



ETHICAL CONDUCT AND POTENTIAL
MISCONDUCT RISKS IN TASMANIAN
PARLIAMENTARY ELECTIONS
RESEARCH PAPER SERIES

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PAPER 2:
GRANT COMMITMENTS IN
ELECTION CAMPAIGNS



INTEGRITY
COMMISSION
TASMANIA



The objectives of the Integrity Commission are to:

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with, and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

We acknowledge and pay our respects to all Aboriginal people in Tasmania, the traditional owners of the Land upon which we work. We recognise and value Aboriginal histories, knowledge and lived experiences, and commit to being culturally inclusive and respectful in our working relationships with all Aboriginal people.

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This report and further information about the Commission can be found on the website
www.integrity.tas.gov.au

GPO Box 822
Hobart Tasmania 7001

Phone: 1300 720 289
Email: contact@integrity.tas.gov.au

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1. Introduction

The Integrity Commission (the Commission) is an independent statutory authority established by the *Integrity Commission Act 2009* (Tas) (IC Act). The Commission's objectives are to:

- ▼ improve the standard of conduct, propriety and ethics in public authorities in Tasmania
- ▼ enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with, and
- ▼ enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

Section 31 of the *IC Act* sets out the Commission's educative, preventative and advisory functions. This includes a function to 'undertake research into matters related to ethical conduct', and to 'take such steps as the Integrity Commission considers necessary to uphold, promote and ensure adherence to standards of conduct, propriety and ethics in public authorities'.

As part of that function, the Commission has decided to release a series of research papers about ethical conduct and potential misconduct risks in Tasmanian parliamentary elections. This is the second paper in the series.

We have identified the risks discussed in the papers through various means, including through complaints, assessments and investigations, our own research from open source information including from other jurisdictions, and communications to the Commission.

Our aim is to communicate these risks to the public, and to promote discussion about potential solutions.

This paper is about risks related to financial commitments, especially those made during parliamentary election periods (the 'election period' is the time between the dissolution of the House of Assembly and the closing of the poll). These commitments – usually called grants, pledges or promises – may be perceived as 'indirect electoral bribery', or 'pork-barrelling', as discussed in Paper 1 of this series.

If not managed carefully, these commitments – or how they are perceived – can undermine public trust in government. This is an issue relating to governments of all persuasions throughout Australia. There has been significant public discussion about this issue over the past two years, especially in the federal and New South Wales jurisdictions, but it is also an issue in Tasmania.

2. Grants and campaign commitments

It is an important part of the democratic process for aspiring candidates to make campaign commitments during the election period. During parliamentary elections, parties and candidates often use the word ‘grant’ as a term for financial commitments or promises to achieve policy outcomes, if that party is elected.

DEFINITIONS

GRANT

The term ‘grant’ is widely used by governments. The Cambridge Dictionary defines a grant as an amount of money given, especially by the government, to a person or organisation for a special purpose.

In this report, a ‘grant’ is as defined by the Tasmanian Government in *Treasurer’s Instruction FC-12: Grant Management*:

“Grant” means any assistance by way of a sum of money or other resource provided to an organisation or individual by the Government, on the condition that the assistance is used for a specified purpose and where the grantor receives no direct economic benefits in return for the assistance provided.

[Treasurer’s Instruction FC-12: Grant Management clause 12.1]

Grants are not loans. The recipient does not need to pay the money back. However, they must spend the money as agreed with Government.

The Government may provide a grant in a number of ways, including as:

- ▼ **an ad-hoc grant:** a one-off stand-alone grant
- ▼ **recurrent funding:** ongoing government money provided to substantively fund community organisations such as the RSL and the Multicultural Council of Tasmania, and
- ▼ **part of a grant program:** a grant program is a framework for delivering multiple grants of a similar nature.

A grant program, or scheme, generally includes:

- ▼ policy rationale for the grants
- ▼ criteria and method of selecting recipients, and a competitive selection process
- ▼ allocation of responsibility for planning and managing grants
- ▼ a framework for individual funding agreements, and
- ▼ review and evaluation processes.

Grants provided through a grant program are usually approved by the relevant Minister or delegate, having been chosen following an application and selection process run by State Servants.

Recipients of ad-hoc grants or recurrent funding may be selected by promises or policy decisions made by parliamentarians (or candidates who are successfully elected) as part of their election campaign. Specific grant election commitments in Tasmania are rarely part of an existing grant program – although an election commitment may be to establish a grant program.

Irrespective of their intent or type, ‘grant’ commitments made during an election period are only promises, are subject to election of the relevant party, and are usually formally approved by Parliament through an Appropriation Act before they are realised.

CAMPAIGN COMMITMENTS

A campaign commitment is a pledge or promise made by a candidate to the electorate during, or related to, an election. Election commitments are an established and important part of the democratic election cycle. They are a mechanism used by individuals and political parties to appeal to voters to vote for policies and platforms that the individual or party wishes to promote, should they form government.

Campaign commitments may or may not include a financial element. For example, candidates may make a commitment to change legislation or build a road – or they may make a commitment to provide money and call it a ‘grant’.

The media frequently reports on whether politicians have, or have not, met campaign commitments. However, campaign commitments are not enforceable. No politician can make a binding commitment, promise or pledge during an election. As they are not enforceable, all election commitments – including grant commitments – could also be referred to as ‘policies’.

GOOD PRACTICE GRANT MANAGEMENT PRINCIPLES

Good practice grant management principles primarily focus on transparency.

In New Zealand, the Department of Internal Affairs has 6 principles for grant administration and the spending of public money:

- ▼ accountability
- ▼ openness
- ▼ value for money
- ▼ lawfulness
- ▼ fairness, and
- ▼ integrity.¹

The United States has enacted specific legislation – the *Federal Grant and Cooperative Agreement Act 1977* – setting out how government agencies should use public funds in the making of grants. It also enacted the *Federal Funding Accountability and Transparency Act* in 2006. This Act has the ‘intent to empower every American with power to hold the government accountable for each spending decision ... to reduce wasteful spending in the government’.² The legislation requires that federal grants be posted on a single, searchable website for public access.

WHY RESPONSIBLE MANAGEMENT OF GRANT FUNDING IS IMPORTANT

A fundamental tenet of our democracy is that public money should be administered responsibly by elected officials. This requires probity in the use of public funds, including in the distribution of grant money – regardless of whether the grant was a campaign commitment.

In 2019, the Australian National University published the results of the [2019 Australian Election Study](#). The study asked voters:

In general, do you feel that the people in government are too often interested in looking after themselves, or do you feel they can be trusted to do the right thing nearly all the time?

Voter responses showed that trust in government had reached its lowest level since records began in 1969. Just one in four Australians believed that people in government could be trusted to do the right thing, while three quarters believed that people in government are looking after themselves. Satisfaction with democracy is currently at its lowest level since the constitutional crises of the 1970s. The survey showed that just 59% of Australians are satisfied with the way democracy is working, which was down 27% from the high point in 2007. This rate of decline is steeper than the decline in the United Kingdom following the 2016 Brexit referendum, and the United States following Donald Trump's 2016 election win.

As has long been recognised, 'there is the potential for electoral advantage to arise, or be sought, from the making of grants'.³ If political or ministerial discretion is available in grants processes, and it is used improperly, this can give rise to political favouritism and corruption.⁴ Irresponsible use of public money – or the perception of irresponsible use of public money – has arguably contributed to the declining trust in government in Australia, and growing dissatisfaction with democracy itself.

GRANTS AND INDIRECT ELECTORAL BRIBERY

In [Paper 1](#) we discussed 'indirect electoral bribery', colloquially known as 'pork barrelling'. According to the Oxford English Dictionary, the term 'pork barrelling' has been in use since 1873. It refers to the diversion of public funds from outcomes that have been tested to be in the public interest to preferential interests. Pork barrelling may be seen as a form of 'corruption', or corruption of the democratic process. [Transparency International](#) defines political corruption as including 'manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their power to sustain their power, status and wealth'.

Scandals relating to pork barrelling are common throughout the world. In December 2021, the Australian Commonwealth Government was the subject of a series of newspaper exposés alleging rampant pork barrelling. The exposés suggested that multibillion-dollar grants systems used by parliamentarians and federal Ministers had become so politicised that Government-held seats around the country received more than \$1.9 billion over three years, while Opposition-held seats received just under \$530 million.⁵ An example given was the electorate of Corangamite in Victoria, which was allegedly the most pork-barrelled electorate in the country in the 2019 federal election. The major parties promised tens of millions of dollars for this ultra-marginal seat during the election campaign. The analysis of 19,000 grants made over the last three years showed Corangamite

received more than \$55.2 million; at the same time, the neighbouring seat of Corio, held by the Opposition, received \$7.66 million.

Prime Minister Scott Morrison responded to the alleged pork barrelling by saying that it showed his government kept the commitments it made: 'That's the electoral process and we've been very transparent about that ... I can tell you if [voters] support our candidates, the commitments I make will be delivered'.⁶

Despite its apparent prevalence, recent Australian research has suggested that pork barrelling may have less impact on voter behaviour than anticipated.⁷

3. Rules about grants as election commitments

TASMANIA

There are no mandatory regulations, legislation or policies about how Tasmanian Ministers manage grants – including those they pledge during an election campaign.

The only mandatory instructions about government grants in Tasmania apply to State Service employees, in the form of ‘Treasurer’s Instructions’ (TIs). The *Best Practice Guide for the Administration of Grants* is a resource produced by the Department of Treasury and Finance for the State Service, to accompany the Treasurer’s Instructions. The guide states (emphasis added):

*The administration of grants lends itself to complaints of **political or other forms of patronage or bias**. The use of public moneys for such purposes would, of course, be improper. The design of the grant scheme should ensure that **decisions in relation to the approval or refusal of applications for grants are open to public scrutiny**.*

This means that reasons for decisions at all stages of the grant process, including appraisal and approval, must be conscientiously documented. The reasons for decision are part of the audit trail and should make it clear that only relevant factors have been taken into account in making recommendations and decisions.

Appraisal forms, therefore, should include sufficient provision for the recording of reasons for recommendations and decisions. They should be maintained as part of the official record and be accessible under Right to Information provisions. Reasons should be recorded against the aims/objectives of the grant scheme. It is also useful to prioritise the appraisals, especially if a decision was made on the distribution of available grant moneys.

[Department of Treasury and Finance (Tasmanian Government), Best Practice Guide for the Administration of Grants (Fourth Edition, December 2013)]

The guide also suggests that, in ‘some cases, a register of officers’ interests will help to protect appraisers or approving officers from accusations of bias or conflict of interest’. We have been told that the completion of a conflict of interest declaration is common practice among State Servants managing grants.

CARETAKER CONVENTIONS

During a House of Assembly election period, the Government is in ‘caretaker’ mode. A set of conventions apply during this period. The aim of the Caretaker Conventions is to ensure that the actions of the outgoing government do not bind the incoming government.

The conventions play an important role in ensuring fairness during an election campaign:

The election period is meant to be a time for deliberative equality. The caretaker rules feed this by ensuring the ministry alone cannot implement new popular or populist big measures. Instead they are merely party promises or pledges.

[Correspondence from Professor Graeme Orr to Integrity Commission, 2 November 2019]

Unlike the Treasurer's Instructions, the Tasmanian Government guidelines on the caretaker conventions do apply to Ministers and ministerial staff. They say that:

- ▼ grants approved prior to caretaker mode may be distributed, but not by a Minister or another member of the Government, and
- ▼ decisions should not be made about grant applications during caretaker mode.

The conventions only apply to Ministers acting in their ministerial role during an election period – not their 'candidate' role. They also 'do not apply to promises on future policies that the party in government announces as part of its election campaign'.⁸ And, as the name suggests, the Caretaker Conventions are only conventions and do not have the force of law.

COMMONWEALTH

The Commonwealth Government has a more comprehensive set of rules and regulations around grants. Unlike Tasmania, they are based in legislation, and they do apply to Ministers and grants pledged by candidates during an election period. Many of the Commonwealth grants that have come under media scrutiny have been for specific grants to be given within a grant program; this is an infrequent occurrence in Tasmania, where most specific election commitment grants sit outside existing grant programs.

The Commonwealth Grants Rules and Guidelines 2017 (CGRGs) sit within the framework of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act). The CGRGs set out 7 key principles for grants administration:

- ▼ robust planning and design
- ▼ collaboration and partnership
- ▼ proportionality
- ▼ an outcomes orientation
- ▼ achieving value with relevant money
- ▼ governance and accountability, and
- ▼ probity and transparency.

SELECTING GRANTEES

The CGRGs state that **all** – including ad hoc – grants must have ‘grant opportunity guidelines’. The minimum requirements for grant opportunity guidelines are that they include:

- ▼ the purpose or description of the grant
- ▼ the objectives
- ▼ the selection process
- ▼ any reporting and acquittal requirements, and
- ▼ the proposed evaluation mechanisms.⁹

Under the CGRGs, when a grant is approved – regardless of who approves it – the ‘approver’ must record in writing ‘the basis for the approval relative to the grant opportunity guidelines and the key principle of achieving value with relevant money’.

Additionally, Ministers ‘must not approve the grant without first receiving written advice from officials on the merits of the proposed grant or group of grants’. There are specific requirements for Ministers approving grants in their own electorates.

Where a Minister approves a grant in their own electorate, the Minister must write to the Finance Minister advising of the details. Ministers may approve grants that are not recommended by the relevant officials, but if this happens they must make an annual report to the Finance Minister explaining the reasons for approval.

Additionally, under section 71 of the *PGPA Act*:

a Minister must not approve proposed expenditure of relevant money unless satisfied, after reasonable inquiries, that the expenditure would be a ‘proper’ use of relevant money. ... ‘Proper’ when used in relation to the use or management of public resources means efficient, effective, economical and ethical.

[Department of Finance (Australian Government), Commonwealth Grants Rules and Guidelines 2017]

All of this also applies to election commitment grants. This means that, under the CGRGs, grants that are pledged as election commitments must go through an assessment and approval process after the election – it is not automatic that such commitments will be distributed.¹⁰ The CGRGs include dedicated guidance about election commitment grants, including:

During an election campaign, government and non-government candidates may undertake to provide certain funding, services or facilities if their relevant party is elected or re-elected to government. Election commitments are often implemented through a grant. In delivering on these ‘election commitments’, it is important that the award of a grant is consistent with the PGPA Act and Rule, in particular, the proper use and management of public resources, and the CGRGs. ...

Given election commitments are typically announced in broad terms, this process will usually involve project proposals being sought from proposed grantees. Those proposals are then to be assessed against the guidelines in order to determine their suitability for a grant, including assessing relevant risks to the Commonwealth, and achieving value with relevant

*money and the extent to which those risks might be able to be treated or mitigated. They **must** be approved in accordance with the relevant sections of Part 1 of the CGRGs.*

[Department of Finance (Australian Government), Australian Government Grants – Briefing, Reporting, Evaluating and Election Commitments – Resource Management Guide No. 412 (June 2018)]

4. Grants as election commitments – case studies

An important feature of the Commonwealth's grants administration regime is the ability for the Auditor-General to investigate federal grants administration. A similar ability is held by the Tasmanian Auditor-General.

The Commonwealth Auditor-General has significant coercive powers and is independent of government. As the reports of the Auditor-General are public, theoretically this should assist to shine a light on improper administration of grants.

Since the early 1990s, the Auditor-General – who leads the Australian National Audit Office (ANAO) – has tabled a number of audit reports on grants administered by the Commonwealth Government. Similarly, since 1994 the Tasmanian Auditor-General – head of the Tasmanian Audit Office (TAO) – has undertaken audits of Tasmanian Government grant programs.

Commonwealth parliamentary committees have also been vigilant in investigating alleged grants 'shorts', and reporting on these incidents, with committees set up for both the 1993 and 2020 'sports shorts' affairs. These hearings have shed light on important details about the processes of grants allocations, and on alleged ministerial interference in grant decision-making. They undoubtedly contribute to the political accountability of the executive.¹¹

In [Paper 1](#) of this series, we gave examples of grant commitments accused of being indirect electoral bribery, or pork barrelling. We will now revisit some of those examples.

TASMANIA

2010 ELECTION

One Tasmanian Auditor-General report is particularly relevant to grant commitments made during election campaigns. During the 2010 election, the then Labor Government (which was returned with the support of the Greens), was the subject of 'considerable media attention around the provision of grants'.¹²

The commitments made were part of two grant programs, named the Premier's Sundry Grants, and the Urban Renewal and Heritage Fund (URHF). The URHF was a one-off program. However, the Premier's Sundry Grants Program had been around for some time, and continues to this day, albeit it has been renamed the 'Premier's Discretionary Fund' (PDF). As its new name suggests, it is a fund for the Premier – and others – to make small discretionary grants of monies with various 'community' purposes.

The TAO found that, despite the allegations of preference for marginal seats, there was no persuasive evidence of bias in either program. However, in regard to the Premier's Sundry Fund, the TAO said that:

guidelines were inadequate and poorly promulgated, approval processes did not include objective assessment, eligibility criteria were informal and monitoring was not common.

In addition, budgets for Premier's Grants were based on unconvincing rationales and were frequently, and substantially, exceeded for equally unconvincing reasons.

[Tasmanian Audit Office, Auditor-General Special Report No. 98 – Premier’s Sundry Grants Program and Urban Renewal and Heritage Fund (June 2011)]

Like election commitments, Premier’s grants are ‘discretionary’. In the words of the TAO:

The difficulty with such grants is that they tend to be arbitrary since, otherwise, funds would be available from other mainstream channels. So the question arises, for example, why should the Ross football team’s uniforms or the Rosny Bowls Club’s roof be funded, but no funding is available for other football teams, or sporting organisations?

Recommendations

In its report, the TAO said that discretionary grants should:

- ▼ have a reasonable process for setting funding levels
- ▼ not involve heightened spending in the lead up to elections
- ▼ have clear and objective criteria for approvals
- ▼ possess an approval process that includes an apolitical evaluation
- ▼ have effectively promulgated guidelines
- ▼ be appropriately monitored
- ▼ be distributed apolitically, and
- ▼ have adequate public reporting.

Specifically, on the Premier’s Sundry Grant Program, the TAO’s recommendations included that:

- ▼ The Department responsible implements a realistic basis for setting funding levels for Premier’s Grants and that these levels only be exceeded for clearly defined and documented reasons.
- ▼ The budget for Premier’s Grants only be exceeded in election years under exceptional circumstances.
- ▼ The Government impose formal eligibility criteria for consideration of applicants for Premier’s Grants including:
 - ▼ community benefit
 - ▼ no access to other grant programs
 - ▼ is a one-off payment
 - ▼ no inequity or in response to a particular hardship
 - ▼ no recent prior funding¹
 - ▼ made for relatively small amounts, e.g. \$10,000.
- ▼ A formal recommendation be provided by the Department to the Premier prior to approval being given.
- ▼ The Government develop guidelines including eligibility criteria for Premier’s Grants. These guidelines should be given to all members of Parliament and be on the Department’s website.

¹ We are aware that there are technical and potentially inequity issues with this particular recommendation, and suggest that it be reviewed, or implemented with some leeway or allowance for exceptions.

- ▼ Funding agreements, including risk management, monitoring, and fund acquittal requirements appropriate to the size of the grant, be completed and retained for all grants in accordance with Treasurer's Instructions.

The recommendation that the State Service make a formal recommendation prior to approval aligns with the Commonwealth guidelines on grant election commitments. It reflects the importance the TAO placed on a non-political assessment by a State servant (ie employee), which said that the benefits of such an assessment are that it:

- ▼ avoids perception of political influence
- ▼ allows a check of whether an organisation has secured a grant in recent years
- ▼ allows a check of whether similar requests from other organisations have been recently refused, and
- ▼ allows time to ensure grants are in accordance with criteria.

Acceptance and implementation of the recommendations

The then Premier, Lara Giddings, did not accept many of the report's recommendations. A 2014 TAO review found that Department of Premier and Cabinet (DPaC) had implemented 57% of the recommendations.¹³ Notably, the recommendation that the State Service make a non-political assessment and recommendation prior to approval of the grants has not been implemented. The TAO reported that the DPaC had advised this was because Ms Giddings thought it was not needed.

There is still very little publicly available information about the Premier's Discretionary Fund. A list of grants is made available on the [DPaC website](#). However, there is no public advertisement of the program, and no publicly available eligibility criteria. The Premier's Office administers the PDF.

The 2021 election again saw the State Government (now Liberal) accused of using the PDF as a 'slush fund'.¹⁴ In the 3 months before the election, PDF grants more than doubled those given out in the same period a year earlier.

2018 ELECTION

Two days before the 3 March 2018 election, the incumbent Liberal government released its pre-election 'Financial Policy Statement'.¹⁵ The statement was attached to a media release. On page 4 of the 5-page statement, in a line in a table, there is reference to \$21.4 million of 'regional grants'.

These regional grants were a series of individual financial election commitments. There is no complete list of these grants, or any public criteria. Most of the grants were only announced directly to stakeholders at events hosted by the recipients with the candidate making the commitment; this was often posted to their Facebook pages during the election period. Some of the commitments were accompanied by a media release uploaded to the party's webpage, or were listed retrospectively in larger party election policies.

After the election, in Parliament, now Premier the Hon Peter Gutwein MP said that 'the Government consulted with community and sporting groups across Tasmania' to determine how the \$21.4 million would be distributed.¹⁶ There is no further publicly available information about how the candidates selected recipients.

Funding for the commitments was then authorised by Parliament over two years, through the budget process. Lists of the individual grants to be given each year were provided to Parliament as part of the budget papers. The individual grants were not further assessed by the State Service – although the State Service did do what it could to ensure there was as much process as possible, for example in terms of ensuring there was a grant deed with reporting and acquittal requirements.

The commitments were to various organisations, including many sports clubs – there were many football, cricket, netball and bowls clubs, but also other sports such as golf, gymnastics and shooting. There are also commitments to government departments, including the Education Department and the Department of State Growth, to various local government councils, and to religious and other community groups.

The grants ranged in value from \$500,000 to the Kingborough District Cricket Club ‘towards an extension of the grandstand’, down to \$2,000 to the Scouts Australia - Tasmanian Branch ‘towards scout group trailer boxes’. Other examples include:

- ▼ \$50,000 to the Van Diemen Light Railway Society Inc ‘towards a feasibility study’
- ▼ \$35,000 to the Cygnet Association Inc ‘towards streetscape improvements’
- ▼ \$25,000 to Sleep Disorders Australia ‘towards the Sleep Apnoea Awareness Program’
- ▼ \$20,000 to Apostolic Church Australia Limited ‘towards a new building/extension’
- ▼ \$5,000 to the Great Western Tiers Tourism Association ‘towards raising awareness’
- ▼ \$4,400 to the Cradle Coast Outrigger Canoe Club Inc ‘towards equipment’, and
- ▼ \$4,200 to the Strahan Rifle Club Inc ‘towards installation of an electronic target board’.

[Department of Premier and Cabinet (Tasmanian Government), DPaC Annual Report 2017–18 (October 2018) 178–183]

Many of the 2018 election regional grants were similar in nature and scale to the Premier’s Discretionary Fund grants examined by the Auditor-General following the 2010 election.

Good practice comparison

There are significant differences between good practice grants management and the 2018 election commitments. Decisions about the recipients did not meet the following principles:

- ▼ Accountability. It wasn’t clear how decisions were arrived at.
- ▼ Openness. Details of the individual recipients were not widely publicised.
- ▼ Fairness. There was no advertisement of the opportunity, nor was there a competitive or transparent selection process.
- ▼ Value for money. There was an absence of criteria assessing whether the expenditure represented value for money.

Despite this, given that they were individual election commitments or policies, it would still have been possible for the grants to meet good practice principles – if there had been a process followed after the election. It is possible to have broad criteria to apply to discretionary funds pledged to selected recipients, after the fact. However, in 2018, there was no process – competitive or otherwise – to determine whether the pledged funds were really needed, or whether they were a good use of public money. After the election, the grants were given out as pledged, with no further assessment of the recipients' need for the funding, or whether the amount of money promised was appropriate.

This means that the 2018 grants overall could not meet good practice grant management principles as they:

- ▼ did not have objectives
- ▼ did not have selection criteria
- ▼ did not have an application process
- ▼ were not publicly advertised or competitive
- ▼ did not identify decision makers, and
- ▼ did not involve a public record of how or why recipients were chosen.

The dangers of this approach are apparent in one example reported in the media. One of the 2018 election commitments was a grant of \$10,000 for the upgrade of a walking track, given to a local government council. A subsequent 'review of the [walking track] project suggests that there was limited planning and ineffective community consultation undertaken before the project commenced'.¹⁷ The Council reportedly received advice that

*construction on [the] track had commenced without the proper approvals or engineering plans. The council had already poured tens of thousands of dollars at the time and faced a larger bill to rehabilitate the area.*¹⁸

As stated in the minutes of the Council meeting, the Council also faces the prospect of potentially having to repay the State Government grant. In this example, it seems likely that limited due diligence was performed in selecting this grant recipient.

COMMONWEALTH

On 15 January 2020, the ANAO released a report on the award of funding under the Commonwealth Community Sport Infrastructure Grants Program (CSIG).¹⁹ The report caused significant media and public interest, and was the subject of a Senate Committee inquiry.

The CSIG was a grant program administered – at least theoretically – by the public service, outside of an election period. However, its implementation raised similar issues to those raised in the two Tasmanian examples.

As stated in its report, the ANAO determined to undertake the audit following,

a request from the Shadow Attorney-General, the Hon Mark Dreyfus QC MP, for an audit into the circumstances surrounding the Liberal candidate for Mayo's presentation of a cheque to the Yankalilla Bowling Club for a project that received \$127,373 in funding [under the CSIG].

Images of this event from Facebook show the candidate holding a fake cheque and champagne glass, posing next to members of the Bowling Club, in the lead up to the 2019 federal election.²⁰

In its report, the ANAO said that grants were not awarded on merit, but that other factors were taken into account by the decision maker, the then Minister for Sport Senator the Hon Bridget McKenzie. Those factors included the electorate of the recipient organisation. The ANAO called this ‘distribution bias’. Another issue emerged after the ANAO report, which was that the list of grants was finalised shortly after the federal election was declared and the Government entered caretaker mode i.e. during the election period.²¹ This may amount to a breach of the caretaker conventions.

The following year, 2021, the ANAO released a report on another Commonwealth Government grant program – the commuter car parks project, part of the Urban Congestion Fund (UCF).²² The total funding for the project was \$660.4 million for 44 commuter car parks. The ANAO said in its report that:

The department’s approach to identifying and selecting commuter car park projects for funding commitment was not appropriate. It was not designed to be open or transparent. ... The distribution of projects selected reflected the geographic and political profile of those given the opportunity by the government to identify candidates for funding consideration.

Under the scheme, \$389 million was allocated one day before the 2019 federal election was announced. Two-thirds of the money went to projects in Melbourne electorates reportedly deemed vital to the re-election of the then Government. The seats of Deakin and Kooyong in Victoria were targeted seats. They received five and four upgraded car parks respectively. Yet the seat of Chisholm located between Deakin and Kooyong, but with no sitting member, received no grant funding. Similarly, the Government held seats of Goldstein and Dunkley were allocated 6 and 3 car parks respectively, but the Opposition held seat of Isaacs, sitting between them, received no grant funding.²³

The ANAO released yet another report about a Commonwealth grant program in February 2022. The report said that funding decisions about the ‘Safer Communities Fund’ disproportionately favoured Government electorates.²⁴

SHORTCOMINGS OF THE COMMONWEALTH FRAMEWORK

If the Commonwealth grants administration framework incorporates good practice principles (as it seems to), it begs the question of how Commonwealth grant programs are still attracting allegations of impropriety. The first answer is that, for various reasons, the government did not apply the framework to the grants in questions.

The CGRGs were not applied to the commuter car parks project because the money was channelled through the states – money distributed in this manner is excluded from the Commonwealth grant framework.²⁵ Similarly, the CGRGs were not applied to the CSIG grants because of a ‘significant’ legal loophole in the system; this has now been fixed by a legislative amendment.²⁶

Second, as academics have pointed out, no-one has analysed whether Senator McKenzie complied with section 71 of the *PGPA Act* – perhaps because it is not enforceable.²⁷

And finally, the commuter car parks project showed that having grant programs administered independently by government departments is only effective if the department is free from ministerial influence. Terry Moran, head of the Department of Prime Minister and Cabinet from 2008 to 2011, said:

What's happened at federal level is that if you're not accommodating of Ministers, you're endangering your job. If you won't take the nods and nudges to favour one proposal over another, and provide advice accordingly, you're endangering your relationship with the Minister. That used not to be case.

[Mike Secombe, 'Berejiklian 'rorts' nothing on the Morrison government's' The Saturday Paper (Online, No. 374, 6–12 November 2021)]

Ministerial influence includes not just Ministers themselves, but also ministerial advisers, who have become very powerful in the Westminster system of government. Ministerial advisers have increasingly extensive roles, including advising on public policy, media, political, parliamentary management and party management matters.²⁸ At times they may act as a 'surrogate' to a Minister (making minor decisions on the Minister's behalf) or even exercise executive power.²⁹ Ministerial advisers tend to come from a party political background. This may exacerbate decision making on purely political grounds, such as ministerial handouts to win marginal seats.³⁰

5. Considerations for Tasmania

The long history of both Commonwealth and Tasmanian audit office reports relating to grant commitments should be heeded. These reports have recurring themes:

- ▼ a relationship to elections or election campaigns
- ▼ grant programs with unclear or non-existent objectives and criteria
- ▼ lack of consultation with interested bodies
- ▼ lack of accurate and relevant information explaining the reasons for decisions
- ▼ difficulty in assessing the overall effectiveness of programs in any measurable way, and whether they achieve value for money, and
- ▼ heightened spending in the lead up to elections.

However, while there are loopholes allowing ongoing allegations of impropriety, there are checks and balances in the Commonwealth grant management system that the Tasmanian system does not possess. The most important differences include that, in the Commonwealth system:

- ▼ the rules apply to Ministers and other public officers – not just the public service
- ▼ there are specific rules around making and authorisation of election commitments
- ▼ the rules apply to ad hoc or discretionary grant commitments
- ▼ Ministers must take advice from the public service before approving most grants
- ▼ if the Minister's decision diverges from public service advice, they must record the reason for that in writing
- ▼ there are special rules for Ministers approving a grant for their own electorate, and
- ▼ Ministers must not approve grant expenditure unless they are satisfied that it is an 'efficient, effective, economical and ethical' use of taxpayer funds.

ELECTION COMMITMENTS

The Commonwealth rules are largely principles-based and do not differentiate between proposed grants that stem from an election commitment and other grants. Tasmanian grant guidelines and rules should capture election commitments by mirroring the CGRGs.

Election commitments should not escape expectations around good practice decision making, including proportionality, collaboration, outcomes orientation, achieving value for money, governance and accountability, and probity and transparency.

As indicated by the ANAO in a 1993 report, the key to effective accountability is accurate and relevant information explaining the reasons for decisions.³¹ This could be mandated in rules and guidelines. Grant recipients could be informed that the provision of any grant would be conditional

on the reasons for the decision being explained and documented. This would assist in avoiding allegations that the commitment had been made on an unplanned or unmeritorious basis.

Rules and guidelines could also incorporate safeguards such as a requirement for a declaration that the project would not have gone ahead without the grant, or that the project had not already started.

Existing agencies or a designated independent agency could act as an arm's length intermediary, assessing the suitability of proposals. This would ensure proposals had been independently scrutinised (which could be relied on by the party making the commitment), and ensure compliance with prescribed criteria. This would be consistent with the CGRGs requirement that Ministers not approve grants without first receiving written advice from officials on the merits of a grant.

ENFORCEMENT AND COMPLIANCE

Robust rules and guidelines regarding grant commitments may have limited effectiveness if they are not accompanied by enforcement mechanisms. Deputy Director of the Australian Centre for Justice Innovation at Monash University Associate Professor Yee-Fui Ng argues that there should be a legal sanction or penalty for breaching financial management legislation. Currently, even in the Commonwealth, Ministers and government officials can breach the guidelines without any legal repercussions.³²

Another consideration is the funding and resources of government departments tasked with assessing, approving and administering grants. While it is ideal to have grants approved and administered independently of politicians, this has to be efficient. If the process of distributing public funds to the most worthy grant recipients is lengthy and unwieldy, it will create an incentive for government to bypass bureaucracy.

Another consideration is a mechanism for potential grant applicants to challenge decisions. Part of the perception problem with election commitments is that while projects may have been meritorious, they were seemingly chosen in an arbitrary way, and potentially on the basis of the candidate having some association with the recipient. It may be that recipients that did not know the candidate, but had greater merit, were overlooked. The potential to challenge can only exist if there is transparency regarding the proposal in the first place, and transparency regarding the ability to challenge.

6. Conclusion and recommendations

Paper 1 of this series discussed ‘pork barrelling’ and the difficulties inherent in seeking to regulate such conduct. In this paper, we have discussed a way in which some of this behaviour may be regulated without constraining the democratic process: by clearly differentiating between ‘commitments’ made before an election and ‘grants’ provided after the election, and having clear rules around commitments made by government, especially those made during an election period. Currently, there are no such rules in Tasmania. The 2010 and 2018 elections both provide examples of why such rules are needed.

It is an important part of the democratic process that aspiring parties should provide their election commitments during the election period. Ideally, financial promises made during an election would be to establish a grant program, with all the checks and balances a program entails. But this is not always the case, and we cannot – and should not – fetter the kinds of policy commitments that election candidates can make. This means it is unavoidable that grant promises will continue to be made with little process or policy backing, and may be – or be perceived to be – for political outcomes only i.e. pork barrelling. This can undermine trust in government, and in the democratic process itself. We are recommending that a system be implemented to restore a degree of due process to these kinds of promises, and thereby to help restore trust in the democratic process.

When made, such promises should be backed by policy, and must be publicised to all of the electorate – not just the intended recipients. Tasmania should also have mandatory legislation or regulations requiring promises of this kind to be subject to an assessment process, after the election – in addition to the checks that currently are performed by the State Service.

Despite its failings, the Commonwealth grant management system already has legislation and regulations like this in place. None of the questionable Commonwealth grants have complied with these regulations; there seems to have been a series of loopholes allowing exceptions. In introducing similar legislation, Tasmania should ensure that it does not have similar loopholes.

The replication of Commonwealth rules – ensuring there are no loopholes – would be an important step in ensuring grants, and election commitments that form the basis of grants, are formulated and administered according to good practice in Tasmania. This would in turn help to arrest the declining trust in government.

Recommendations

- 1. We recommend that the Government consider, before the next House of Assembly election, reviewing the *Public Governance, Performance and Accountability Act 2013* (Cth) with a view to introducing legislation into Tasmania incorporating the sentiment of section 71 of that Act.**
- 2. We recommend the Government consider, before the next House of Assembly election, introducing mandatory grant rules modelled on the Commonwealth Grants Rules and Guidelines, ensuring that they include compliance mechanisms and apply to:**
 - Ministers and ministerial staff
 - grant commitments made during an election period
 - ad hoc and discretionary grant commitments, and

- the Premier's Discretionary Fund.

3. We recommend the Government consider adopting the remainder of the recommendations made in 2011 by the Tasmanian Auditor-General about the Premier's Sundry Grants program (now known as the Premier's Discretionary Fund).

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