



Our ref: PuLC:JvdPvk111122

11 November 2022

Committee Secretary
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
Canberra, ACT, 2600

By email: jcpaa@aph.gov.au

Dear Committee Secretary,

Inquiry into Commonwealth Grants Administration

The Law Society of NSW provides this brief submission to bring to the attention of the Joint Committee of Public Accounts and Audit (**JCPAA**) recent relevant developments in NSW in respect of the administration of grants. Most relevantly to this inquiry, the NSW Independent Commission Against Corruption has made public its *Report on Investigation into Pork Barrelling in NSW*¹ (**ICAC Report**). The ICAC Report found that pork barrelling could constitute corrupt conduct (as defined in NSW) in certain circumstances, and makes a number of recommendations to help prevent or better regulate the practice.

Under its terms of reference, this inquiry is to have particular regard to possible changes to the *Commonwealth Grants Rules and Guidelines 2017*² (**CGRGs**).

The Law Society notes that the CGRGs contain a number of requirements that apply to Ministers. These include grants-related decision-making and reporting requirements, in addition to the legislative requirements that apply where a Minister approves proposed expenditure (paragraph 1.3).

Paragraph 4.11 specifically provides that Ministers may approve grants within their own electorate and paragraph 4.12 provides that Ministers may approve grants that are not recommended by the relevant officials.

Under paragraph 5.2 grant opportunity guidelines need not be made publicly available on GrantConnect, if there is a "specific policy reason" to not publicise the grant opportunity guidelines, or grants are provided on a one-off or ad hoc basis.

¹ NSW Independent Commission Against Corruption, *Report on Investigation into Pork Barrelling in NSW*, August 2022, online <<https://www.icac.nsw.gov.au/investigations/past-investigations/2022/investigation-into-pork-barrelling--operation-jersey->>>.

² Australia, Department of Finance, *Commonwealth Grants Rules and Guidelines 2017* online <<https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>>.

Under paragraph 5.7, where officials assess that publishing grant information in accordance with the CGRGs could adversely affect “the achievement of government policy outcomes”, the responsible Minister may seek an exemption from the Minister for Finance.

In our view, these aspects of the CGRGs should be examined closely, particularly in light of the ICAC Report, and together with the JCPAA’s findings in respect of the rest of the terms of reference. We suggest that these CGRG provisions can affect transparency and accountability in the grant decision-making process, and may provide the kind of latitude that might be exploited to result in the maladministration of grants.

As has been the NSW experience, we suggest that better integrity outcomes in respect of government administration can be achieved not only by addressing consequences of corruption or maladministration, but by putting in place measures that are directed towards transparency, accountability, prevention and building a culture of good administration and corruption-resistance. We note particularly the recommendations in the ICAC Report directed at establishing a cross-agency oversight mechanism (“cross-agency Community of Practice”) and that this mechanism be tasked with the development of certain templates and guidance, as well as the identification of mechanisms of determining and managing situations where a Minister is in a position to award, or influence the award of, grants in their own electorate.

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Yours sincerely,

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Joanne van der Plaats
President