



New South Wales

# Government Grants Administration Bill 2021

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows—

- (a) to provide for the administration of government grant schemes,
- (b) to enable the Auditor-General to conduct audits and report on whether government agencies and Ministers comply with the requirements of this Act,
- (c) to enable the Auditor-General to conduct “follow the dollar” audits and report on an entity that receives government money under a government grant scheme,
- (d) to establish a register of government grant schemes (the *NSW grants register*) that is freely available on the internet for inspection by the public,
- (e) to require a review of this Act to be conducted within 12 months, including a review of the allocation of government money under government grant schemes to regional and metropolitan areas.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** defines certain words and expressions used in the proposed Act.

**Clause 4** makes it clear the proposed Act prevails to the extent of an inconsistency with another Act or law.

## **Part 2 Administration of government grant schemes**

**Clause 5** defines *government grant* and *government grant scheme* for the purposes of the proposed Act.

**Clause 6** defines *government grant scheme guidelines* for the purposes of the proposed Act and enables the Minister administering the proposed Act to issue new guidelines from time to time following consultation with the Auditor-General and the ICAC parliamentary committee.

**Clause 7** requires a government agency to ensure a government grant scheme administered by the agency is administered in accordance with the government grant scheme guidelines.

**Clause 8** requires a government agency to publish details about each government grant scheme administered by the agency on the agency's website and on the NSW grants register.

**Clause 9** requires a government agency to provide certain information to the Minister responsible for approving or awarding a government grant.

**Clause 10** requires a Minister, before approving or awarding a government grant, to ensure the Minister has certain information and complies with the NSW Ministerial Code of Conduct. The proposed section also requires a Minister to inform the Minister administering the proposed Act, or in certain circumstances, the Auditor-General, if the Minister does not follow recommendations made by the government agency administering the government grant scheme.

**Clause 11** enables the Auditor-General to audit and report on the compliance of government agencies and Ministers with the requirements of this Act, and other matters.

## **Part 3 Performance audits of non-government entities**

**Clause 12** defines certain words for the purposes of the proposed Part.

**Clause 13** enables the Auditor-General to conduct a "follow the dollar" audit on the performance of an entity that receives government money under a government grant scheme.

**Clause 14** requires the Auditor-General to report on such an audit.

**Clause 15** requires the report to tabled.

**Clause 16** makes it clear the proposed Act does not limit the powers of the Auditor-General.

## **Part 4 Miscellaneous**

**Clause 17** requires the Secretary to establish the NSW grants register, containing the government grant scheme guidelines, the details of each scheme and other matters. The register is to be in the form determined by the Secretary and freely available on the internet for inspection by the public.

**Clause 18** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 19** requires the Minister administering the proposed Act to review the proposed Act in 12 months and, in particular, review whether government money is appropriately and fairly allocated to regional and metropolitan areas.

## **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.



New South Wales

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New South Wales

# Government Grants Administration Bill 2021

No           , 2021

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## **A Bill for**

An Act to provide for the transparent administration of government grant schemes; to provide for the audit of entities in relation to government grant schemes; and for related purposes.

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<b>The Legislature of New South Wales enacts—</b>	1
<b>Part 1 Preliminary</b>	2
<b>1 Name of Act</b>	3
This Act is the <i>Government Grants Administration Act 2021</i> .	4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Definitions</b>	7
In this Act—	8
<b>accountable authority</b> has the same meaning as in the <i>Government Sector Finance Act 2018</i> .	9 10
<b>Auditor-General</b> means the Auditor-General referred to in section 27B of the <i>Government Sector Audit Act 1983</i> .	11 12
<b>entity</b> has the same meaning as in the <i>Government Sector Finance Act 2018</i> .	13
<b>government grant</b> —see section 5.	14
<b>government grant scheme</b> —see section 5.	15
<b>government grant scheme guidelines</b> —see section 6.	16
<b>government money</b> has the same meaning as in the <i>Government Sector Finance Act 2018</i> .	17 18
<b>GSF agency</b> has the same meaning as in the <i>Government Sector Finance Act 2018</i> .	19
<b>non-government entity</b> means the following—	20
(a) an entity that is not a GSF agency,	21
(b) an entity of a kind prescribed by the regulations.	22
<b>NSW grants register</b> —see section 17.	23
<b>Secretary</b> means the Secretary of the Treasury.	24
<b>State policy objective</b> means—	25
(a) a program or project that the State has undertaken to conduct or deliver, or	26
(b) a program or project that one or more GSF agencies are responsible for conducting or delivering for or on behalf of the State, or	27 28
(c) any other objective of a kind prescribed by the regulations.	29
<b>Note</b> — The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	30 31
<b>4 Relationship with other Acts and laws</b>	32
This Act prevails to the extent of an inconsistency with another Act or law.	33

<b>Part 2</b>	<b>Administration of government grant schemes</b>	1
<b>5</b>	<b>Meaning of “government grant scheme”</b>	2
(1)	In this Act, <i>government grant scheme</i> means a scheme established—	3
(a)	to allocate government money to a non-government entity (a <i>government grant</i> ), and	4
(b)	for the purposes of the non-government entity conducting or delivering a State policy objective.	5
	<b>Example—</b>	6
	A government grant scheme may include a research grant, a grant for the delivery of services or a grant to fund infrastructure.	7
(2)	However, a government grant scheme does not include—	8
(a)	compensation given to a non-government entity, or	9
(b)	any other scheme, payment or thing prescribed by the regulations.	10
(3)	Additionally, the regulations may prescribe a scheme, or class of schemes, to be a government grant scheme for the purposes of this Act.	11
<b>6</b>	<b>Meaning of “government grant scheme guidelines”</b>	12
(1)	In this Act, <i>government grant scheme guidelines</i> means one of the following, whichever is published later—	13
(a)	the <i>Good Practice Guide to Grants Administration</i> , published on the website of the Department of Premier and Cabinet, 26 May 2010,	14
(b)	guidelines issued by the Minister administering this Act from time to time in relation to the design and administration of government grant schemes.	15
(2)	Government grant scheme guidelines issued by the Minister must provide for the information, if any, prescribed by the regulations and be published on the NSW grants register.	16
(3)	Before the Minister issues government grant scheme guidelines, the Secretary must give the Minister written notice of, and the Minister must have regard to, any relevant recommendations made by the following—	17
(a)	the Auditor-General,	18
(b)	the Committee on the Independent Commission Against Corruption constituted under the <i>Independent Commission Against Corruption Act 1988</i> .	19
<b>7</b>	<b>GSF agency must comply with government guidelines</b>	20
	The accountable authority for the GSF agency administering a government grant scheme must ensure the government grant scheme is administered in accordance with the government grant scheme guidelines.	21
<b>8</b>	<b>Publication of scheme details</b>	22
	The accountable authority for the GSF agency administering a government grant scheme must ensure the following information is published on the agency’s website and the NSW grants register—	23
(a)	the objectives of the scheme,	24
(b)	guidance for making an application under the scheme,	25
(c)	eligibility criteria for the allocation of government money under the scheme,	26
(d)	the amount of government money available under the scheme,	27
(e)	the relevant decision-maker for the scheme,	28

(f)	information prescribed by the regulations for the purposes of this section.	1
<b>9</b>	<b>Provision of information to Minister</b>	2
(1)	This section applies if a Minister is responsible for approving or awarding a government grant.	3 4
(2)	The accountable authority for the GSF agency administering a government grant scheme must ensure the following information is provided in writing to the Minister responsible for approving or awarding a government grant—	5 6 7
(a)	an explicit statement which makes it clear the information relates to the approval or award of a government grant,	8 9
(b)	information on the applicable requirements of this Act or any other law,	10
(c)	the information required to be published under section 7,	11
(d)	an indication as to how each applicant meets the eligibility criteria,	12
(e)	if the accountable authority has provided a recommendation, the process used by the accountable authority to recommend one or more applicants to the Minister,	13 14 15
(f)	information prescribed by the regulations for the purposes of this section.	16
<b>10</b>	<b>Requirements of Minister</b>	17
(1)	This section applies if a Minister is responsible for approving or awarding a government grant (the <i>responsible Minister</i> ).	18 19
(2)	A responsible Minister must not approve or award a government grant unless—	20
(a)	the responsible Minister has received the information required to be given under section 9, and	21 22
(b)	in the opinion of the responsible Minister, the information meets the requirements of section 9, and	23 24
(c)	the responsible Minister complies with the NSW Ministerial Code of Conduct, as set out in the appendix to the <i>Independent Commission Against Corruption Regulation 2017</i> .	25 26 27
(3)	If the responsible Minister does not follow a recommendation provided to the responsible Minister as described in section 9(2)(e), the responsible Minister must give written notice to the following persons of the responsible Minister’s reasons for not following the recommendation—	28 29 30 31
(a)	the Minister administering this Act, or	32
(b)	if the responsible Minister is the Minister administering this Act—the Auditor-General.	33 34
<b>11</b>	<b>Auditor-General to report</b>	35
(1)	The Auditor-General may make a special report regarding the following matters if, in the opinion of the Auditor-General, the matter should be brought to the attention of Parliament—	36 37 38
(a)	a GSF agency failing to comply with a provision of this Act,	39
(b)	a Minister responsible for approving or awarding a government grant failing to comply with a provision of this Act,	40 41
(c)	a matter prescribed by the regulations.	42
(2)	The Auditor-General may include the report in any other report of the Auditor-General and is to table the report in accordance with section 15.	43 44

<b>Part 3</b>	<b>Performance audits of non-government entities</b>	1
<b>12</b>	<b>Interpretation</b>	2
(1)	In this Part—	3
	<i>audit</i> includes examination and inspection.	4
	<i>performance audit</i> means an audit under this Part.	5
	<i>head</i> of a non-government entity means the person who is the chief executive officer, however described, of the entity or otherwise responsible for the entity’s day to day management.	6 7 8
	<i>responsible Minister</i> , in relation to a non-government entity that is subject to a performance audit, means the Minister who is responsible for achieving the State policy objective to which the audit relates.	9 10 11
(2)	To avoid doubt, a non-government entity that is audited (or capable of being audited) under this Part is not an <i>auditable entity</i> for the purposes of the <i>Government Sector Audit Act 1983</i> .	12 13 14
<b>13</b>	<b>“Follow the dollar” performance audit</b>	15
(1)	The Auditor-General may, when the Auditor-General considers it appropriate, conduct an audit of activities of a non-government entity if—	16 17
(a)	the non-government entity has received a government grant under a government grant scheme, and	18 19
(b)	the non-government entity is conducting or delivering a State policy objective, and	20 21
(c)	the audit of the non-government entity’s activities only relates to conducting or delivering the State policy objective, and	22 23
(d)	the audit of the non-government entity’s activities could not be conducted under the <i>Government Sector Audit Act 1983</i> or the <i>Government Sector Finance Act 2018</i> .	24 25 26
(2)	The purpose of the performance audit of a non-government entity is to determine whether—	27 28
(a)	the entity is carrying out the activities effectively, and	29
(b)	the entity is doing so economically and efficiently and in compliance with all relevant laws.	30 31
(3)	A performance audit of a non-government entity may also include the audit of any associated entities employed or engaged by the non-government entity to conduct or deliver the State policy objective.	32 33 34
<b>14</b>	<b>Report of performance audit</b>	35
(1)	The Auditor-General is to report to each of the following (a <i>report recipient</i> ) as to the result of any performance audit of a non-government entity and as to any other matters that in the judgment of the Auditor-General call for special notice—	36 37 38
(a)	the head of the non-government entity,	39
(b)	the responsible Minister for the non-government entity,	40
(c)	the Treasurer,	41
(d)	the accountable authorities for any GSF agencies responsible for administering the government grant scheme concerned.	42 43
(2)	The Auditor-General must not make a report of a performance audit under this section unless, at least 28 days before making the report, the Auditor-General has	44 45

given each report recipient a summary of findings and proposed recommendations in relation to the audit.	1 2
(3) The Auditor-General may make a report of a performance audit under this section before the expiry of that 28-day period if the head of the non-government entity has provided to the Auditor-General any submissions or comments the person wishes to make.	3 4 5 6
(4) The Auditor-General is to include in the report of a performance audit under this section any submissions or comments made by the non-government entity or a summary, in an agreed form, of any such submissions or comments.	7 8 9
(5) In a report of a performance audit under this section, the Auditor-General—	10
(a) may include such information as the Auditor-General thinks desirable in relation to the activities that are the subject of the audit, and	11 12
(b) is to set out the reasons for opinions expressed in the report, and	13
(c) may include any recommendations arising out of the audit that the Auditor-General thinks fit to make.	14 15
(6) The Auditor-General may include the report in any other report of the Auditor-General.	16 17
<b>15 Tabling of reports</b>	18
(1) The Auditor-General is, as soon as practicable after making a report under section 11 or 14, to present the report to each House of Parliament, if that House is then sitting.	19 20
(2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned and is to be dealt with in accordance with the <i>Government Sector Audit Act 1983</i> , section 63C.	21 22 23 24
(3) The Auditor-General may include the report in any other report of the Auditor-General to the House of Parliament concerned.	25 26
<b>16 Act does not limit audit powers of Auditor-General</b>	27
This Act does not limit any power of the Auditor-General to conduct audits under another provision of the <i>Government Sector Audit Act 1983</i> or any other law.	28 29

<b>Part 4</b>	<b>Miscellaneous</b>	1
<b>17</b>	<b>NSW grants register</b>	2
(1)	The Secretary is to maintain a register of government grant schemes (the <i>NSW grants register</i> ) that contains—	3
		4
(a)	the government grant scheme guidelines, and	5
(b)	details of each government grant scheme, as required to be published under section 8, and	6
		7
(c)	the information prescribed by the regulations.	8
(2)	The NSW grants register is to be in the form determined by the Secretary and made freely available on the internet for inspection by the public.	9
		10
<b>18</b>	<b>Regulations</b>	11
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	12
		13
		14
		15
<b>19</b>	<b>Review of Act</b>	16
(1)	The Minister administering this Act is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	17
		18
		19
(2)	Additionally, the Minister administering the Act is to review—	20
(a)	whether government money is appropriately and fairly allocated to both metropolitan and regional areas, and	21
		22
(b)	the boundaries of metropolitan and regional areas for the purposes of the allocation of government grants, and	23
		24
(c)	whether Newcastle and Wollongong should be considered cities, or another type of area, in order to access relevant government grant schemes.	25
		26
(3)	The review is to be undertaken as soon as possible after the period of 12 months from the commencement of this Act (the <i>review period</i> ).	27
		28
(4)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the review period.	29
		30

<b>Schedule 1</b>	<b>Savings, transitional and other provisions</b>	1
<b>Part 1</b>	<b>General</b>	2
<b>1</b>	<b>Regulations</b>	3
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—	4 5
(a)	a provision of this Act, or	6
(b)	a provision amending this Act.	7
(2)	A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.	8 9
(3)	A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.	10 11
(4)	A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—	12 13
(a)	for a provision of this Act—the date of assent to this Act, or	14
(b)	for a provision amending this Act—the date of assent to the amending Act.	15
(5)	A savings or transitional provision taking effect before its publication on the NSW legislation website does not—	16 17
(a)	affect the rights of a person existing before that publication in a way prejudicial to the person, or	18 19
(b)	impose liabilities on a person for anything done or omitted to be done before that publication.	20 21
(6)	In this clause—	22
	<i>person</i> does not include the State or an authority of the State.	23
<b>Part 2</b>	<b>Provisions consequent on enactment of this Act</b>	24
<b>2</b>	<b>Application of Act to current government grants</b>	25
	This Act applies to a government grant scheme that is in operation on the day of commencement of this Act, except as provided for in section 3.	26 27
<b>3</b>	<b>NSW grants register</b>	28
(1)	The following documents are not required to be published on the NSW grants register until 6 months after the date on which this Act commences (the <i>transition period</i> )—	29 30 31
(a)	the government grant scheme guidelines, if the guidelines are issued by the Minister under this Act, section 6(1)(b), and	32 33
(b)	details of each government grant scheme, as required to be published under this Act, section 7.	34 35

- (2) The Minister may publish government grant scheme guidelines in the transition period by notice in the Gazette.

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