

## Chapter 3

### The decision to fund the Foundation Partnership

3.1 This chapter considers the decision-making processes in relation to funding the Foundation Partnership. The last chapter suggested that there was no consultation with the Foundation itself, before this measure was proposed to it by members of the executive on 9 April 2018. Evidence considered in this chapter also indicates that the Commonwealth undertook no consultation with important stakeholders in the Reef sector, particularly its partner in the Reef 2050 Plan, the Queensland Government, and government agencies that are funded by the public to maintain expertise and good management practice in Reef research and programs.

3.2 Lastly, this chapter examines other irregularities in the probity of the decision, looking at the limited evidence for due diligence being undertaken on the Foundation before the decision was made to award it an unprecedented Commonwealth grant of \$444 million.

3.3 The committee notes that many of the issues canvassed in this chapter were canvassed by the Australian National Audit Office audit. The findings of that audit largely concur with this committee's findings, as is discussed elsewhere in this report.

#### Initial consideration of funding for the Reef

3.4 The department provided a summary of the initial consideration and approval of the Partnership Grant. This suggested that the Government had been looking to develop Reef-related proposals for consideration from 2017:

There was extensive engagement with Commonwealth agencies in the development of the options by the [Interdepartmental Taskforce led by the department that was established on 15 May 2017].

The Government first considered Reef-related proposals as part of the 2017–18 Mid-Year Economic and Fiscal Outlook process. The Government's decisions were announced by the then Prime Minister, the Hon Malcolm Turnbull MP, on 22 January 2018.

Minister Frydenberg took two submissions to the Expenditure Review Committee in March 2018, as part of the 2018–19 Budget process, to address the pressures facing the Great Barrier Reef.<sup>1</sup>

3.5 The Hon Malcolm Turnbull, then Prime Minister, told the committee that these proposals were rejected by the Expenditure Review Committee (ERC) on

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1 The announcement made on 22 January 2018 is outlined in the previous chapter. See also Department of the Environment and Energy, *Submission 7*, Supplementary Submission Attachment B (Information statement regarding the assessment and awarding of the Reef Trust Grant to the Great Barrier Reef Foundation), p. 1.

6 March 2018, and that the then Minister for the Environment was charged with developing a new approach:

On 6 March 2018 the Expenditure Review Committee of Cabinet considered a Portfolio Budget Submission from the then Minister for Energy & Environment proposing two options for additional funding to support the health of the Reef. One was partially offset and over 6 years, the other was smaller and fully offset over two years.

The ERC resolved that an alternative proposal be brought forward to create a tied reef fund, with a partner outside the general government sector, to be funded in 2017/18 for activities to be agreed with the Commonwealth, with appropriate governance arrangements.<sup>2</sup>

3.6 Mr Turnbull noted that this approach was favoured by the then Treasurer, the Hon Scott Morrison MP, and the Minister for Finance, Senator the Hon Mathias Cormann:

This approach was taken because the Treasurer and Finance Minister were open to funding a substantial package for the Reef *so long as it was expensed in 2017/18*. This was because Government revenues were promisingly strong in 2017/18 and they believed the Budget in that year could accommodate the substantial investment proposed for the Reef. However, that may not be so in subsequent years. This was the reason why a partner *outside the Commonwealth Government* sector was sought; it also brought with it the possibility of leveraging the Commonwealth's contribution with private sector contributions.<sup>3</sup>

The arrangement allowed the Government to book the grant expenditure in one year, 2017/18, notwithstanding that the investment of the funds in the various reef projects by the GBRF would take place over a period of six years.<sup>4</sup>

3.7 Mr Turnbull stated that Mr Frydenberg brought a new proposal for the Foundation Partnership to an ERC meeting on 28 March 2018:

Following that decision a new submission prepared by the Department of Environment and Energy recommending a grant of \$443 million to the Great Barrier Reef Foundation was circulated and presented by the (then) Minister to the ERC on 28 March 2018 in the usual way.<sup>5</sup>

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2 The Hon Malcolm Turnbull, *Answers to written questions taken on notice* (received 1 October 2018), p. 1.

3 The Hon Malcolm Turnbull, *Answers to written questions taken on notice* (received 1 October 2018), p. 1.

4 The Hon Malcolm Turnbull, *Answers to written questions taken on notice* (received 1 October 2018), p. 1.

5 The Hon Malcolm Turnbull, *Answers to written questions taken on notice* (received 1 October 2018), p. 1.

3.8 The timeline of the decision to fund the Foundation Partnership provided by Mr Frydenberg to the House of Representatives illustrates the speed at which the measure was developed by the department and Foundation, and approved by the executive:

Following ERC agreement [on 28 March 2018], an interdepartmental committee was established to progress this proposal, and I was given authority to approach the foundation, which occurred on 9 April, to determine whether they were interested in entering into a partnership for the benefit of the reef...subject to the successful negotiation of a partnership agreement and final phase of due diligence.<sup>6</sup>

3.9 The department submitted that it led the establishment of an interdepartmental committee (IDC) in April 2018 'to provide advice on the assessment and approval of the grant to the Foundation'. The IDC held five meetings between April and July 2018, which were not formally minuted. These meetings, the department stated:

...included staff from the Department, the Department of the Prime Minister and Cabinet, the Department of Finance and Treasury.

The IDC used a short standing agenda covering the status of grant agreement negotiations, ministerial approvals and communications. The Department provided verbal updates at these meetings as a basis for discussion. No formal minutes were taken.<sup>7</sup>

3.10 The committee sought further evidence from the department, as well as from the Department of Finance and the Treasury, as to whether they had been consulted on early proposals for \$444 million in funding delivered through the Foundation Partnership. All departments declined to provide evidence on the initial development of the Partnership, citing cabinet-in-confidence conventions.<sup>8</sup>

3.11 In giving this evidence, a Treasury official suggested that, whereas the Foundation Partnership had gone through the cabinet process, smaller grants such as the \$5 million awarded to the Foundation were not necessarily submitted to cabinet:

...often the administration of grants don't go through cabinet, they're part of the administration of a program. They typically don't go through cabinet.<sup>9</sup>

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6 The Hon Josh Frydenberg MP, Minister for the Environment and Energy, *House of Representatives Hansard*, 13 August 2018, p. 6981.

7 Department of the Environment and Energy, *Submission 7*, Supplementary Submission, p. 6.

8 See Mr Finn Pratt AO PSM, Secretary, Department of the Environment and Energy, *Committee Hansard*, 21 September 2018, p. 67; Mr David Fredericks, Deputy Secretary, Budget and Financial Reporting, Department of Finance, *Committee Hansard*, 21 September 2018, pp. 38–39; and Ms Meghan Quinn, Deputy Secretary, Treasury, *Committee Hansard*, 21 September 2018, p. 54.

9 Ms Meghan Quinn, Deputy Secretary, Treasury, *Committee Hansard*, 21 September 2018, p. 52.

### *The choice of the Foundation*

3.12 The Partnership has been described by the Government as 'the largest ever single investment' in protecting the Reef.<sup>10</sup> Given the level of funding involved, one of the key areas of focus for this inquiry is why a charity has been selected to administer funding rather than a Commonwealth entity, such as the department, CSIRO or one of the Commonwealth agencies dedicated to the Reef (Great Barrier Reef Marine Park Authority (GBRMPA) and Australian Institute of Marine Science (AIMS)).

3.13 Regarding the choice of the Foundation, Mr Turnbull commented to the committee:

As to why the GBRF was recommended by the Department of the Environment and Energy (as opposed to another organisation) you should inquire of the Department. But it was plainly a reputable organisation with a track record in Reef research and support with whom the Department had previously worked and in which it had confidence.<sup>11</sup>

3.14 On why GBRMPA was not selected to administer the funding, the Minister representing the Minister for the Environment and Energy in the Senate explained that this is because the Partnership goes beyond GBRMPA's responsibilities.<sup>12</sup> Mr Dean Knudson, a Deputy Secretary at the department, added that GBRMPA has 'a very specific role' as a park manager and AIMS 'is a science entity', whereas the Partnership is 'about on-the-ground project delivery, in which the Great Barrier Reef Foundation has extensive experience'.<sup>13</sup>

3.15 The department set out some of the qualities of the Foundation that led to the establishment of the Partnership:

- a. its track record in leveraging philanthropic support as Australia's leading reef-dedicated charity.
- b. its decade of experience in working effectively with the Department and a diverse range of Reef stakeholders to manage Commonwealth and State funding to develop, manage and deliver projects to support the Reef.

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10 The Hon Malcolm Turnbull MP, Prime Minister; The Hon Julie Bishop MP, Minister for Finance; The Hon Josh Frydenberg MP, Minister for the Environment and Energy; The Hon Melissa Price MP, Assistant Minister for the Environment, 'Record investment in the Great Barrier Reef to drive jobs', *Joint Media Release*, 29 April 2018.

11 The Hon Malcolm Turnbull, *Answers to written questions taken on notice* (received 1 October 2018), p. 1.

12 Senator the Hon Simon Birmingham, Minister for Education and Training, *Senate Environment and Communications Legislation Committee Hansard*, Budget Estimates 2018–19, 21 May 2018, p. 32.

13 Mr Dean Knudson, Deputy Secretary, Environment Protection Group, Department of the Environment and Energy, *Senate Environment and Communications Legislation Committee Hansard*, Budget Estimates 2018–19, 21 May 2018, pp. 31 and 56.

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- c. the first phase of due diligence conducted by the Department which considered the Foundation's governance, structure, constitution, project management, fundraising history, capacity for growth, board composition and scientific experience.<sup>14</sup>

3.16 In other documentation supporting the Partnership measure, the department has highlighted further reasons for the Foundation being chosen to administer such a sizeable Commonwealth grant, including because it:

- is a not-for-profit organisation established in 2000 to raise funds to protect and preserve the Great Barrier Reef
- has a strong track record of fundraising
- works effectively with the diverse range of relevant stakeholders to deliver actions to support the Reef 2050 Plan
- has a well-established track record of efficiently developing and managing projects for a range of funding bodies to deliver outcomes for the Great Barrier Reef
- has sound corporate governance, with its board having a number of current and former CEOs, Chairs and executive officers of some of Australia's largest companies
- is familiar with government requirements and expectations, and has a solid track record in managing funding from Commonwealth and state government sources.<sup>15</sup>

3.17 The Foundation also put forward reasons as to why it had been chosen to receive the grant. Ms Marsden stated:

In my opinion, there are two key reasons why we are uniquely placed to turn this money into real outcomes for the reef. The first is that we have the demonstrated ability to leverage money and to drive collaboration at a global level. The second is that, through projects like Raine Island and the many others we've delivered over the years, we have a proven and global reputation for carefully targeting problems, designing solutions and working with the right people to get results. What we have been asked to do with this grant is exactly what we have been doing for the last 17 years. I'm very confident that the Great Barrier Reef Foundation can turn this funding into action in time for it to make a difference.<sup>16</sup>

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14 Department of the Environment and Energy, *Submission 7*, Supplementary Submission Attachment B (Information statement regarding the assessment and awarding of the Reef Trust Grant to the Great Barrier Reef Foundation), p. 2.

15 Department of the Environment and Energy, *Reef Trust–Great Barrier Reef Foundation Partnership Grant Guidelines*, 2018, [www.environment.gov.au/system/files/resources/7d29a273-1e90-4cdf-ae7b-5bb7fb8745dd/files/reef-trust-gbrf-partnership-grant-guidelines.pdf](http://www.environment.gov.au/system/files/resources/7d29a273-1e90-4cdf-ae7b-5bb7fb8745dd/files/reef-trust-gbrf-partnership-grant-guidelines.pdf) (accessed 21 June 2018), p. 5.

16 Ms Anna Marsden, Managing Director, Great Barrier Reef Foundation, *Committee Hansard*, 30 July 2018, pp. 39–40.

3.18 There have been some reports that early advice to government advocated for the grant to be awarded to an established Commonwealth agency. In hearings, relevant departments were unable to comment on this assertion.<sup>17</sup>

### **A lack of consultation with Reef stakeholders**

3.19 The previous chapter established that the Foundation was unaware of the proposal for a \$444 million Partnership before it was approached on 9 April 2018. This section sets out the evidence showing a lack of consultation with other key stakeholders, including the Queensland Government, the Commonwealth's partner in the Reef 2050 Plan. It also appears that the Government's own agencies with policy, program delivery and research expertise in the Reef were not aware of the proposal until it had already been decided by the Government. This appears to have created a degree of uncertainty in their planning and operations.

#### ***The Queensland Government***

3.20 The Queensland Government expressed disappointment that a Commonwealth agency had not been given the responsibility of disbursing new funding for the Reef. It advised that it was not consulted on the Partnership and 'was only advised on the day of the announcement'.<sup>18</sup>

#### ***Great Barrier Reef Marine Park Authority***

3.21 The Chairman of GBRMPA at the time of the 2018–19 Budget, Dr Russell Reichelt (also a Director on the Foundation's Board), advised the committee in Estimates that he became aware of the Government's decision only a 'few weeks before' the Prime Minister's announcement of the Partnership on 29 April 2018.<sup>19</sup> At a later hearing, Dr Reichelt told the committee that:

By the time that amount was known and the direction of those funds was known, the decision had already been made—it was well into the planning for the announcement. In other words, there wasn't a period where I knew about it before the decision was taken to do it.<sup>20</sup>

3.22 Dr Reichelt indicated that the Foundation was approached by the Government about the potential Partnership 'within a couple of days' of him being made aware of

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17 For example, see Ms Meghan Quinn, Deputy Secretary, Treasury, *Committee Hansard*, 21 September 2018, p. 54; and Mr David Fredericks, Deputy Secretary, Budget and Financial Reporting, Department of Finance, *Committee Hansard*, 21 September 2018, p. 38.

18 Queensland Government, *Submission 9*, p. 1.

19 Dr Russell Reichelt, Chairman, Great Barrier Reef Foundation, *Senate Environment and Communications Legislation Committee Hansard*, Budget Estimates 2018–19, 21 May 2018, p. 51.

20 Dr Russell Reichelt, Chairman, Great Barrier Reef Foundation, *Committee Hansard*, 30 July 2018, p. 26.

the measure in his GBRMPA capacity.<sup>21</sup> The committee notes that this lack of awareness is despite the involvement of GBRMPA in the departmental taskforce that was responsible for developing proposals for consideration by the Government from mid-2017.<sup>22</sup> The committee also notes that a request to GBRMPA made under FOI legislation produced no documents relating to Commonwealth consultation prior to the Partnership being announced on 29 April 2018.<sup>23</sup>

## **CSIRO**

3.23 The Chief Executive of CSIRO, Dr Larry Marshall, who is a member of the Foundation's Chairman's Panel and had attended all of its meetings from 2015 onwards, explained that he became aware of the Partnership 'probably the weekend before the announcement' following 'a rumour that I heard'.<sup>24</sup>

3.24 Emails provided by CSIRO pursuant to the order for production of documents the Senate agreed to on 20 June 2018 (notice of motion no. 857) do not discuss any aspect of the Foundation, until the morning of 29 April 2018, the day the partnership was announced.<sup>25</sup>

3.25 A series of emails from Monday 30 April 2018, the day after the measure was announced, include comments indicating that CSIRO executives were unprepared for the Foundation Partnership. For example, an email written by the Chief Operating Officer, Ms Hazel Bennett, to CSIRO executives, including Dr Peter Mayfield, the Executive Director for Environment, Energy and Resources, stated that:

Early call between Peter and I—we didn't have visibility....seems to have involved the PM's office....funding went to the Great Barrier Reef

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- 21 After the Foundation was approached by the Government to discuss the policy, Dr Reichelt recused himself from Foundation Board's consideration of the matter. Dr Russell Reichelt, Chairman, Great Barrier Reef Marine Park Authority, *Senate Environment and Communications Legislation Committee Hansard*, Budget Estimates 2018–19, 21 May 2018, pp. 53–54.
- 22 Department of the Environment and Energy, *Submission 7*, Supplementary Submission Attachment B (Information statement regarding the assessment and awarding of the Reef Trust Grant to the Great Barrier Reef Foundation), p. 1.
- 23 See, for example: The Hon Tony Burke MP, 'FOI reveals more confusion on the government's Great Barrier Reef Cash Splash', *Media Release*, [www.tonyburke.com.au/media-releases/2018/6/21/media-release-foi-reveals-more-confusion-on-the-governments-great-barrier-reef-cash-splash](http://www.tonyburke.com.au/media-releases/2018/6/21/media-release-foi-reveals-more-confusion-on-the-governments-great-barrier-reef-cash-splash) (accessed 26 November 2018).
- 24 Dr Larry Marshall, Chief Executive, CSIRO, *Senate Economics Legislation Committee Hansard*, Budget Estimates 2018–19, 31 May 2018, p. 169.
- 25 CSIRO, Documents Produced pursuant to the Senate Order agreed on 20 June 2018 (notice of motion no. 857), Document 1.

Foundation...team will make calls this morning to see what else they can find.<sup>26</sup>

3.26 Similarly, an early morning email sent on 30 April 2018, from Dr Mayfield to Dr Christian Roth, Senior Principal Research Scientist with CSIRO, describes a 'mad scramble' for information for the Board about the Foundation Partnership, a degree of uncertainty about existing connections between the Foundation and CSIRO, and a suggestion that CSIRO's Chief Executive 'may not have known' about the measure before it was announced.<sup>27</sup>

3.27 An email sent the evening of 30 April 2018 from the Chief Executive of CSIRO, Dr Marshall, gives some information for the Board. This suggests that the CSIRO has an 'excellent relationship' with the Foundation, both through Dr Marshall's membership at the 'Chairman's level' and the eReef's program, as well as Dr Roth's membership of the Foundation's International Science Advisory Committee (ISAC). Dr Marshall also hinted at the speed with which this proposal was put together, and the lack of consultation that occurred with AIMS:

It appears AIMS was not anticipating the development, which only emerged over the last 4–6 weeks, as the budgetary windfall became evident to the Govt, and the full-scale [new policy proposal] developed last year by the [department] was brought forward to the coming [financial year].<sup>28</sup>

### *Australian Institute of Marine Science*

3.28 Dr Paul Hardisty, Chief Executive Officer, Australian Institute of Marine Science, was informed by the department about the Foundation Partnership on 24 April 2018, just a few days before the policy was announced.<sup>29</sup>

3.29 Apart from this contact with the Chief Executive Officer, it seems that prior to the announcement of the Foundation Partnership on 29 April 2018, senior AIMS officials had no awareness that a funding mechanism was being considered that would see Commonwealth funds being disbursed by a private organisation.<sup>30</sup>

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26 CSIRO, Documents Produced pursuant to the Senate Order agreed on 20 June 2018 (notice of motion no. 857), Document 9, p. 1.

27 CSIRO, Documents Produced pursuant to the Senate Order agreed on 20 June 2018 (notice of motion no. 857), Document 10, p. 1.

28 CSIRO, Documents Produced pursuant to the Senate Order agreed on 20 June 2018 (notice of motion no. 857), Document 12, p. 1.

29 Department of the Environment and Energy, FOI 180514, Documents 19, p. 1 and 22.

30 See evidence given by Mr David Mead, Executive Director Strategy and Development, Australian Institute of Marine Science and Dr Paul Hardisty, Chief Executive Officer, Australian Institute of Marine Science, *Committee Hansard*, 21 September 2018, pp. 29 and 30 respectively.

3.30 It is clear in evidence received by the committee that the lack of prior consultation introduced substantial uncertainty for AIMS. For example, an internal AIMS email from 30 April, the day after the announcement was made, indicates a degree of confusion about implications for AIMS funding, as well as to why AIMS had no visibility of such a significant announcement:

Hoping we can get a briefing today on what the funding means and so we can have a Comms plan if/when we are approached by media...It seems GBRMPA, GBRF and JCU were aware of the announcement, but I notice that AIMS was not named in the ministerial release. It would be good for the Comms team to have an understanding of whether this is part of a strategy ie; we want to lead the project quietly in the background or, if it was out of our hands ie: political. I hate to think we were not in the loop on it.<sup>31</sup>

3.31 At the AIMS council meeting held over 4 and 5 June 2018, an item on the agenda outlined the ongoing uncertainty this announcement had for AIMS at a senior level, even well after the announcement of the grant:

We have been told that this is funding for the next phase of our current RRAP project, although we have no guarantees that GBRF will honour the results and guidance of the feasibility study and the current RRAP consortium. We are working hard with the DoEE, DIIS, and the GBRF to ensure that the foundation does not try to 'reinvent the wheel', or apply another level of management and decision-making to the process, but we have no clarity at the moment of where this will land. At the most recent GBRF Chairman's weekend (which I attended) it was clear that the reef restoration area will be the focus of the foundation's fundraising efforts. We understand, verbally, that the idea is to leverage the government's \$100m with \$100m from philanthropists and industry, and another \$100m from research providers. Funds are to be spent over 6 years at most. The good news is that the money is there. The bad news is that there is no certainty that AIMS will get any of it. We are working hard to position ourselves and to ensure the current RRAP offers the strongest R&D strategy.<sup>32</sup>

### **Lack of evidence of due diligence in the Government's decision**

3.32 The department indicated that as part of the grant evaluation process, a due diligence review was undertaken, to ascertain whether there were any issues that would preclude the Foundation from receiving the grant.<sup>33</sup>

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31 Australian Institute of Marine Science, Documents Produced pursuant to the Senate Order agreed on 15 August 2018 (notice of motion no. 954), Document 3, p. 1.

32 Australian Institute of Marine Science, Documents Produced pursuant to the Senate Order agreed on 15 August 2018 (notice of motion no. 954), Document 56, p. 2.

33 Mr Dean Knudson, Deputy Secretary, Environment Protection Group, Department of the Environment and Energy, *Committee Hansard*, 30 July 2018, p. 62. See also Mr Finn Pratt AO PSM, Secretary, *Committee Hansard*, 21 September 2018, p. 61.

3.33 While the department described the due diligence process both before and after the announcement of the grant as 'extensive',<sup>34</sup> there is in fact very little available evidence to establish whether or not appropriate due diligence was undertaken by the Commonwealth to grant the Foundation a much larger amount of funding—nearly half a billion dollars—before the decision to do so was made on 9 April 2018.

*Due diligence prior to the award of the \$444 million grant*

3.34 Mr Finn Pratt AO PSM, Secretary of the department, outlined the process that had been undertaken in approving the Foundation for funding under the Partnership. He commented that this process had been undertaken without the knowledge of the Foundation itself—at least until it had accepted the Government's proposal for the Partnership Agreement following the 9 April meeting. Mr Pratt stated:

There is much interest in due diligence. The former minister explained to the House that the department did a first phase of due diligence as part of the cabinet process. This included looking at the foundation's constitution, structure, governance, board composition, project management, scientific expertise, fundraising history and capacity for growth. It is incorrect to assume that because the foundation was unaware of the department's due diligence work that no due diligence took place before the offer to the foundation was made...Indeed, it would have been inappropriate for the department to tell the foundation about the due diligence work, as this was part of the budget process.<sup>35</sup>

3.35 The department indicated that documents it released under FOI requests support the suggestion that the 'first phase of due diligence' was being undertaken in early March. These documents include a note outlining some high level observations of a meeting on 8 March 2018 between departmental officials and Ms Marsden of the Foundation.<sup>36</sup> Ms Marsden commented that the Foundation also supplied due diligence documents to the department on 28 May 2018 to support their application for this smaller grant, including two years of financial records.<sup>37</sup>

3.36 The department stated that Ms Marsden assumed that the meeting and requirement for documentation had been solely related to Foundation's application for the smaller \$5 million grant.<sup>38</sup> Indeed, Ms Marsden echoed this perception to the

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34 Mr Finn Pratt AO PSM, Secretary, Department of the Environment and Energy, *Committee Hansard*, 21 September 2018, p. 65.

35 Mr Finn Pratt AO PSM, Secretary, Department of the Environment and Energy, *Committee Hansard*, 21 September 2018, p. 61.

36 Mr Stephen Oxley, First Assistant Secretary, Heritage, Reef and Marine Division, Department of the Environment and Energy, *Committee Hansard*, 21 September 2018, p. 63.

37 Ms Anna Marsden, Managing Director, Great Barrier Reef Foundation, *Committee Hansard*, 18 September 2018, p. 14.

38 Mr Stephen Oxley, First Assistant Secretary, Heritage, Reef and Marine Division, Department of the Environment and Energy, *Committee Hansard*, 21 September 2018, p. 63.

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committee, suggesting the department had conducted due diligence on the Foundation for the \$444 million grant 'without our knowledge, in March [2018]'.<sup>39</sup>

3.37 In relation to the 8 March 2018 meeting, the department commented:

What we've said is that we've been involved with the foundation for quite some time to make sure that they have appropriate governance on project delivery...The note that you're referring to is from early discussions with the foundation where, quite frankly, we were very much trying to get a sense of how they operated at that time, and it does not necessarily reflect on how they will be managing these grants going forward.<sup>40</sup>

*Due diligence after the award of the \$444 million grant*

3.38 Mr Pratt outlined the full due diligence process carried out following the award and announcement of the Foundation Partnership. He noted that the department developed grant guidelines consistent with the Commonwealth Grant Rules and Guidelines. Following the submission of the Foundation's proposal responding to these guidelines on 29 May 2018, the department evaluated the proposal, including whether it adequately addressed the guidelines, whether it represented value for money, whether the Foundation had the capacity to upscale in order to deliver on time and on budget, the risks associated with successfully delivering the grant and the proposed mitigations. Mr Pratt added that the Australian Government Solicitor undertook a detailed due diligence review, which was provided on 8 June 2018. Mr Pratt concluded:

The department sought approval from the former minister in accordance with section 71 of the [*Public Governance, Performance and Accountability Act 2013* (PGPA Act)] based on its evaluation that the grant to the foundation represented an efficient, effective and ethical use of Commonwealth funds on 15 June. A comprehensive grant agreement was developed with the support of the Australian Government Solicitor and executed on 27 June.<sup>41</sup>

3.39 Pursuant to the order for the production of documents agreed to by the Senate on 21 August 2018 (notice of motion no. 978), the department provided documents to demonstrate the due diligence processes that it undertook in relation to the award of

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39 Ms Anna Marsden, Managing Director, Great Barrier Reef Foundation, *Committee Hansard*, 18 September 2018, p. 14.

40 Mr Dean Knudson, Deputy Secretary, Environment Protection Group, Department of the Environment and Energy, *Committee Hansard*, 21 September 2018, p. 64.

41 Mr Finn Pratt, Secretary, Department of the Environment and Energy, *Committee Hansard*, 21 September 2018, pp. 61–62.

the Partnership grant 'that were considered by the Minister in approving the grant'.<sup>42</sup> These documents include:

- an information statement explaining the assessment and awarding of the grant;
- a compliance table;
- a Proposal Evaluation; and
- an index to the due diligence report prepared by the Australian Government Solicitor.

3.40 The Compliance Table sets out the mandatory requirements that the grant was subject to, including the PGPA Act, the PGPA Rule, and the Commonwealth Grant Rules and Guidelines, as well as the conditions of the Partnership Grant itself.<sup>43</sup>

3.41 In the Proposal Evaluation, the department noted that the Foundation had identified 'potential risks and constraints to Partnership delivery', but 'demonstrated it has the capacity to manage these in an effective and adaptive manner'.<sup>44</sup> These included a number of areas for work, including that:

- 'The Foundation has recognised the need to expand its organisational capacity in order to deliver all five components of the Partnership and is progressing measures to address this';
- 'The Foundation is also seeking expert advice to inform transition requirements' including engaging consultants to evaluate its capacity, program design, innovation support, key stakeholder markets, and 'a Leadership Coach and Human Resources Consultant';
- 'There is however a need for the organisation to expand experience/skills relevant to four out of the five partnership outcomes' including water quality improvement, [Crown of Thorn Starfish] COTS control, Indigenous and Community Reef Protection Actions and Integrated Monitoring and Reporting;
- 'The Foundation has not delivered a grant of this scale before', although noting its ability to leverage support in upscaling its operations; and
- 'The only 'perceived' conflict of interest identified by the Foundation is that Dr Russell Reichelt, a Director of the Foundation, is the Chairman and Chief

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42 Department of the Environment and Energy, Documents Produced pursuant to the Senate Order agreed on 21 August 2018 (notice of motion no. 978), Cover Letter from the Hon. Simon Birmingham, Minister for Trade, Tourism and Investment, p. 1.

43 Department of the Environment and Energy, Documents Produced pursuant to the Senate Order agreed on 21 August 2018 (notice of motion no. 978), Attachment A2 (Compliance Table), p. 1.

44 Department of the Environment and Energy, Documents Produced pursuant to the Senate Order agreed on 21 August 2018 (notice of motion no. 978), Attachment A3 (Proposal Evaluation), p. 1.

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Executive of [GBRMPA], which is a potential recipient of grant funding', which will be managed through the Foundation's existing procedures.<sup>45</sup>

3.42 The Compliance Table notes that the department's risk assessment found that the grant 'Proposal is adequate for this stage of planning'. It also found that the Foundation had identified appropriate 'controls and treatments' for the following risks:

...inability to quickly scale up the Foundation's delivery capacity; loss of local delivery capacity and momentum; work health and safety compliance; misinformation occurring due to inadequate communication from the Foundation; managing stakeholder expectations; legal and regulatory risk; break-down of partnerships; and inadequate delivery.<sup>46</sup>

3.43 The Department of Finance confirmed that these documents provided evidence that the department had undertaken appropriate risk assessment and due diligence on the Foundation Partnership:

It's an obligation of all agencies, grant-giving or otherwise, to assess risks in the activity they undertake. I note that the Department of the Environment has provided a supplementary submission, dated 10 September, where they actually provide some of the processes and steps that they went through, including how they have gone through and assessed risk. So, yes, there are obligations on all departments to assess and manage risk, and the Department of the Environment has provided that information in this case.<sup>47</sup>

3.44 The committee notes that all these checks on the Foundation were carried out following the announcement of the \$444 million grant.

### **The use of a grant mechanism to award funding**

3.45 The Grant Agreement executed on 27 June 2018 between the Commonwealth and the Foundation is available in full on the department's website. The introduction to the Agreement on the departmental website includes a statement about the Commonwealth's grants process:

Grants are widely used to achieve government policy objectives, involving the payment of billions of dollars each year to the non-government sector. Grants provide significant benefits to many Australians, through the Government working in partnership with individuals and organisations to deliver outcomes for the Australian public.

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45 Department of the Environment and Energy, Documents Produced pursuant to the Senate Order agreed on 21 August 2018 (notice of motion no. 978), Attachment A3 (Proposal Evaluation), pp. 1, 3, 5, 7, 11 and 19–20.

46 Department of the Environment and Energy, Documents Produced pursuant to the Senate Order agreed on 21 August 2018 (notice of motion no. 978), Attachment A3 (Proposal Evaluation), p. 10.

47 Dr Stein Helgeby, Deputy Secretary, Governance and APS Transformation, Department of Finance, *Committee Hansard*, 21 September 2018, p. 39.

The Commonwealth Grants Rules and Guidelines 2017 (CGRGs) establish the Commonwealth grants policy framework. The CGRGs contain the key legislative and policy requirements, and explain the better practice principles of grants administration.

In accordance with the CGRGs, a tailored grant agreement has been developed and executed between the Department of the Environment and Energy and the Foundation. It establishes the grounds for an effective working relationship based on collaboration and respect and a shared understanding of objectives and expectations.<sup>48</sup>

3.46 The department informed the committee that the development of the Grant Agreement had adhered to all appropriate Commonwealth requirements:

In establishing the grant, the department undertook a grant assessment process, in line with the Commonwealth Grants Rules and Guidelines. This included: developing grant guidelines specifying the intended outcomes and requirements; secondly, assessing the foundation's proposal, responding to the grant guidelines, to ensure that it represented value for money; thirdly, a due diligence review, to ascertain whether there were any issues that would preclude the foundation from receiving the grant; and then, finally, seeking the approval of the Minister for the Environment and Energy that the funding proposals represented an efficient, effective, economic and ethical use of Commonwealth funds. I would note that the funding agreement was developed with the full support of the Australian Government Solicitor.<sup>49</sup>

3.47 The department went on to describe the Grant Agreement as 'robust and comprehensive' and provided a brief overview of the Grant's conditions and oversight mechanisms:

It specifies the delivery, which must be consistent with the goals of the Reef 2050 Plan...mentioned earlier, and that close consultation is required with the department but also our 2050 partners. That includes the Great Barrier Reef Marine Park Authority and the Queensland government, as well as the reef advisory bodies, which include the independent expert panel and the Reef 2050 Advisory Committee. The agreement includes a detailed planning and design process in the early stages, to ensure the foundation is able to build its resources, manage risk and attract co-investment, and also to engage with stakeholders and to monitor and evaluate outcomes, and you've just had some testimony to that effect. An annual investment strategy and annual work plan will be developed in consultation with those

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48 Grant Agreement Between the Reef Trust and Great Barrier Reef Foundation, [www.environment.gov.au/marine/gbr/publications/grant-agreement-between-reef-trust-and-great-barrier-reef-foundation](http://www.environment.gov.au/marine/gbr/publications/grant-agreement-between-reef-trust-and-great-barrier-reef-foundation) (accessed 9 November 2018).

49 Mr Dean Knudson, Deputy Secretary, Environment Protection Group, Department of the Environment and Energy, *Committee Hansard*, 30 July 2018, p. 62.

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key agencies and advisory bodies, and you've heard that that will all be made public.<sup>50</sup>

3.48 There are also oversight mechanisms in the Agreement. This includes six-monthly reporting, as well as a Commonwealth observer position on the Foundation's Board, and a departmental representative on the partnership management committee established by the Foundation.<sup>51</sup>

***The use of a grant mechanism rather than an open tender process***

3.49 The committee received evidence that raised concerns about the categorisation of the Foundation Partnership as a grant, rather than being awarded subject to the Commonwealth's more stringent procurement framework. Some stakeholders argued that adherence to the Commonwealth Procurement Rules and Guidelines—rather than grant processes—would have ensured that greater due diligence was undertaken in awarding Reef-related funding, and much more transparency in Commonwealth decision making processes.<sup>52</sup>

3.50 The Queensland Government suggested that going to tender would have ensured transparency and accountability in the Government's decision making process. It stated that it was:

...concerned at the unprecedented approach of providing such a level of funding to a single private organisation without going to the open market to ensure a transparent and accountable procurement process.<sup>53</sup>

3.51 350.org Australia submitted that this process could have ensured transparency in the Commonwealth's decision making:

We believe the means through which *the GBR Foundation* was chosen as the organisation to be given the nearly \$500 million dollar taxpayer grant, raises questions around transparency and the public interest. We believe an Inquiry is required to understand why such a large sum of public funds was given to a corporate organisation without a competitive tender process. This decision effectively leaves authorities such as the Great Barrier Reef Marine Park Authority and other scientific organizations in the dark and raises questions about the delivery of the 2050 Great Barrier Reef Partnership Program.<sup>54</sup>

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50 Mr Dean Knudson, Deputy Secretary, Environment Protection Group, Department of the Environment and Energy, *Committee Hansard*, 30 July 2018, p. 62.

51 Mr Dean Knudson, Deputy Secretary, Environment Protection Group, Department of the Environment and Energy, *Committee Hansard*, 30 July 2018, pp. 62–63.

52 For example, see issues raised by: Science Party, *Submission 4*, p. 1; Environmental Justice Australia, *Submission 11*, pp. 1–3; and Greenpeace Australia Pacific, *Submission 17*, p. 1.

53 Queensland Government, *Submission 9*, p. 1.

54 350.org Australia, *Submission 10*, p. 4.

3.52 Environmental Justice Australia (EJA) highlighted that information about the Commonwealth Grant Rules and Guidelines suggest that:

Sometimes it can be difficult to distinguish between a grant and a procurement, particularly where a procurement is on behalf of a third party. With a grant, the recipient receives financial assistance from the Commonwealth to help achieve its own goals (consistent with Commonwealth goals), whereas in a procurement, the Commonwealth is usually purchasing goods and/or services that assist the Commonwealth in achieving its own goals.<sup>55</sup>

3.53 EJA suggested that the way the Partnership had been framed by the Government clearly showed it was awarded to achieve 'Commonwealth goals' and should be considered as a procurement. It cited a number of Government comments, including comments made by Senator the Hon Simon Birmingham in Senate Estimates:

The government made a budget decision to make a record investment into the reef, informed by advice from a range of sources, including the [GBRMPA], as we usually would, in relation to the budget bids that ministers make about their portfolio priorities. The government then considered the foundation to be an appropriate vehicle to deliver that investment in the reef and rightly commenced negotiations with the foundation about how that might occur. As you have heard before, those negotiations are ongoing.<sup>56</sup>

3.54 Greenpeace Australia Pacific agreed that the Partnership should have been awarded as a procurement, rather than a grant, and so:

...needs to comply with the Commonwealth Procurement Guidelines, which require open tender, due diligence and transparency. There are criminal offences for failure to adhere to these guidelines. The partnership is a critical component of the Reef 2050 plan, and therefore a core function of government. Provision of government services such as the Reef 2050 plan should either be delivered by government or by third parties through an open tender.<sup>57</sup>

3.55 In responding to concerns about the use of a grant process, the Department of Finance informed the committee that it was up to departments to determine whether funding could be delivered as procurement or grant mechanisms:

The framework that operates within government is a devolved financial framework. In that framework, people have different responsibilities. In particular, what are called accountable authorities, which are secretaries in the case of a department and boards in the case of a corporate entity, have

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55 Environmental Justice Australia, *Submission 11*, pp. 2–3.

56 Environmental Justice Australia, *Submission 11*, p. 2.

57 Greenpeace Australia Pacific, *Submission 17*, p. 1. See also Cape York Regional Organisations, *Submission 16*, p. 4.

responsibilities and obligations. Those responsibilities and obligations particularly fit under the Public Governance, Performance and Accountability Act, and that set of obligations then flows through a number of other documents. So there are rules that are made under that act, some that relate to grants, some that relate to procurement. One of the obligations that apply to any agency in a grant-giving context is to satisfy itself, by reference to the guidelines and the rules, whether something is a procurement or whether something is a grant. If it's one thing, then there's one set of requirements that apply to it. If it's the other thing, then a different set of requirements apply to it.

The first obligation on the part of a department is to satisfy itself about what it is. There are extensive materials published and made available by Finance to departments to help them do that. To start with, there are the grant rules and guidelines, which are really the top level of things, and they specify things that people must do and things that people should do. Sitting underneath that, there are other arrangements. In particular, there is what we call a resource management guide, which is, if you like, an explication in greater depth of some of the issues in particular cases.<sup>58</sup>

3.56 The Department of Finance also noted that the Department of the Environment and Energy had fulfilled all relevant obligations:

I would draw the committee's attention to a document which called *Grants, procurements and other financial arrangements: resource management guide No. 411*. It is publicly available and it makes clear some of the things that really would lead an organisation or an accountable authority to make a judgement about whether something fits clearly in one camp or clearly in the other. As the department of the environment have shown in their submission dated 10 September, they did go through that process, and they went through it rigorously and they reached a view, which they have explained, that this was a grant rather than a procurement.<sup>59</sup>

### **The delivery of funds in the 2017–18 year as a single payment**

3.57 Despite being announced in the lead up to the 2018–19 Budget, being included in the 2018–19 Budget papers, and the Foundation not being ready to develop and administer the program until 2018–19, the appropriations required for the Partnership were made for the 2017–18 financial year. In addition, although the Partnership is a six-year program, the \$444 million in funding for the Partnership was appropriated in its entirety in 2017–18, rather than being spread over the forward years.

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58 Dr Stein Helgeby, Deputy Secretary, Governance and APS Transformation, Department of Finance, *Committee Hansard*, 21 September 2018, p. 41.

59 Dr Stein Helgeby, Deputy Secretary, Governance and APS Transformation, Department of Finance, *Committee Hansard*, 21 September 2018, p. 41.

3.58 During a Senate Budget Estimates hearing in May 2018, the Minister for Finance argued that appropriating the entire funds needed for the Partnership in one year provided certainty, and would ensure the Foundation has 'the necessary resources...on an ongoing basis for what is a very high policy priority'. He continued that it also sent a strong signal to potential donors to the Foundation, which would help it leverage philanthropic funds:

This is a reflection of the government's policy decision that doing it this way provides certainty of funding for on-ground Reef protection activities, and it sends a very strong signal to potential investors that the government is committed to long-term protection of the Reef.<sup>60</sup>

3.59 The committee notes that Mr Turnbull's evidence also suggested that the decision was made regarding the appearance of future budgets, as the expenditure of Commonwealth money in the 2017–18 year would not affect forward estimates and future Budgets.<sup>61</sup>

3.60 Officers of the department provided further justification for the provision of the grant in one payment during Budget Estimates in May 2018:

In a number of different areas where we have tried to set up partnerships and, in particular, focused on trying to increase leveraging from other sources, whether it is states and territories or private sector, the department's experience has been that one of the key things external funders will look for is solid and firm commitment by the Commonwealth government behind that. With the scale of this investment being the largest investment ever in the history of any Australian government in the reef, that is a pretty strong signal to the market. For the Great Barrier Reef Foundation, which over the last more than a decade has managed to raise \$80 million, that will take them into a very different space in terms of their ability to raise additional funding.<sup>62</sup>

3.61 The Department of Finance also commented that it was not unusual for grants to be awarded as a single payment:

A grant includes, for example, the ability to provide financial assistance through a co-contribution or to build capacity. It's provided in order to, amongst other things, support the purposes, or enable both government's policy purposes and the purposes of the relevant organisation to be met. I don't think it's right to characterise grants as being structured in exactly the way your question was implying [as being delivered over a number of

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60 Senator the Hon Matthias Cormann, Minister for Finance, *Senate Finance and Public Administration Legislation Committee Hansard*, Budget Estimates 2018–19, 23 May 2018, p. 75.

61 See this chapter above.

62 Mr Dean Knudson, Deputy Secretary, Environment Protection Group, Department of the Environment and Energy, *Senate Environment and Communications Legislation Committee Hansard*, Budget Estimates 2018–19, 21 May 2018, p. 19.

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years and subject to performance indicators being met]. They can be structured many different ways and they can be made, and often are made, as one-off payments. That's, in itself, not a definition of a grant.<sup>63</sup>

3.62 Some evidence received by the committee raised concerns about the delivery of the grant as a single lump sum, rather than being staggered over the six years of the grant. For example, the Australian Conservation Foundation (ACF) argued that this single payment meant there was 'obvious disconnect between tangible spending through Reef 2050 Plan actions and the accounting of overall Reef investment in the Federal budget'.<sup>64</sup>

3.63 Mr Matt Rose, a former Treasury official now an economist for the ACF, outlined governance and oversight risks associated with such an unprecedented single payment, as well as noting its irregularity:

With a small foundation being given this much money in one hit, there are obviously governance risks. If you genuinely wanted to build the capacity of the foundation, surely you would get into some kind of grant arrangement that helped them build the capacity and then accelerated the funding in the out years...I can't remember in my time [at Treasury] seeing any arrangements quite like this, where you front-load all the money and then the foundation comes out later and says, 'Oh we're going to spend it over six years.' It was put in last year's budget, two weeks before the next year's budget. So clearly they wanted money out the door.<sup>65</sup>

3.64 In relation to the arguments about ensuring continuity of funding, Mr Rose stated:

In terms of certainty, certainty is not granted like this to government departments, NGOs and the legal aid sector in the work they do. They don't get a chunk of money and six years to spend it. They get money over the forward estimates, and every year they worry about whether the money's going to be taken off them in the budget process.<sup>66</sup>

3.65 It has also been noted that the transfer of this sum as a single payment, rather than as a Budget line working over the forward estimates, will mean that the grant accrues considerable interest benefitting the Foundation, rather than the Commonwealth Budget. Under the funding agreement, the Foundation can use up to \$22.5 million of the interest accrued from this payment to supplement its

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63 Dr Stein Helgeby, Deputy Secretary, Governance and APS Transformation, Department of Finance, *Committee Hansard*, 21 September 2018, p. 43.

64 Australian Conservation Foundation, *Submission 2*, pp. 3–4.

65 Mr Matt Rose, Economist, Australian Conservation Foundation, *Committee Hansard*, 30 July 2018, p. 8.

66 Mr Matt Rose, Economist, Australian Conservation Foundation, *Committee Hansard*, 30 July 2018, p. 8.

administrative costs.<sup>67</sup> As a result of the full grant being advanced as a single payment, it has been estimated that the loss to the Commonwealth will be around \$11 million in public debt interest.<sup>68</sup>

### **Size of other Commonwealth grants awarded in 2018**

3.66 The committee understands that the \$444 million Partnership is an unprecedentedly large grant made by the Commonwealth. Since it became compulsory for all Commonwealth entity grants to be listed on the online database Grant Connect in December 2017, the Partnership is the single largest grant awarded, almost twice the size of the next-largest Commonwealth grant made in 2018.<sup>69</sup>

3.67 From December 2017, five other Commonwealth grants have exceeded \$100 million. Only one exceeded \$200 million, to the Australian Rail Track Corporation, a Government statutory corporation for an infrastructure upgrade of \$235 million on the North East Rail Line in Victoria. In announcing the grant it was noted that:

Multiple review and endorsement processes were undertaken by agencies including Transport for Victoria, Rail Projects Victoria, Public Transport Victoria, V/Line, the Federal Department of Infrastructure, Regional Development and Cities as well as the Australian Rail Track Corporation.<sup>70</sup>

3.68 Four other grants exceeded \$100 million, two in aged care services (\$127 and \$136 million) and two for services for people with disabilities (\$157 and \$174 million).<sup>71</sup>

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67 'Overview: Grant Agreement between the Reef Trust and the Great Barrier Reef Foundation', p. 2.

68 Lisa Cox, '\$444m reef grant to cost taxpayers extra \$11m, Labor says', *Guardian Online*, 16 August 2018, [www.theguardian.com/environment/2018/aug/15/444m-reef-grant-to-cost-taxpayers-extra-11m-says-labor-mp](http://www.theguardian.com/environment/2018/aug/15/444m-reef-grant-to-cost-taxpayers-extra-11m-says-labor-mp) (accessed 8 November 2018).

69 From December 2017 the details of all Commonwealth grants must be published on a central government repository. See [www.grants.gov.au/?event=public.home](http://www.grants.gov.au/?event=public.home) (accessed 25 October 2018).

70 The Hon Michael McCormack MP, Deputy Prime Minister, 'Feds sign off on \$235 million North East Rail Line Funding', *Media Release*, 11 October 2018.

71 See the Commonwealth register of grants at [www.grants.gov.au/?event=public.home](http://www.grants.gov.au/?event=public.home) (accessed 25 October 2018).