

Committee Secretary
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

sportsgrants.sen@aph.gov.au

Inquiry into the administration and award of funding under the Community Sport Infrastructure Grant Program

Thank you for the opportunity to make a submission by the Senate Select Committee on Administration of Sports Grants. I regard this inquiry as significant for a number of reasons including its relevance to questions of integrity, transparency, accountability and proper and ethical compliance to established processes and sources of authority as they relate to government expenditure.

The recent imbroglio over grant funding under the Community Sport Infrastructure Grant Program shows how powerful sectional and corporate interests and personal ambition have become in influencing policy development and decision making at the Federal Government level. This is deeply destructive of democratic government which relies on trust, honesty, openness and fairness and must be challenged.

I note the report by the Grattan Institute entitled *Who's in the room? Access and influence in Australian politics* that discusses the role of special interests in politics and the risk of policy capture.¹

The value of an independent, respected and well resourced public service

I am dismayed that, as part of the discussion surrounding the allocation of grants under this program, the Prime Minister and other members of the Government can so readily:

- dismiss the findings of the Australian National Audit Office, a time honoured accountability mechanism in the Australian political system with an impeccable reputation for independence and thoroughness;
- ignore the challenge inherent in assessing the relative merits of a proposal to ensure that the final decision is based on evidence that is independently evaluated to ensure it is not biased by personal or sectional interests and in recognition of the capacity of the project to meet the program objectives.

My dismay was fuelled by reported statements by the Prime Minister that Members of Parliaments are better at assessing the merits of a project in their electorate than are public servants in Canberra. The implication is that the MP has no difficulty in adopting an unbiased stance and is able to step back from their own interests to objectively judge

¹ <https://grattan.edu.au/wp-content/uploads/2018/09/908-Who-s-in-the-room-Access-and-influence-in-Australian-politics.pdf>

the project's merits against those from the many other electorates around the country. I find this both unrealistic and an unwarranted reflection on the capacity of public servants to do their job effectively, impartially and in the interests of all Australians.

My hope is that your inquiry can provide the Prime Minister and his Government with a timely reminder of the valuable resource they have available to them to help govern Australia effectively and with vision. The APS has a long tradition of serving Government, Parliament and the Australian community well and is capable of much more than simply delivering on the Government's agenda. The value of this resource is grounded in a number of pieces of legislation and regulation that spell out the duties and obligation of a public servant.

This resource must be respected and adequately funded to ensure this capacity is preserved and enhanced.

The Public Service Act 1999² plays an important role in ensuring that public resources are used appropriately, effectively, and efficiently. In undertaking their duties, all public servants are required to abide by the values and comply with the Code of Conduct as set out in this piece of legislation.

The object of this Act of particular relevance to the administration of grants program is '*... to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public*'. Implicit in this value is the requirement that public servants perform their job in a non-partisan and impartial way for the benefit of all Australians.

The Act identifies five objectives which will underpin the way a public servant is required to do their job:

- Committed to service:
'...professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government'
- Ethical:
'... demonstrates leadership, is trustworthy, and acts with integrity, in all that it does'
- Respectful:
'... respects all people, including their rights and their heritage'
- Accountable:
'...is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility'
- Impartial:
'... is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence'

² <https://www.legislation.gov.au/Details/C2019C00057>

The behaviour of all public servants is subject to the Code of Conduct contained in this Act. This requires every public servant to:

- behave honestly and with integrity;
- act with care and diligence;
- treat everyone with respect and courtesy, and without harassment;
- comply with all applicable Australian laws and with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction;
- maintain appropriate confidentiality;
- take reasonable steps to avoid any conflict of interest (real or apparent); and disclose details of any material personal interest;
- use Commonwealth resources in a proper manner and for a proper purpose;
- not provide false or misleading information;
- not improperly use inside information or the employee's duties, status, power or authority
- behave in a way that upholds the APS Values and APS Employment Principles; and the integrity and good reputation of the employee's Agency and the APS.
- if on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
- comply with any other conduct requirement that is prescribed by the regulations.

Mr Morrison's statement that ... *'In the Westminster system of parliamentary democracy, it is the Ministers who are accountable to the public. It is Ministers who provide policy leadership and direction'*. fails to acknowledge that public servants are equally accountable for how they do their job by the provisions of the Public Service Act 1999. The Prime Minister has made this statement a number of times including when he released the Government's response to the Independent Review of the Australian Public Service by David Thodey.³

This statement also totally misrepresents the whole policy development process which consists of significantly more than a Minister coming up with bright ideas and telling an officer to make it happen.

I acknowledge that the officers in the Sports Commission are not employed under the Public Service Act. However, they like all similar bodies have taken on these values and obligations as a necessary part of doing their job. The yawning gap is the lack of anything similar to apply to the work of non-public servant staff employed in Ministers' offices.

Commonwealth Grants Guidelines

As, I am sure you aware, the Commonwealth grants policy framework is set out in Commonwealth Grants Rules and Guidelines 2017. This policy framework applies to all

³ <https://pmc.gov.au/resource-centre/government/delivering-for-australians>

entities subject to the Public Governance, Performance and Accountability Act 2013 (PGPA Act)⁴.

... These rules and guidelines contain the key legislative and policy requirements, and explain the better practice principles of grants administration⁵. [They] apply to grants administration performed by ministers, accountable authorities, officials and third parties who undertake grants administration on behalf of the Commonwealth.

As such, they necessarily apply to the program under consideration here. The rules and guidelines are notable in that they provide detailed and prescriptive requirements on those administering a grants program. It is clearly stated there that they apply to grants administration performed by Ministers and third parties who undertake grants administration on behalf of the Commonwealth.

Such rules and guidelines are essential to ensure that all government expenditure is transparent, accountable, and directed towards achieving value and for purposes that benefit the Australian community. For example, the guidelines state:

Achieving value with relevant money should be a prime consideration in all phases of grants administration.⁶ Grants administration should provide value, as should the grantees in delivering grant activities. This requires the careful comparison of the costs and benefits of feasible options in all phases of grants administration, particularly when planning and designing grant opportunities and when selecting grantees. It is also a means by which officials can assure the entity's accountable authority, Ministers and the Parliament that resources are deployed in an efficient, effective, economical and ethical manner, while not imposing overly burdensome requirements on grantees.

I would understand this statement to include all steps in the process of delivering this program including the decision making stage. If the decision maker is the Minister, then the Guidelines also state that:

A Minister must not approve a proposed expenditure of relevant money unless the Minister is satisfied, after making reasonable inquiries, that the expenditure would be a proper use of relevant money⁷.

In this context, 'proper' is defined as '*efficient, effective, economical and ethical*'

My concern is that the process undertaken by the Minister and in the Minister's office when making decisions about who should receive funding under the Community Sports Infrastructure Grant Program appears not to have upheld the values and processes required by these rules and guidelines or by the PGPA Act.

⁴ <https://www.legislation.gov.au/Details/C2013A00123>

⁵ <https://www.finance.gov.au/government/commonwealth-grants/commonwealth-grants-rules-guidelines>

⁶ <https://www.legislation.gov.au/Details/C2013A00123>

⁷ <https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>

Compliance with these rules and guidelines is particularly important in the case of a competitive grants program where decisions are based on relative merit against a set of criteria that reflect the program's objectives. This program was not an entitlement program where grants are made because the proponent has undertaken certain specified activities or has tightly specific characteristics. Nor was it conceived as a demand-driven or a 'first-in first-served' program. If it had been, then the officials setting it up are required to document the reasons for this approach and to '*advise Ministers on how the grant allocation method was developed, explain how implementation issues were considered and outline the risk mitigation strategies*⁸'

The funds for this program are listed in the Appropriations Acts as being part of the Regional Development Program of the Infrastructure, Regional Development and Cities Portfolio. The normal practice for most grants program is for the Head of the Department to be the 'accountable authority' with the duties to amongst other things promote '... the proper use and management of public resources for which the authority is responsible'.

If a Minister approves a proposed expenditure, the Minister is required under the PGPA Act to:

- (a) record the terms of the approval in writing as soon as practicable after giving the approval; and
- (b) comply with any other requirements prescribed by the rules in relation to the approval.

As part of your inquiry, I consider the following questions should be asked about the process followed by the Minister:

- What legislative provisions exist to provide the Minister with the decision making authority for this program? Did the Minister comply with the necessary procedures to ensure she had the authority to make these decisions?
- Why was the Head of the Department of Infrastructure, Regional Development and Cities not the 'accountable authority' for this program when the funds were included in the appropriation for this department?
- How did the Minister obtain and record the necessary evidence to measure whether each proposal was an efficient, effective, economical and ethical use of public resources? In particular:
 - What 'reasonable inquiries' did the Minister undertake to satisfy herself that the expenditure was a proper use of the money? If so, what form did these inquiries take?

⁸ <https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>

- What other actions did the Minister take to ensure that her actions would promote the *'... proper use and management of public resources for which the accountable authority is responsible?*
- In recognition that this was a competitive grants program, did the Minister have processes in place in her office that clearly outlined and documented these inquiries and other actions to enable accurate and comparative assessments and to record the results of these comparison?
- Has the Minister complied with the requirement in the PGPA that she record the terms of the approval in writing as soon as practicable after giving the approval? If so, was she required to use this record to report on what she had and to whom?

Budget appropriations for the Community Sports Infrastructure Grants Program

The funding for the Community Sports Infrastructure Grants Program is listed in the Portfolio Budget Statements 2019–20 for the Infrastructure, Regional Development and Cities Portfolio⁹. It forms part of the Program 3.1 – The regional development program which

'... supports regional development and local communities through regionally focused stakeholder consultation and engagement, research, policy development and program delivery activities to create jobs, drive regional economic growth and build stronger regional communities.'

According to the Portfolio Budget Statement, Program 3.1 will *'... deliver projects which:*

- *support the economic growth and liveability of regions*
- *develop options and provide policy advice on developing regional Australia, including on: – enabling communities to drive their own future – building more resilient local economies'*

In the light of these objectives and goals, I find it rather curious that such large amounts of funding and numbers of grants were made to projects in capital cities such as Sydney and Melbourne, neither of which would be regarded as regional Australia or even as a regional city¹⁰. The list of recipients for all three rounds for New South Wales and Victoria include:

- a large number of metropolitan municipal councils, many of which received grants of up to \$500, 000;
- many sporting clubs located in metropolitan areas which received amounts ranging from around \$35, 000 up to \$500, 000;
- organisations that appear to be private interests with the potential for substantial personal enrichment beyond that available to the community in general.

⁹ https://www.infrastructure.gov.au/departments/statements/2019_2020/budget/files/2019-20_PBS_DIRDC.pdf

¹⁰

https://www.sportaus.gov.au/grants_and_funding/community_sport_infrastructure_grant_program/successful_grant_recipient_list#?state=NSW&round=

In New South Wales, the list includes local councils such as Penrith, Woollahra, Blacktown, Randwick, Burwood, Inner West, North Sydney, Canterbury-Bankstown, Fairfield, and Northern Beaches. In Victoria, the list includes Banyule, Brimbank, Glen Eira, Hobson Bay, Monash, Moreland, Kingston, Knox, and Moonee Valley.

A significant number of sporting clubs receiving grants are based in metropolitan areas of Sydney and Melbourne. Sydney suburbs include St George, Vaucluse, Liverpool, Parramatta, Hunters Hill, Mosman, Pennant Hills and Sans Souci. Melbourne suburbs receiving grants include Aspendale, Camberwell, Hawthorn, Strathmore, Bundoora, Fitzroy, Footscray, Kew, Murrumbeena and Box Hill.

This review has significant implications for Australian democracy and fairness with which Australian citizens are treated. Access to resources through grants programs such as this can have a substantial impact on the levels of equality that characterise our society. It also points to the constant need for vigilance on the potential for corruption that can occur when sectional interests are allowed to influence decision making.

Joy Mettam