7.5 Promoting awareness of the availability of grant funding and application and assessment processes

EPA staff with responsibility for contestable grants management should:

- choose methods that promote open, transparent and equitable access to grants
- ensure that the applicable rules for grant programs are simply expressed, clear in their intent and effectively communicated to stakeholders
- provide relevant information about previous grants activity
- develop and provide a standard application format for each type of grant.

7.6 Clear eligibility criteria

EPA staff with responsibility for grants management should:

- ensure application documentation contains clear eligibility and assessment criteria to enable the selection of applications in a consistent, transparent and accountable manner
- develop clear, consistent and well-documented grant program guidelines and related documentation, including information about:
 - grant objectives and purpose
 - eligibility criteria
 - assessment criteria
 - weighting of assessment criteria
 - the evaluation and approval processes
 - standard terms and conditions
 - indicative reporting and acquittal requirements
 - a description of complaint handling or review mechanisms
- ensure the assessment process includes appropriate “fit and proper person” requirements.

7.7 Robust assessment process

EPA staff with responsibility for grants management should:

- establish a Technical Review Committee
- develop and provide terms of reference to members of the Technical Review Committee, including outlining:
 - the function of the committee
 - the role of committee members
 - the assessment criteria

- the assessment process
 - members' obligation to maintain confidentiality
 - members' obligation to disclose any conflict of interests
 - members' obligation to comply with the EPA Code of Ethics and Conduct and with this policy
 - signed acceptance of the offer of appointment, with signed declarations in relation to members' obligations
- ensure robust due diligence is conducted on material contained in applications, including verifying the identity and roles of applicants, whether personal or corporate, and verifying fit and proper person claims
 - ensure adequate data is collected from applicants to enable evaluation of their resources, financial and operational capacities needed to undertake the activities for which grant funding may be provided
 - ensure all Technical Review Committee members and sign off on their individual conclusions
 - accept that any Technical Review Committee member remains free to submit a minority report.

EPA staff with responsibility for grants management may choose a two-stage assessment process where appropriate, for example, where shortlisting expressions of interest; or where external technical experts are engaged to provide advice on technical aspects of grant applications but are not members of the committee responsible for making recommendations to the grant approver.

7.8 Robust and segregated approval process

EPA staff with responsibility for grants management should ensure:

- prior to applications opening, there are clearly defined and appropriately segregated roles and responsibilities for all parties involved in grants management, including Technical Review Committee members, staff making grant recommendations, staff approving grants and staff managing the grant agreement during its term
- roles and responsibilities are consistent with delegated authority
- individuals have the skills necessary to discharge their role and responsibilities
- the approver remains at arm's length from the assessment process
- good record keeping is recognised as a key component of good grants governance and accountability
- all EPA staff and external Technical Review Committee members involved in assessing grant applications submit a declaration of private interests and associations to the relevant EPA Executive / Director
- any actual, potential or perceived conflicts of interests are disclosed and properly dealt with, a register of parties' interests is maintained and the process for managing any conflict of interests is formally documented
- grant program guidelines clearly outline what may constitute a conflict of interests
- advice, recommendations and decisions are impartial, appropriately documented and reported, lawful and publicly defensible

- subject to Ministerial approval, all applicants, successful and unsuccessful, are advised of the outcomes at the same time, and as far as practical, within ten business days of approval
- unsuccessful applicants are provided with the reason/s why their application was unsuccessful and given the opportunity to provide feedback.

7.9 Documentation of the grant agreement

EPA staff with responsibility for grants management should ensure grant agreements:

- are well drafted and fit for purpose
- use plain English
- are informed by the Crown Solicitor's Office model funding agreement [Model Funding Agreement \(Community Grants Programs\)](#) or other standard form Deed of Agreement appropriate to the grant / program, and appropriately customised to be relevant to the specific grant / program
- unambiguously identify the grantor and the grantee
- include an obligation on the grantee to acknowledge the grantor as the source of funding
- where required, include an obligation on the grantee to assist with the public announcement of successful grants and cooperate with EPA to achieve this
- provide a clear understanding between the parties on outcomes required before payment of the grant commences
- include a right for the grantor to
 - audit the funding arrangements and oblige the grantee to cooperate with any such audit
 - recover unspent funds
 - recover grants in the event of material non-performance by the grantee
- include an obligation on the grantee to hold grant funds in an interest bearing account
- provide an appropriate dispute resolution process
- define grant activity deliverables, schedule payments according to progress, and specify reporting requirements and acquittal procedures, including provision of supporting documentation.

7.10 Effective monitoring and reporting on progress and compliance

EPA staff with responsibility for grants management should:

- document an Agreement management plan for each grant agreement
- establish indicators of critical changes / exceptions to approved funding and timeframe, including cumulative variations
- actively monitor progress and compliance with the grant agreement

- verify milestones have been achieved before releasing progress payments
- maintain accurate and complete records of payments due and payments made
- maintain records to facilitate reporting on grants and outcomes achieved.

7.11 Public reporting

EPA staff with responsibility for contestable grants management should:

- publish accurate and current information on the EPA website in a timely way using a consistent format, including:
 - publication date of grant application
 - description of the grant / program
 - closing date and time for receipt of applications, where applicable
 - eligibility criteria
 - type of selection process
 - grant program guidelines
 - grants awarded, grantee and grant value
 - disclosure of whether a grant agreement includes confidentiality provisions
- ensure publication and disclosure of Agreements in accordance with the *Government Information (Public Access) Act 2009*
- ensure information on individual grants is retained on the EPA website for at least two financial years.

8. Checklist – customising a standard form Deed of Agreement

EPA staff with responsibility for grants management should consider whether legal advice is needed for a Deed of Agreement for a grant or whether it is reasonable to rely on customising a standard form Deed of Agreement that has previously been reviewed by Legal Branch.

When deciding how to customise a standard form Deed of Agreement for a grant, EPA staff with responsibility for grants management should consider issues including:

- how risky the project is
- whether a very large or risky project should be broken into stages and the agreement limited to the first stage
- whether information in the grant guidelines or grant application includes rights, obligations or commitments which need to be legally enforceable
- verifying that not-for-profit associations are incorporated, and using the correct legal name of the incorporated association

- verifying the name of the legal entity that is the grantee (not merely a business name, which is not an entity) <http://intranet-test.dec.int/intranet%20library/pages/legalentities.aspx>
- where the required outcomes include products, whether there are standards or EPA requirements that need to be specified
- whether the grantee needs to legally confirm it has done things in a certain way, such as a warranty that the work done has not infringed a third party's copyright
- specifying milestones which are clear, reasonable and measurable
- how proposed variations will be managed
- whether EPA is consenting to or requiring the use of EPA's logo
- ownership of any intellectual property created as part of the project
- whether commercial sensitive aspects of the project might restrict information that should be provided to the EPA
- minimum public liability and other insurance requirements
- allocation of responsibility if things go wrong or parties are negligent
- allocation of responsibility for specified records to be kept
- nominated contact officers for communications between the parties
- whether sub-contracting is allowed
- whether key personnel are essential to the agreement

9. Further advice and information

For further advice and information on the management of grants you should contact the:

- Senior Governance Officer 9995 5404 or
- Manager, Finance, Risk and Governance 9995 6181 or
- Director, Corporate Services 9585 6822.