

# Chapter 3

## Issues

3.1 Although the findings of ANAO's Performance Audit Report No.26 of 2007-08 and of Performance Audit Report No.22 of 2012-13 were referred to the committee, the great majority of the evidence received by the committee focussed on the latter report. The issues that most concerned witnesses related to eligibility for grants and assessment of applications for grants under the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program (IGACEP). The effectiveness of the program and claims of fraud were also matters of significance for a number of witnesses. These matters are discussed in this chapter.

### **Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program**

3.2 As discussed in Chapter 2, the IGACEP is a program under the *Tasmanian Forests Intergovernmental Agreement between the Commonwealth of Australia and the State of Tasmania* which provides \$45 million for forestry contractors to exit the timber industry.

3.3 The objectives of the IGACEP program, as set out in the *Grant Program Guidelines* (the Guidelines) dated October 2011, are as follows:

The program seeks to assist the Tasmanian public forest industry to adjust to industry downturn and to the reduced scale of native forest harvesting, through voluntary exit assistance to eligible harvest, haulage and silviculture contracting businesses. It is expected the reduced scale of harvesting will result in the order of 1.5 million fewer tonnes being harvested and hauled and a decrease in public forest silvicultural activities... The program does not seek to provide for the individual circumstances of every person or enterprise affected by the need for industry adjustment but seeks to assist transition by supporting voluntary exits.<sup>1</sup>

3.4 The Guidelines cover such matters as the operation of the program, eligibility criteria, assessment processes and merit criteria. Some of these matters were of significance in the inquiry because of the possibly unintended consequences for some applicants.

3.5 Although the objective of the program essentially was to provide industry adjustment assistance for contractors to leave the industry, there was an associated

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1 Australian Government Department of Agriculture, Fisheries and Forestry, Tasmanian Forests Intergovernmental Agreement: Contractors Voluntary Exit Grants Program, *Grant Program Guidelines*, October 2011, p. 2.

conservation objective as part of the Tasmanian Forests Intergovernmental Agreement (IGA). Mr Tom Aldred, who was the responsible First Assistant Secretary in DAFF at the relevant time, informed the committee that:

...in the negotiation of the IGA a downturn in the industry and the exiting of Gunns from the native forest industry allowed an arrangement to take place to deal with additional conservation outcomes that reduced the area of available public native forest. It did not in itself reduce the area of available private native forest, so in that sense a lot of the restructuring was focused on that public native forest.<sup>2</sup>

## Eligibility

### *Gunns contractors*

3.6 Evidence submitted to the inquiry showed that some forestry contractors who no longer had work due to the downturn in the industry did not meet the eligibility requirements for assistance through the IGACEP. Others may have received less than they expected. Former Gunns contractors were most adversely affected. Those contractors were aggrieved principally because they perceived that the program was intended primarily to assist former Gunns contractors to exit from the industry.

3.7 This perception is understandable. Mrs Wiggins, a former Gunns contractor, quoted from the Heads of Agreement to the IGA published on 24 July 2011:

The Tasmanian and Australian Governments agree that:

A package of immediate assistance will be provided to workers and contractors who are losing their jobs and livelihoods as a result of the current changes in the industry, namely the exit of Gunns Ltd from the native forest sector.<sup>3</sup>

3.8 Additionally, the Overview to the Guidelines stated that the IGA signed by the Prime Minister and the Premier of Tasmania on 7 August 2011 'acknowledges the Tasmanian forest industry is undergoing restructuring through changes in markets and community values and the decision of Gunn Ltd to exit the Tasmanian public forest industry'.<sup>4</sup> DAFF's submission to the inquiry made a similar observation.<sup>5</sup>

3.9 Three former Gunns contractors apparently were not eligible for a grant because the program as finally agreed applied an eligibility criterion of 50 per cent

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2 Mr Tom Aldred, *Committee Hansard*, 7 May 2013, p, 39.

3 Tasmanian Forest Agreement, Heads of Agreement, 24 July 2011, [www.environment.gov.au/land/forests/pubs/heads-of-agreement.pdf](http://www.environment.gov.au/land/forests/pubs/heads-of-agreement.pdf), (accessed 30 May 2013). This may have been a draft document.

4 Australian Government Department of Agriculture, Fisheries and Forestry, Tasmanian Forests Intergovernmental Agreement: Contractors Voluntary Exit Grants Program, *Grant Program Guidelines*, October 2011, p. 1.

5 Department of Agriculture, Fisheries and Forestry, *Submission 9*, p. 7.

public native forests and 50 per cent private native forests (see below paragraphs 3.18 and 3.19). These contractors had been harvesting mainly in private native forests. The eligibility criteria required, among other things, that applicants had:

...under an ongoing contract or an ongoing arrangement, been conducting harvest, haulage or silvicultural operations in *Tasmanian public native forests*... This means that more than fifty percent of the native forest operations (including private native forest and excluding plantation forest) of a business must be in public native forest operations in at least one of the following four financial years: 2007-08, 2008-09, 2009-10 or 2010-11.<sup>6</sup>

3.10 The committee heard from two former Gunns contractors who were deemed not to be eligible for the package. One, Wiggins and Dean, was not eligible for a grant because its contracts included a greater than average proportion of private harvest blocks. Mrs Wiggins informed the committee that the contractor had fallen 'a mere 2000 tonnes short in this eligibility criterion'.<sup>7</sup> Another Gunns contractor, Mr Darryl and Ms Penny Scott, submitted that:

Please note no PUBLIC native forest mentioned only native forest. We believed this package was to enable us (Gunns contractors) to leave the industry and we were excluded solely on the basis we had not logged the required 50% in PUBLIC native forest.<sup>8</sup>

3.11 Mrs Wiggins queried where and why the term 'public native forest' had appeared in the 'paperwork'.<sup>9</sup>

3.12 Mr Padgett, appearing for the Australian Forest Contractors Association, which was a party to the consultations leading to the Agreement, informed the committee that:

As you know, it did say in the statement of principles that the exit package would be designed around exiting contractors that were working in native forest for Gunns—that was it. When the IGA was brought down, as you are aware, the wording changed to 'public native forest'. Our view of that was that it was purely on the authority of the minister—perhaps the Prime Minister; we are not sure. But it was politically driven and it was forced into the agreement not to be changed.<sup>10</sup>

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6 Australian Government Department of Agriculture, Fisheries and Forestry, *Tasmanian Forests Intergovernmental Agreement: Contractors Voluntary Exit Grants Program, Grant Program Guidelines*, October 2011, p. 3, emphasis added.

7 Mrs Marion Wiggins, *Committee Hansard*, 7 May 2013, p. 17.

8 Mr Darryl and Ms Penny Scott, *Submission 6*, p. 1.

9 Mrs Marion Wiggins, *Committee Hansard*, 7 May 2013, p. 17.

10 Mr Kenneth Padgett, *Committee Hansard*, 7 May 2013.

3.13 The committee raised this matter with the department. DAFF responded in an answer to a question on notice that the word "public" had been in the draft IGA shared with the signatories to the Statement of Principles:

The word public, referring to public native forests in the context of the Contractors Voluntary Exit Grants Program in the 2011 Tasmanian Forests Intergovernmental Agreement (IGA), was in the draft IGA that was shared with the Signatories to the *Tasmanian Forests Statement of Principles to Lead to an Agreement* on Thursday, 4 August 2011.<sup>11</sup>

3.14 Mr Bob Gordon, the then Managing Director of Forestry Tasmania (FT) stated that:

I do not know why there is an apparent focus on public native forest contracts when the discussion around the signatories table was about the Gunns contractors who effectively had no contractor volumes and were the most severely affected. Why that happened, I do not know...<sup>12</sup>

3.15 The question then arose as to whether the governments would have been aware that the program as finally decided might have adverse consequences for at least some former Gunns contractors. The following exchange with Mr Padgett is relevant:

**ACTING CHAIR:** So you did warn the government of the potential impacts of the changing of that wording...even though the government was claiming that the IGA reflected the statement of principles, it clearly was not?

**Mr Padgett:** It was a change to what was agreed in the statement of principles and we were not happy with it and we let them know that we were not happy with it. We were not sure of the ramifications, but we knew it would have ramifications down the track.

**ACTING CHAIR:** Were you told why it would not be changed?

**Mr Padgett:** No, we were not.<sup>13</sup>

3.16 The committee was informed that there were extensive consultations relating to the design of the program, especially between DAFF and the Tasmanian Government of Department of Infrastructure, Energy and Resources. Ultimately DAFF was not able to reach agreement on some design aspects of the program with its Tasmanian counterparts. Negotiation of elements also occurred between ministerial offices. The final guidelines were approved by the Australian Government Minister for Agriculture, Fisheries and Forestry on 26 October 2011.<sup>14</sup>

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11 DAFF, answer to question on notice, received 27 May 2013, emphasis in original.

12 Mr Gordon, Committee Hansard, 7 May 2013, p. 12.

13 *Committee Hansard*, 7 May 2013, p. 27.

14 DAFF, *Submission 9*, p. 8.

3.17 Dr Mark Tucker, who was the responsible DAFF Deputy Secretary at the relevant time, speaking in relation to the consultations surrounding the program, explained that there was intensive activity on the weekend following the [final] meeting on Thursday 20 October 2011 and that DAFF did not participate in all activities. Dr Tucker remarked that 'obviously, with something of that nature, senior government people have to be happy in terms of the way that the agreement looks'.<sup>15</sup> Another DAFF officer, Mr Aldred, stated that:

The opportunity was there to place substantial additional areas of public land into the reserve system. That change would have impacted on the availability of public logs from that resource base. The actual construct of the agreement reflects that. Then the contractors' package that was developed in accordance with that set out to assist the industry overall in terms of the public native industry.<sup>16</sup>

### *The 50/50 provision*

3.18 As mentioned above, one of the eligibility criteria was that an applicant must:

...under an ongoing contract or an ongoing arrangement, been conducting harvest, haulage or silvicultural operations in Tasmanian public native forests... This means that more than fifty per cent of the native forest operations (including private native forest and excluding plantation forest) of a business must be in public native forest operations in at least one of the following four financial years: 2007-08, 2008-09, 2009-2010 or 2010-2011.<sup>17</sup>

3.19 Some witnesses were concerned that the criterion specified more than fifty per cent of activities in a public native forest. Mr Padgett, Director of the Australian Forest Contractors Association, informed the committee that the original proposal put to industry was that a contractor had to have done 90 per cent of its work in a public native forest. He indicated that on that basis no-one, except for contractors working for Forestry Tasmania,<sup>18</sup> would have qualified for a grant. Mr Padgett continued as follows:

We negotiated, and we negotiated quite hard. But all negotiations must end, as we know, and when we got to 50 per cent that was as far as we as a group were able to negotiate. I can tell you that that in that process there were some pretty heated conversations with DAFF because we were very much of the view that they did not understand the full ramifications of it.<sup>19</sup>

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15 Dr Tucker, *Committee Hansard*, 15 May 2013, p. 6.

16 Mr Aldred, *Committee Hansard*, 15 May 2013, p. 7.

17 *The Guidelines*, p. 3.

18 Note: Contractors working for Forestry Tasmania work almost exclusively in public native forests. (See Mr Gordon, *Committee Hansard*, 7 May 2013, p. 14.)

19 Mr Padgett, *Committee Hansard*, 7 May 2013, p. 28.

### ***Ineligible applications***

3.20 The ANAO reported that there was a high rate of ineligible applications, as businesses that were undertaking ineligible activities were also experiencing the impact of changes in forestry activity.<sup>20</sup>

3.21 A company that had a contract with Gunns, Rod Watson Heavy Haulage, was deemed not to be eligible under the Guidelines. The company's business was moving harvesting contractors' heavy equipment to and from logging coups. The witness submitted that all the contractors for whom they provided this service received a grant but they did not, despite the fact that their business disappeared with the exit of the contractors. The company unsuccessfully sought a review and made an unsuccessful appeal to the Ombudsman. The reason given for this was that Rod Watson Heavy Haulage did not fit the criteria.<sup>21</sup>

### ***Committee view***

3.22 The original rationale for the IGACEP, as published in July 2011, was to assist contractors to exit from the forests industry due to changes in the industry, namely the exit of Gunns Ltd from the native forest sector. Gunns contractors were conducting forestry activities in both the public and private native forest sectors. By the time the IGA was signed in August of that year the program's sole focus was on public native forests.<sup>22</sup> The rationale given for the program was then 'to adjust to industry downturn and to the reduced scale of native forest harvesting'.<sup>23</sup>

3.23 In this context the committee notes the overview given in the program guidelines:

The [IGA] acknowledges the Tasmanian forestry industry is undergoing restructuring through changes in markets and community values and the decision of Gunns Ltd to exit the Tasmanian public native forest industry.

The viability of many harvest, haulage and silvicultural contracting business is directly impacted by these changes and the **Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program** (the program) seeks to assist these contractors by providing voluntary exit grants and by doing so, support restructuring to a smaller operating environment.<sup>24</sup>

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20 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 20.

21 Rod Watson Heavy Haulage, *Submission 4*, p. 1.

22 Commonwealth and Tasmanian Governments, *Tasmanian Forests Intergovernmental Agreement*, August 2011, p. 4.

23 *The Guidelines*, p. 2.

24 Australian Government Department of Agriculture, Fisheries and Forestry, *Tasmanian Forests Intergovernmental Agreement: Contractors Voluntary Exit Grants Program, Grant Program Guidelines*, October 2011, p. 1, emphasis in original.

3.24 The committee considers that the Commonwealth Government should consider addressing what appear to be the unintended consequences of this change for a small number of contractors. In that regard the committee is aware there are existing processes for the government to address unintended consequences of government programs.

### ***Documentation***

3.25 The ANAO reported that of the 61 applicants that the Advisory Panel assessed as eligible for a grant, ten applicants had been offered grant funding totalling \$3 595 863 despite not providing the required documentation to demonstrate eligibility, including financial information, evidence of ongoing arrangements and /or evidence of activity in public native forestry.<sup>25</sup>

3.26 The ANAO's analysis of the program's administration found that:

...the department did not document key aspects of the panel's rationale for determining seven of the ten applicants as eligible. In particular, the evidence taken into consideration when applicants were deemed eligible without having submitted the required documentation, where a lower eligibility threshold was applied, or the basis on which the panel did not agree with the secretariat's advice regarding eligibility. The lack of documentation raised questions about whether equitable access was provided to the program.<sup>26</sup>

3.27 This finding was a matter of concern to some witnesses, Mrs Wiggins, for example, stated that the finding:

...is pretty devastating when you have lost everything. The lack of documentation raised questions about whether equitable access was provided to this program. We are people that missed out through no fault of our own. We worked hard and we were just put in the wrong places at the wrong times. We need some answers. I think we are owed some answers.<sup>27</sup>

3.28 The Chair of the Advisory Panel, commenting on 'two or three' of the ten applications, stated that:

We made a decision based on the fact that we thought it was fair in the situation where they basically did not have any money and they had provided as much information as they could. They were basically one document short of meeting the start line. They were in hardship. Yes, the

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25 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 20.

26 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 20.

27 Mrs Wiggins, *Committee Hansard*, 7 May 2013, p. 17.

guidelines did not provide that flexibility, and yes, maybe it was compassion. We let them through.<sup>28</sup>

3.29 In a more detailed response to a question taken on notice, DAFF informed the committee that:

The ANAO stated that 10 applicants had been offered grants without providing the required documentation to demonstrate eligibility and also considered that the program's guidelines did not include flexibility for discretionary decision making on eligibility. The department acknowledges that this should have been explicitly stated in the guidelines. However, the Advisory Panel considered the objective of the program and where there was reasonable evidence from other relevant sources, such as verification of subcontracting relationships in other applications, and considered this information was relevant to assessing the eligibility of the applicant.

The department made conditional offers to grantees that were not able to provide all the required information immediately. These conditions in the funding deeds allowed eligible businesses to access the assistance and to make a new start, while ensuring the interests of the Australian Government were protected. All successful grantees subsequently provided the necessary documentation to meet this requirement and payments were made only when all appropriate documentation was provided.<sup>29</sup>

### ***Committee view***

3.30 The committee acknowledges that the IGACEP Advisory Panel may have been in a difficult position in view of the paucity of documentation that some otherwise eligible applicants were able to provide. Nevertheless, the actions breached the published guidelines and it is possible that contractors who were aware that they could not have met the guidelines in this regard did not apply for a grant. In any event, for those who were deemed ineligible, the award of a grant to contractors who did not meet the guidelines in full gave at least the appearance of inequity. DAFF must ensure that this situation does not arise again in its grants administration.

### **Allegations of fraud and non-compliance**

3.31 The committee heard a number of allegations of fraud which were made *in camera* in relation to the IGACEP.<sup>30</sup> The committee understands that all the allegations that it heard have been brought to the attention of DAFF's Investigations and Security Team.

3.32 DAFF informed the committee that the department had received eighteen allegations of fraud from five individuals in relation to the IGACEP. It had referred

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28 Mr Talbot, *Committee Hansard*, 7 May 2013, p. 43.

29 DAFF, answer to question on notice, received 20 May 2013.

30 There were no allegations of fraud in relation to the TFIDA programs. See Dr Cloney, *Committee Transcript*, 15 May 2013, p. 15.



eleven of these allegations to its forestry branch for compliance checking and assessed seven as requiring additional assessment by its Fraud and Security Team.<sup>31</sup> The department has now contracted AusIndustry to investigate compliance issues.<sup>32</sup>

3.33 Grants recipients were required to complete a funding deed and a Deed of Undertaking<sup>33</sup> signed by all directors/owners so that they could receive the initial 75 per cent of the approved grant. The additional 25 per cent was to be paid on provision of:

- an exit strategy for ongoing contracts or ongoing arrangements;
- proof of payment of all employees' entitlements;
- evidence that hire or lease arrangements for the businesses' forestry machinery had been terminated; and
- evidence that the business had ceased using its forestry machinery.<sup>34</sup>

3.34 DAFF made a distinction between fraud and non-compliance in the following way:

...fraud is essentially when people misrepresent themselves to get benefits inappropriately from the Commonwealth Government... Compliance occurs once they have received a grant. There are conditions on that grant or deed. Are they or are they not keeping to those conditions? That is a compliance matter.<sup>35</sup>

3.35 The department informed the committee that if there were evidence of non-compliance it could seek an injunction on any activities that are not compliant with the recipient's funding deed. It could also seek a return of funding that the recipient had received, as a debt due to the Commonwealth.<sup>36</sup>

3.36 An issue of some significance for potential applicants was that a compliance plan had not been developed before the program was introduced. This was one of the weaknesses in the program that was identified by the ANAO.<sup>37</sup> Potentially this may

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31 DAFF, *Submission 9*, p. 12.

32 Ms Freeman, *Committee Hansard*, 15 May 2013, p. 5.

33 A Deed of Undertaking, a form of Statutory Declaration, provides a means for the Commonwealth to pursue the directors or owners to repay grant funding if they breach the funding deed, even in the cases where the original business has been deregistered. See ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 14.

34 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 14.

35 Dr Tucker, *Committee Hansard*, 15 May 2013, p. 4.

36 Ms Freeman, *Committee Hansard*, 15 May 2013, p. 5.

37 Mr McPhee, *Committee Hansard*, 7 May 2013, p. 2.

have led some contractors to apply for a grant in ignorance of their having to give certain undertakings.

3.37 Mr Simpson, an Executive Director with the ANAO, informed that committee that before a program commences applicants should have an understanding of their compliance obligations:

At the end of the day, an applicant may make a decision. If they are having to comply for 10 years, provide a report every year for 10 years and have visits to their premises for \$20,000 or \$30,000, they may decide not to proceed on that basis.<sup>38</sup>

3.38 DAFF submitted that the initial compliance plan for the IGACEP was first drafted in April 2012, well after the guidelines had been published. The compliance arrangements were finalised in December 2012, more than a year after the program guidelines were released. The department submitted that:

The ANAO's view is that a plan should have been in place at the beginning of the program. However, tight timeframes for finalising guidelines, advertising and assessing applications meant that the detail for a comprehensive compliance plan could not be finalised until a later time.<sup>39</sup>

### *Committee view*

3.39 The committee is not in a position to determine whether the allegations of fraud and non-compliance have merit, nor is it the committee's role to do so. Nevertheless, it is important for the integrity of the program and to allay people's concerns that DAFF resolve these matters as soon as possible.

3.40 Whilst acknowledging the tight time constraints imposed on the program's implementation, the committee is of the view that DAFF should have prepared compliance arrangements in a far more timely manner. The committee concurs with Mr Simpson's observation that as a general principle, applicants should be aware of a program's compliance arrangements prior to applying.

### **Recommendation 1**

**3.41 The committee recommends that DAFF thoroughly investigate all alleged cases of fraud and all alleged cases of non-compliance resulting from the two programs. The committee further recommends that DAFF resolve these matters as soon as possible.**

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38 Mr Simpson, *Committee Hansard*, 7 May 2013, p. 7. The committee notes that the draft funding deed provided to grantees stated amongst other things that the grantee must 'facilitate such visits by representatives of the Commonwealth as the Commonwealth reasonably requests for the purpose of assessing the Project'.

39 DAFF, *Submission 9*, p. 12.

## Did the program meet its objectives?

3.42 In addressing this issue, DAFF has stated that the contractors exit program was not aimed at reducing logging in Tasmania's native forests but was intended to assist contractors to exit the sector which was experiencing a significant downturn. On its website the department has published the following comments:

The Tasmanian Forests IGA set in place arrangements to reduce the area of forest available for production and consequently the volume of wood produced from public native forests each year. The contractors exit program sought to assist the Tasmanian public native forest industry to adjust to industry downturn and the reduced scale of native forest harvesting that resulted from the IGA. In discussions with the Tasmanian Government it was considered that reduction in harvesting and haulage capacity in the order of 1.5 million tonnes would assist adjustment in that industry, given the reduction in native forest harvesting flowing from commitments in the 2011 Tasmanian Forests Intergovernmental Agreement.

The department provided 58 grants to eligible contracting companies and removed an estimated 1.4 million tonnes of contracted harvest capacity and 2 million tonnes of contracted haulage capacity from the native forest sector. All eligible companies under the program received an offer of funding. The department considers that the objective, to reduce capacity and thereby assist the sector to adjust, has been achieved and the expectation to remove in the order of 1.5 million tonnes of contracted capacity has been met.<sup>40</sup>

3.43 It is difficult to reconcile DAFF's estimates with other published figures. Confusion has arisen because the Advisory Panel in its assessment process used actual 2009-10 tonnages of wood harvested or hauled rather than contracted tonnages. The ANAO reported that the Panel had advised that the 61 grants offered under the IGACEP would remove 865 628 tonnes of harvesting capacity (58 per cent of the target) and 973 718 tonnes of haulage capacity (65 per cent of the target).<sup>41</sup> DAFF submitted figures to the committee of 819 888 tonnes harvested and 972 000 tonnes hauled. These tonnages related to actual tonnages harvested and hauled under contract in 2009-10. DAFF has estimated that these figures equate to 1.4 million and 2 million tonnes of contracted capacity, respectively.<sup>42</sup>

3.44 The outcome is further confused because FT consequently contracted an additional 200 000 tonnes of harvesting and haulage to fulfil its existing orders. The corporation submitted that it had had significant concerns that the program could

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40 DAFF, Tasmanian Forests Intergovernmental Contractors Voluntary Exit Grants Program, [www.daff.gov.au/about/media-centre/tasmanian-forests-intergovernmental-contractors-voluntary-exit-grants-program](http://www.daff.gov.au/about/media-centre/tasmanian-forests-intergovernmental-contractors-voluntary-exit-grants-program), p. 2, accessed 3 June 2013.

41 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 23.

42 DAFF, *Submission 9*, pp 11–12.

potentially detrimentally affect its ability to meet its contracts and that it had communicated these concerns to DAFF as early as 30 August 2011.<sup>43</sup>

3.45 Mr Gordon stated that because FT's concerns were not adequately addressed, too much harvest and transfer capacity was lost and the corporation had no alternative but to increase the capacity of other contractors to meet its commercial and legal obligations.<sup>44</sup> FT's concerns are discussed later in this chapter.

### ***Committee view***

3.46 The committee has found it difficult to assess with any great certainty whether the Government's expectation that 1.5 million fewer tonnes of wood would be harvested and hauled from Tasmania's public native forests as a result of the IGACEP was met. It is clear that a significant amount of excess harvesting and haulage capacity has been removed although not perhaps to the extent envisaged by the Government, however the impact of the program remains uncertain.

3.47 The committee would have been able to report more fully on the effectiveness of the IGACEP if the ANAO had been able to audit DAFF's key performance indicators. The Auditor-General, Mr Ian McPhee, informed the committee that the ANAO had recently been given the authority to conduct such audits, but had not been resourced for that function. Mr McPhee stated that:

...we are currently doing some pilot work to be able to see how we go about providing an opinion in relation to a department's key performance indicators. But, more generally, our performance audit program does look at agencies' reporting against key performance indicators, and the performance of the programs. We happen to think that it is an area that needs more focus on the part of the finance department and the government to make sure we understand more about the impact of government programs—whether they are achieving the objectives set by government—so it is even becoming an increasing focus within our performance audit coverage as well.<sup>45</sup>

### **Recommendation 2**

**3.48 The committee recommends that the Department of Finance and Deregulation implement the Auditor-General's proposal to develop guidelines on the impact of government programs. The guidelines should ensure that the Parliament is able to assess whether programs are achieving the objectives set by government.**

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43 Forestry Tasmania, *Submission 2*, p. 2.

44 Mr Gordon, *Committee Hansard*, 7 May 2013, p. 8.

45 Mr McPhee, *Committee Hansard*, 7 May 2013, p. 5.

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## Forestry Tasmania's contracts

3.49 As stated above, FT informed the committee that as a result of the reduced capacity brought about by the program, it had been obliged to increase its contracts. Mr Gordon pointed out that the increase was of the same order as the capacity that had been retired from the industry by the exit of FT contractors. He stated that FT had not supported the exit of some contractors but they had received grants nevertheless. The additional capacity had been allocated to its existing contractors, 'that is, contractors that did not receive an exit grant and that were continuing to work in the forest industry'.<sup>46</sup> Mr Gordon informed the committee that this was done to increase the capacity of those people remaining to improve their viability.<sup>47</sup>

3.50 This action gave rise to concerns from some contractors who were not contracted to FT. Mr Bennetto suggested that the required additional industry capacity could have been acquired by FT engaging former Gunns contractors who were not eligible for a grant or who wished to remain in the industry.<sup>48</sup>

3.51 Mr Iles informed the committee that in effect some \$7 million dollars had been wasted. He stated that:

We do not know whose volume it was that came back, we do not know what price it was paid to be exited, so one can only presume it was \$35 a tonne. So far there is \$7,122,500 that the department has paid for no value whatsoever. They cannot pay these people beside me [former Gunns contractors] some money and they cannot pay me correctly. And yet they can exit volume out of the system and pay huge amounts of money for no value. I find that unbelievable.<sup>49</sup>

3.52 Mr Aldred stated in response to questions about the effectiveness of the program and in particular whether the reinstatement of the FT capacity had effectively wasted some \$7 million from the program that:

We tried to take out contacting capacity, the capacity to do the work. A substantial number of players left the industry. That did not change the volume of wood that was to be available, and where some contractors may have been operating at 60 per cent capacity and going broke, they may have got up to 80 per cent as a result of others leaving the industry. That is an overall objective of the package—to assist adjustment...

Mr Gordon said that if a number of the contractors left, they would reallocate some of the volume to existing ones. That indeed might make

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46 Forestry Tasmania, *Submission 2*, p. 3.

47 Mr Gordon, *Committee Hansard*, 7 May 2013, p. 10.

48 Mr Bennetto, *Committee Hansard*, 7 May 2013, p. 24.

49 Mr Iles, *Committee Hansard*, 7 May 2013, p. 24.

them more profitable and actually deliver the result that we were looking for through the program.<sup>50</sup>

## Assessment

### *Contracted versus actual volumes*

3.53 The Advisory Panel's decision to assess applications on the basis of actual volumes harvested in 2009-10 rather than on contracted volumes was the cause of much disquiet. The ANAO reported that:

While DAFF considered that this approach [assessing applications on actual volumes harvested] ensured consistent treatment of all applications, it was not consistent with the program guidelines and the assessment plan, which indicated that actual tonnage would only be used if the applicant did not have an agreed 'annual tonnage'. Applicants were not advised of this determination, unless this aspect of the process was specifically questioned by an applicant as part of a review request.<sup>51</sup>

3.54 Mr Talbot, Chair of the Advisory Panel, advised the committee that Gunns contracts did not specify whether the contracted tonnage would come from public or private forests. This was in effect because Gunns was sourcing timber from public and private forests unlike FT which had ready access to public forests. Mr Talbot stated that:

You have a program that is supposed to be about public native forests, and if we ended up using contracted amounts in this case, we could be in a position where we were buying out quite a lot of private native forest harvesting, which was not the intent of the program.<sup>52</sup>

3.55 In addition, the Panel decided to use actual tonnages because contracted volumes would have advantaged FT contractors whose contracts were in public native forests and disadvantaged the Gunns contractors. It was considered that this would be a more equitable approach.<sup>53</sup> Mr Talbot argued that the Panel's approach was consistent with the Guidelines because there was a provision in the first criterion that actual tonnages could be used where public native forest figures could not be identified.<sup>54</sup>

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50 Mr Aldred, *Committee Hansard*, 15 May 2013, p. 13.

51 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 21.

52 Mr Talbot, *Committee Hansard*, 7 May 2013, p. 41.

53 Mr Talbot, *Committee Hansard*, 7 May 2013, p. 38.

54 Mr Talbot, *Committee Hansard*, 7 May 2013, p. 38.

*Committee view*

3.56 Whatever the merits of DAFF's approach, the ANAO found that it was not in accordance with the Guidelines and the assessment plan. More importantly, the Panel did not advise applicants and others in the industry of the change.

***\$35/tonne cap***

3.57 A significant number of grants that were awarded were for lesser amounts than the amounts requested by applicants. These amounts were based on a capped \$35 per tonne of wood, whether harvested or hauled. The ANAO reported that the Advisory Panel set the cap between the median dollar per tonne sought by applicants (\$48.04 per tonne) and the mean dollar per tonne sought by applicants (\$24.62 per tonne).<sup>55</sup> In its report the ANAO stated that:

DAFF informed the ANAO that the use of a cap enabled the department to remove contractors and subcontractors from the industry at the lowest cost. However, the basis on which the value of the cap was determined as representing value for money for the Australian Government was not documented by the panel. Further, the arrangements established by DAFF to determine whether a funding offer that was lower than the amount nominated to exit the industry would be offered were not consistent with the process established in the program guidelines or the assessment plan.<sup>56</sup>

3.58 The ANAO reported that the DAFF secretariat responsible for the program was advised by the department's Grants Policy Section that hidden caps should not be used; that the caps should be announced; and applied equitably to applicants.<sup>57</sup>

3.59 The decision to implement a capped amount for both harvesting and hauling gave rise to controversy not only because a significant number of applicants received less than they had assessed they needed<sup>58</sup> but also because the cost of harvesting may be more than the cost of haulage, possibly by a factor of two to one.<sup>59</sup>

3.60 Responding to a question from the committee in relation to the different costs of harvesting and hauling Mr Aldred stated that:

Certainly we were aware of the two for one proposal by some people. We did try to verify whether in the fact that could be used as an industry

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55 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 22.

56 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 22.

57 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 79.

58 See, for example, Mr Iles, *Committee Hansard*, 7 May 2013, p. 24.

59 DM & SJ Iles, Pty Ltd, *Submission 8*, p. [2].

average. We were not able to verify that two to one was a good landing point.

We did reflect in the guidelines that our expectation was that a haulage company would be lower than a harvest company. So we provided some guidance in the guidelines for applicants on that along those lines. Bear in mind it was a reverse tender, so people were bidding and we were looking for value for money for the Commonwealth. It was not an entitlements program, where the overall structure and profitability of each individual enterprise was assessed. That is certainly one model; it has been used before in New South Wales but it was not the one that was used here.<sup>60</sup>

3.61 In relation to some applicants receiving less than they requested (or needed), Mr Talbot stated that 60 per cent of the applicants received the amount they asked for.<sup>61</sup> The use of the \$35 cap allowed the Panel to stay within the available budget of \$44.02 million and to recommend that all eligible applicants received some funding.

#### *Committee view*

3.62 Clearly, as the DAFF Grants Policy Section advised, a hidden cap should not have been used to ration grants. If a funding cap was to be used, applicants should have been informed, despite the apprehension that to do so might lead to amounts requested by applicants gravitating towards the cap. In the committee's view, funding caps are undesirable as they may lead to inequitable outcomes, but if they are to be used they should be specifically detailed in the Guidelines and thus be known to potential applicants.

#### ***Conclusions on the assessment process***

3.63 The committee acknowledges the reasons why the Advisory Panel assessed the applications for grants under the IGACEP in the way that it did. However, in determining that grants should be assessed on the basis of actual rather than contracted tonnages, in determining a hidden cap to ration the grants for some applicants, and in accepting some applications in the absence of complete documentation the Advisory Panel exercised a discretion that it did not have under the Guidelines.

3.64 The committee agrees with the comment made by the Auditor-General at the hearing, namely:

Sometimes the guidelines do, themselves, allow for some latitude and moving away, but, alternatively, if the government has issued guidelines and wishes to change course then the appropriate response is to re-issue or to advise potential applicants of the changes so that everyone understands the new approach and the department obviously changes its ways to assess against the new requirements.

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60 Mr Aldred, *Committee Hansard*, 7 May 2013, p. 51.

61 Mr Talbot, *Committee Hansard*, 7 May 2013, p. 50.



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It is a complex area, and it is made even more complex when election commitments play into existing grant programs.<sup>62</sup>

3.65 As a general rule the committee would not encourage a government department or agency to construct guidelines which would allow the administrators of a program to exercise significant discretion. There may be cases where it is permissible, but if the guidelines cannot be adhered to, the proper course of action is to revisit the guidelines.

3.66 Furthermore, the committee agrees with the Auditor-General's comments about the importance of equitable access to government grant programs:

...I am a strong believer in applicants having equitable access to government grants programs consistent with government policy requirements—that is, when the government specifies the eligibility requirements and the merit requirements for a particular grants program it is incumbent on agencies and departments to assess those applications in a fair and equitable manner.

Of course, where they depart from the published guidelines—where they do not follow the accepted practice—it generally has an impact on access and equity, and that is of considerable concern not only to my office but the parliament more broadly and the government, who expects applicants to be treated equitably within the program policy requirements for each program...<sup>63</sup>

3.67 In the committee's view, DAFF's failure to re-issue the Guidelines after making three significant changes led to a range of inequitable outcomes for certain applicants and other contractors who chose not to apply.

### **Audit Report recommendations**

3.68 The committee has summarised the ANAO's recommendations in its two reports in Chapter 2 of this report. Briefly, the two audits identified some similar problems in DAFF's administration of the programs, namely, that not all processes and procedures were followed in relation to:

- the establishment of sound governance arrangements;
- documentation of advisory bodies' assessment of applications;
- management of compliance with funding deeds; and
- reporting of program performance.<sup>64</sup>

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62 Mr McPhee, *Committee Hansard*, 7 May 2013, p. 3.

63 Mr McPhee, *Committee Hansard*, 7 May 2013, p. 7.

64 Mr McPhee, *Committee Hansard*, 7 May 2013, p. 2.

3.69 DAFF agreed with the recommendations but in a response to the report on the administration of IGACEP program stated that:

The report also recognises that the program was delivered in a challenging and condensed timeframe and notes the comments of the Joint Committee of Public Accounts and Audit in its Report 435 that the Government gives consideration to the capacity of agencies to comply with administrative requirements when delivering programs in compressed timeframes. The department considers that the timeframe along with the limited applicant group and the program's relationship to the broader range of initiatives designed to diversify the Tasmanian economy define the context in which the program was delivered.<sup>65</sup>

### *Committee view*

3.70 The committee accepts that DAFF was required to implement the government's program in what it describes as a compressed time frame.

3.71 However, the committee is concerned that deficiencies in DAFF's program management have been recurring for a significant period of time. The committee notes that DAFF agreed with the three recommendations contained in the ANAO's 2008 performance audit and that DAFF has subsequently introduced mechanisms to improve its management of its grants programs (see paragraphs 2.11 to 2.15).

3.72 Given that DAFF made changes after the audit of the TCFA programs, including the development of a comprehensive grants manual, the committee is concerned that similar weaknesses were found in the ANAO's 2013 report on the IGACEP.

3.73 On a related matter, Senator Colbeck recently wrote to the Auditor-General requesting an audit to assess the effectiveness of DAFF's monitoring of the implementation of ANAO and internal audit recommendations. The Auditor-General responded that the ANAO is 'currently conducting a cross-entity audit examining several public sector entities' implementation of our recommendations...'. With specific reference to DAFF, the Auditor-General indicated that 'on the basis of recent Parliamentary interest in the extent to which DAFF has responded to audit recommendations, specifically in relation to grants administration, and the concerns that you [Senator Colbeck] have raised, [the ANAO] will give careful consideration to the inclusion of DAFF in subsequent cross-entity audits.' The Auditor-General's correspondence is at Appendix 7.

3.74 The Auditor-General informed the committee that the ANAO selectively pursues a number of former audits through what it calls follow-up or follow-on audits to check that departments have implemented the recommendations as agreed.<sup>66</sup> The

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65 ANAO, *Administration of the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program*, Audit Report No.22 2012-13, p. 26.

66 Mr McPhee, *Committee Hansard*, 7 May 2013, p. 2.

number of such audits is necessarily constrained by the resources available to the ANAO. The committee understands, however, that the ANAO will continue to address the risks associated with DAFF's grants administration in the future. It fully supports that aim.

3.75 The committee considers that if the ANAO identifies any concerns with DAFF's implementation of the reports' recommendations, the ANAO should consider giving priority to a follow-up audit.

### **Recommendation 3**

**3.76 The committee recommends that the ANAO continue to include DAFF's administration of its grants programs in its future work programs.**

**Senator Bill Heffernan**

**Chair**

