

**Submission to the Senate Select Committee
on Administration of Sports Grants**

Secretary of the Department of the Prime Minister and Cabinet

1. On 13 February 2020 I was invited to make a written submission to the Senate Select Committee on Administration of Sports Grants. I was asked to provide any written submission by 21 February 2020.
2. On 17 January 2020 the Prime Minister sought my advice of any apparent breaches in the *Statement of Ministerial Standards* (the Standards) in relation to the then Minister's administration of the Community Sport Infrastructure Grant Program (the Program), taking into account matters raised in the Auditor-General's report *Award of Funding under the Community Sport Infrastructure Program* (the ANAO report).
3. This request for advice was made under paragraph 7.4 of the Standards, by which the Prime Minister may seek advice from the Secretary of the Department of Prime Minister and Cabinet on any matters within the Standards. My inquiries and final report were accordingly limited to the application of the Standards to the actions of the then Minister.
4. My advice to the Prime Minister was prepared for the consideration of the Governance Committee of Cabinet, and remains subject to the rules of Cabinet confidentiality. This Submission is intended to assist the Committee in its inquiry, and includes information on which I based my advice to the Prime Minister as well as supplementary data analysis.
5. It is important to note that the Auditor-General is not required to share audit information with external parties in most cases, nor do I have the power to compel information from individuals. In this case, the Auditor-General did not provide any information to me that the ANAO used for its audit. Accordingly, I made my best efforts (and the Auditor-General provided assistance in identifying sources) to obtain the information necessary to provide a sound basis for my advice to the Prime Minister. I thank those who willingly provided information and documents.
6. My advice to the Prime Minister was based on my analysis of information provided to me by Sport Australia, Senator McKenzie and the Senator's staff which related to her decision-making. This included the spreadsheet noted by the ANAO at section 3.20 of the Report (the Adviser's spreadsheet, dated 20

November 2018), the tables of recommendations as assessed by Sport Australia and the Minister's final approvals.

7. I paid careful attention to the *Community Sport Infrastructure Grant Program: Program Guidelines (August 2018)* (the Guidelines) which contained eligibility criteria, assessment criteria and made clear that the Minister "will provide final approval", and that "other factors may be considered when deciding which projects to fund".
8. It is clear to me from the Guidelines that, after an assessment process, Senator McKenzie was the final approver of funding decisions and she was able to consider "other factors" in the final funding approval. I found no constraints in the Guidelines limiting the other factors that the Minister may consider, so a wide discretion was available.
9. I concluded therefore that, in exercising her role as decision maker for the Program, Senator McKenzie acted within the remit of the Guidelines.
10. In my view, however, and as outlined in the ANAO Report, there were some significant shortcomings with respect to the Minister's decision making role, as well as the administration of the assessment process by Sport Australia. Key among these were the lack of transparency for applicants around the other factors being considered, and the disconnect between the assessment process run by Sport Australia and the assessment and decision-making process in the Minister's Office. This lack of transparency, coupled with the significant divergences between projects recommended by Sport Australia and those approved by the Minister have given rise to concerns about the funding decision-making.
11. The discrepancy between the number of applications recommended by Sport Australia and the final list of approved applications clearly shows the Minister's Office undertook a separate and non-transparent process in addition to the assessment by Sport Australia.
12. Senator McKenzie provided information to me that her final approvals were intended to ensure a fair spread of grants according to state, region, party, funding stream and sport, in addition to the criteria assessed by Sport Australia.
13. There has been considerable commentary on the ANAO's reference to the Minister's decisions being influenced by the identification of 'marginal' and 'targeted' electorates in the Adviser's spreadsheet (referred to by the ANAO at section 3.20 of the Report).

14. The ANAO Report at para 4.24 asserts that the Adviser's spreadsheet is evidence that "the Minister's Office had documented the approach that would be adopted to selecting successful applicants" before funding decisions were made. However, there is persuasive data that backs up the conclusion that the Minister's decisions to approve grants were not based on the Adviser's spreadsheet.
15. Firstly, there was a significant period of time between the date of the Adviser's spreadsheet referred to in the ANAO Report (20 November 2018) and the dates of the final approval processes (Round 1 – 11-21 December 2018, Round 2 – 5 February 2019, Round 3 – 3 April 2019).
16. Secondly, thirty per cent of the applications listed as 'successful' in the Adviser's spreadsheet were not approved for funding in any of the three grant rounds (Table 1).

Table 1: Projects listed as 'successful' vs. funded projects

| Outcome | 'Successful' | Not | Total | 'Successful' | Not | Total |
|------------|--------------|-------|-------|--------------|------|-------|
| Funded | 420 | 260 | 680 | 70% | 19% | 35% |
| Not funded | 182 | 1,081 | 1,263 | 30% | 81% | 65% |
| Total | 602 | 1,341 | 1,943 | 100% | 100% | 100% |

Note: 'Successful' refers to assessments in the 'Adviser's spreadsheet'. These assessments pertained to 1,943 applications, of which 680 were funded. An additional five projects were also funded.

17. So, on the evidence available to me, there is a material divergence between actual outcomes of all funded projects and the approach identified in the Adviser's spreadsheet. This does not accord with the ANAO Report (in the text box on page 52) which states "The award of funding reflected the approach documented by the Minister's Office of focusing on 'marginal' electorates held by the Coalition as well as those electorates held by other parties or independent members that were to be 'targeted' by the Coalition at the 2019 Election."
18. Further, had the Minister approved only those grants recommended by Sport Australia in the list of recommendations it proposed initially, 30 electorates would not have received any grants at all (Table 2). In contrast, following the Minister's actual funding decisions, only five electorates did not receive a grant (including three electorates from which there were no applications).

Table 2: Recommended vs funded projects (number of electorates)

| No. of projects | Recommended: number of electorates | Funded: number of electorates |
|-----------------|------------------------------------|-------------------------------|
| 0 projects | 30 | 5 |
| 1 projects | 36 | 12 |
| 2 projects | 28 | 13 |
| 3 projects | 18 | 28 |
| 4 projects | 13 | 25 |
| 5 projects | 6 | 21 |
| 6 projects | 4 | 15 |
| 7 projects | 3 | 11 |
| 8 projects | 4 | 10 |
| 9 or more | 8 | 10 |

Note: This table relates to 422 projects initially recommended by Sport Australia, and all 685 funded projects. There were three electorates that made no applications and therefore had zero projects recommended or funded.

19. I did not find evidence that the separate funding approval process conducted in the Minister's office was unduly influenced by reference to 'marginal' or 'targeted' electorates. Evidence provided to me indicated that the Adviser's spreadsheet was developed by one member of staff in the Minister's Office, using information provided by Sport Australia in September 2018, as a worksheet to support an increase in funding for the Program.
20. Senator McKenzie advised me in response to a direct question that she had never seen the Adviser's spreadsheet and that neither she nor her staff based their assessments on it. Her Chief of Staff also told the Department of the Prime Minister and Cabinet that the Adviser had categorically stated she had not shown the spreadsheet to the Minister.
21. As the Prime Minister said on 2 February 2020, applications from 'marginal' or 'targeted' seats were approved by the Minister at a statistically similar ratio of 32 per cent compared to the number of applications from other electorates at 36 per cent.

Table 3: Projects funded by electorate status

| Electorate status | Applications | Funded | Funded (%) |
|----------------------|--------------|--------|------------|
| Marginal or Targeted | 705 | 229 | 32% |
| Other | 1,238 | 451 | 36% |
| All electorates | 1,943 | 680 | 35% |

Note: The designation of 'marginal' or 'target' came from the Adviser's spreadsheet. This pertained to 1,943 applications, of which 680 were funded. An additional five projects were also funded, of which three went to a project in a 'marginal' or 'targeted' seat.

22. The ANAO Report at paragraph 24 states “Applications from projects located in those [‘marginal’ and ‘targeted’] electorates were more successful in being awarded funding than if funding was allocated on the basis of merit assessed against the published program guidelines.”
23. However, careful analysis of the information available to me does not lead me to the same conclusion. In terms of the comparison between those applications recommended by Sport Australia over the three funding rounds and those approved by the Minister, 180 ‘marginal’ and ‘targeted’ projects were recommended by Sport Australia, and 229 were ultimately approved by the Minister, representing a 27 per cent increase. This is smaller than the percentage increase of projects recommended (325) to projects funded (451) in non-marginal or non-targeted seats which was 39 per cent (Table 4).

Table 4: Projects recommended and funded by electorate status

| Electorate status | Applications | Recommended | Funded | Increase |
|--------------------------|---------------------|--------------------|---------------|-----------------|
| Marginal or Targeted | 705 | 180 | 229 | 27% |
| Other | 1,238 | 325 | 451 | 39% |
| All electorates | 1,943 | 505 | 680 | 35% |

Note: ‘Recommended’ refers to recommendations made by Sport Australia (SA) over the three funding rounds (ie, some projects were recommended on several occasions but are only counted once in this tally). The designation of ‘marginal’ or ‘target’ came from the ‘Adviser’s spreadsheet’. Both the ‘Adviser’s spreadsheet’ and the SA recommendations pertained to 1,943 applications, of which 680 were funded. An additional five projects were also funded.

24. As noted in the ANAO Report (3.16 and 3.17) there were other factors associated with the administration of the Program by Sport Australia that resulted in some projects that received high assessment scores being not approved for funding by the Minister. Two of these factors were Sport Australia’s approach of allocating funding by ‘stream’ – which, as the ANAO observed, was not consistent with the Guidelines – and applying some further unpublished criteria such as limiting any successful organisation to a maximum of one grant. The ANAO Report also noted (Footnote 88 page 70) that a number of projects were withdrawn from the assessment process due to receiving funding from other sources.
25. In his statement on 2 February 2020, the Prime Minister stated that the Government will be adopting the recommendations of the Report and made particular reference to Recommendation 4 of the Report, that:

The Australian Government amend the Commonwealth Grant Rules and Guidelines to require that the advising, decision-making and reporting requirements applying to situations where a minister approves grant

funding be extended to apply to corporate Commonwealth entities in situations where a minister, rather than the corporate entity, is the decision-maker. This would mean that there would be a single framework in place for all circumstances where a minister decides upon the award of grant funding.

26. I consider this reform will ensure that shortcomings identified with this Program will be avoided in the future.
27. Ultimately for the reasons I have outlined, my advice to the Prime Minister concluded that in exercising her discretion as decision maker for the Program, Senator McKenzie acted within the remit of the Guidelines. Further, the evidence I have reviewed does not support the suggestion that political considerations were the primary determining factor in the Minister's decisions to approve the grants. On this basis, and while there were shortcomings in the administration of the Program, I concluded Senator McKenzie did not act in breach of the Standards with respect to fairness.
28. I did find that Senator McKenzie breached the Standards by failing to declare her memberships of two organisations and that she had an actual conflict of interest when awarding funding to one of those organisations, the Wangaratta Clay Target Club, which was neither declared to the Prime Minister nor managed.
29. I trust this submission is of assistance to the Committee.

Philip Gaetjens
14 February 2020