



PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS

FOLLOW-UP OF AUDITOR-GENERAL'S SPECIAL REPORTS
NO. 82 HEAD OF AGENCY CONTRACT RENEWAL
NO. 84 FUNDING THE TASMANIAN EDUCATION FOUNDATION

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ABBREVIATIONS LIST

ASIC	Australian Securities and Investments Commission
DoE	Department of Education
DPAC	Department of Premier and Cabinet
HoA	Head of Agency
PAC	Public Accounts Committee
PSMO	Public Sector Management Office
SSMO	State Service Management Office
TCCI	Tasmanian Chamber of Commerce and Industry
TEF	Tasmanian Education Foundation

CHARTER OF THE COMMITTEE

The Public Accounts Committee

The Public Accounts Committee is a joint standing committee of the Tasmanian Parliament constituted under the *Public Accounts Committee Act 1970*.

The Public Accounts Committee comprises six Members of Parliament, three Members drawn from the Legislative Council and three Members from the House of Assembly.

Its functions under the *Public Accounts Committee Act* (Section 6) are to inquire into, consider and report to Parliament on any matter:

- *referred to the Committee by either House relating to:*
 - the management, administration or use of public sector finances; or
 - the accounts of any public authority or other organisation controlled by the State or in which the State has an interest;
- *arising in connection with public sector finances that the Committee considers appropriate; and*
- *referred to the Committee by the Auditor-General.¹*

The Public Accounts Committee also has oversight responsibilities regarding the independence of the Auditor-General, which are derived from the *Audit Act 2008*.

An important area of focus for the Public Accounts Committee is following up Auditor-General's reports to Parliament under Section 6(2)(b) of the *Public Accounts Committee Act 1970*. In scrutinising the work of the Auditor-General, the Public Accounts Committee believes it can provide greater awareness within the Parliament and the community, leading to increased information and greater transparency.

¹ *Public Accounts Committee Act 1970*, s.6

CHAPTER 1 - INTRODUCTION

Pursuant to Section 6(2)(b) of the *Public Accounts Committee Act 1970* (the Act), the Public Accounts Committee may inquire into, consider and report to the Parliament on any matter referred to it by the Auditor-General.

In accordance with that section, the Auditor-General refers his Special Audits and other audit reports to the Public Accounts Committee.

In April 2012 the Public Accounts Committee of the 47th Parliament resolved to follow-up the following Auditor-General's reports:

- Special Report No. 82: *Head of Agency Contract Renewal*; and
- Special Report No. 84: *Funding the Tasmanian Education Foundation*.

Hearings were held to inquire into the uptake of the Auditor-General's recommendations for:

- Report No.82 on 18 April, 30 April and 3 December 2012 (Department of Premier and Cabinet); and
- Report No.84 on 20 June 2012 (Tasmanian Chamber of Commerce and Industry) and 22 August 2012 (Department of Education).

Further to the hearings, during 2013 the Public Accounts Committee requested information from the Australian Securities and Investments Commission (ASIC), Department of Education (DoE) and Tasmania Police in relation to information in Report No.84.

The follow-up work of the Public Accounts Committee into these two Auditor-General's reports was interrupted by the election that took place in March 2014, and while a draft report was under preparation the Inquiry was not finalised by the Public Accounts Committee of the 47th Parliament.

The Public Accounts Committee of the 48th Parliament has considered the work undertaken by the previous Public Accounts Committee and the evidence received as part of the 2012-13 Inquiry.

In addition to considering prior evidence, the Public Accounts Committee of the 48th Parliament has:

- Received a further update from the Premier on progress made in implementing the recommendations of the Auditor-General regarding Head of Agency Contract Renewal; and
- Reconfirmed the position of ASIC and Tasmania Police with regard to a matter raised during the Funding the Tasmanian Education Foundation Inquiry.

The Public Accounts Committee of the 48th Parliament has resolved to finalise these follow-up inquiries in accordance with section 6(2)(b) of the Act.

CHAPTER 2 - PUBLIC ACCOUNTS COMMITTEE OF THE 47th PARLIAMENT - REPORT No. 82: HEAD OF AGENCY CONTRACT RENEWAL

2.1 The Auditor-General's Special Audit

The Auditor-General “*examined the processes followed in renewing the contract for the employment of Mr Scott Gadd, the Secretary of the Department of Environment, Parks, Heritage and the Arts, which was amalgamated with the Department of Primary Industries and Water on 1 July 2010 to form the Department of Primary Industries, Parks, Water and Environment.*”²

The Auditor-General's review resulted in four recommendations with the aim to bring about greater clarity in the employment arrangements for both the employer and employee.

The Auditor-General made the following recommendations:

1. The standard Head of Agency(HoA) instrument of appointment should be amended to require that the officer receive at least six months' notice of any intention to not renew the contract;
2. Any decision to offer a contract renewal under Clause 12 should be based on a recent performance appraisal;
3. The standard HoA instrument of appointment should be amended to clarify:
 - (a) whether an offer under Clause 12 can be withdrawn or modified by the Crown prior to acceptance and if so, what compensation is payable;
 - (b) whether an offer under Clause 12 is presumed to be on the same terms and conditions as the existing contract unless otherwise specified;
 - (c) if different terms (e.g. duration) are offered, what is the impact on the option provided by Clause 13; and
4. The standard HoA instrument of appointment should be amended to state that an offer of renewal of contract will lapse unless accepted in writing within a specified time.

² Auditor-General's Special Report No.82 Head of Agency Contract Renewal August 2009, p. i.

2.2 Findings - Public Accounts Committee of the 47th Parliament

The Public Accounts Committee of the 47th Parliament received evidence from DPAC concerning the recommendations made by the Auditor-General in *Special Report No. 82* and made the following findings.

Auditor-General - Recommendation No.1

The standard HoA instrument of appointment should be amended to require that the officer receive at least six months' notice of any intention to not renew the contract.

PSMO and DPAC response	<p><i>The Public Accounts Committee received evidence that this was now included in the standard Instrument of Appointment, under Schedule 4 Clause 1, as follows:</i></p> <p><i>"1. At least six but not more than eight months prior to the expiry of the term of the appointment, the Officer is to be notified by the Premier in writing:</i></p> <p><i>(a) of an offer of consecutive appointment; or</i></p> <p><i>(b) that an offer of a consecutive appointment will not be made."³</i></p>
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PAC Finding No. 1	The Public Accounts Committee finds that Recommendation No. 1 of Special Report No. 82 has been fully implemented by DPAC subsequent to the Auditor-General's Special Report.
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Auditor-General - Recommendation No.2

Any decision to offer a contract renewal under Clause 12 should be based on a recent performance appraisal.

PSMO and DPAC response	<p>The Public Accounts Committee received evidence with respect to a Performance Management system for HoAs⁴ and a new clause in the standard instrument of appointment (Clause 4.1 - 4.2 of Schedule 3⁵) which states:</p> <p><i>4.1. The Officer is to comply with any "Performance Management System for Heads of Agency" as approved by the Premier from time to time; and</i></p> <p><i>4.2. This appointment is subject to ongoing satisfactory performance as assessed by the Premier in accordance with the approved Management System.</i></p>
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³ Standard Instrument of Appointment – Head of Agency, submitted to the PAC, 18 April 2012, Schedule 4, p. 1

⁴ Performance Management Systems for Heads of Agency, documentation submitted 18 April 2012

⁵ Standard Instrument of Appointment – Head of Agency, submitted to the Committee, 18 April 2012, Schedule 3, p. 1

PAC Finding No. 2	The Public Accounts Committee finds that Recommendation No. 2 of Special Report No. 82 has been addressed, in that a Performance Management framework for HoAs is now in place and there is a clause in the HoA standard instrument of appointment which states that the <i>“appointment is subject to the ongoing satisfactory performance as assessed by the Premier in accordance with the approved performance management system.”</i>
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Performance Based HoA Contracts

In its discussions with Departmental representatives, the Public Accounts Committee considered the issue of possible non-performance of HoAs with DPAC officials and noted that a HoA contract is only to be continued in the event of an assessment of ongoing satisfactory performance per Schedule 3 Clause 4.2:

'This appointment is subject to the ongoing satisfactory performance as assessed by the Premier in accordance with the approved performance management system.'

It was also noted that there is a recognised practice that Ministers meet with their respective HoAs on a weekly basis, but no information was forthcoming with regard to the issue of non-performance of HoAs.

PAC Finding No. 3	The Public Accounts Committee finds that other than the continuation clause in the event of assessed satisfactory performance, there is an absence of information around how non-performance is managed within the performance appraisal framework.
PAC Finding No. 4	The Public Accounts Committee further finds that the current performance appraisal framework has “no financial incentives” for high performers (for example stretch goals with incentives for exceptional, measurable performance).
PAC Finding No. 5	The Public Accounts Committee finds that there is a lack of transparency generally with respect to indicators on which a HoA’s performance is assessed.

Auditor-General - Recommendation No.3

The standard HoA instrument of appointment should be amended to clarify:

- *whether an offer under Clause 12 can be withdrawn or modified by the Crown prior to acceptance and if so, what compensation is payable;*
- *whether an offer under Clause 12 is presumed to be on the same terms and conditions as the existing contract unless otherwise specified; and*
- *if different terms (e.g. duration) are offered, what is the impact on the option provided by Clause 13?*

PSMO and DPAC response	The Public Accounts Committee received evidence that these were now included in the standard instrument of appointment.
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PAC Finding No. 6	The Public Accounts Committee finds that Recommendation No. 3 of Special Report No. 82 has been fully implemented by DPAC subsequent to the Auditor-General's Special Report.
Auditor-General - Recommendation No.4	
<i>The standard HoA instrument of appointment should be amended to state that an offer of renewal of contract will lapse unless accepted in writing within a specified time.</i>	
PSMO and DPAC response	The Public Accounts Committee received evidence that this amendment has been made to the standard instrument of appointment.
PAC Finding No. 7	The Public Accounts Committee finds that Recommendation No. 4 of Special Report No. 82, recommending that, the standard HoA instrument of appointment be amended to state that an offer of renewal of contract will lapse unless accepted in writing within a specified time, has been fully implemented by DPAC subsequent to the Auditor-General's Special Report.

Termination and Termination Benefits - Head of Agency Contracts

Salary Maintenance

The Public Accounts Committee noted that those HoAs reverting back to the State Service from HoA level are, in certain circumstances, offered salary maintenance for a specified period. The effect of salary maintenance is to "top up" the State Service salary to the previously held HoA salary level.

The Public Accounts Committee notes the following terms for salary maintenance in the HoA instrument of appointment as follows:

"Schedule 6C - Salary Maintenance:

In the event that:

- (1) no offer of consecutive HoA appointment is made; OR*
 - (2) if the HoA consecutive appointment offer is not similar to existing terms and is subsequently rejected by the officer; AND*
 - The officer elects to then:*
 - (a) terminate; AND*
 - (b) revert to the State Service in another role*
- then salary maintenance is offered."*

According to the HoA instrument of appointment, the salary maintenance allowance is for the following duration:

Number of completed years of continuous service as a HoA	Duration of salary maintenance allowance
Up to and including 5 years	6 months
Greater than 5 years and up to and including 10 years	9 months
Greater than 10 years	12 months

While the Public Accounts Committee acknowledges the expectation of an HoA (under normal circumstances) to receive the “contracted” salary amount until at least the end of the contract expiry date, the Public Accounts Committee is of the view that salary maintenance allowance payment in the instance when the employee elects to revert to the certainty of the State Service, is not only unwarranted, but is inequitable to other State Service employees.

PAC Finding No. 8	The Public Accounts Committee finds that the payment of salary maintenance allowance to HoAs who elect to revert to the certainty of the State Service, is generally an excessive and unjustified contract condition.
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CHAPTER 3 - PUBLIC ACCOUNTS COMMITTEE OF THE 48th PARLIAMENT - REPORT No. 82: *HEAD OF AGENCY CONTRACT RENEWAL*

3.1 Summary

The Public Accounts Committee of the 48th Parliament, in continuing this Inquiry, has reassessed evidence in accordance with section 8 of the *Public Accounts Committee Act 1970*.

The Public Accounts Committee took action to determine the degree of progress in relation to this matter since the matter had been examined by the previous Public Accounts Committee.

Correspondence was forwarded to the Premier, Hon Will Hodgman MP, in November 2014, in which the Public Accounts Committee:

- Acknowledged the findings of the previous Public Accounts Committee that the four recommendations of the Auditor-General in his report had been fully implemented and/or addressed; and
- Requested further feedback regarding some additional matters raised by the previous Public Accounts Committee in light of evidence received including:
 - The benefit or otherwise of undertaking a review of the current HoA contract by an independent expert, with a view to developing performance based contracts for HoAs;
 - With respect to the performance appraisal system, the benefit or otherwise of undertaking a review of the processes used to manage non-performance and consideration of the introduction of a mechanism to encourage high performers at the HoA level;
 - The benefit or otherwise of amending the performance appraisal system to include transparent indicators for HoA positions, and considering how these results should be publicly reported: for example in the annual report of Agencies; and
 - The benefit or otherwise of undertaking a review of the terms of future HoA contracts with respect to the payment of the salary maintenance allowance, including consideration of its elimination from future contracts.

In his response the Premier advised that:

- *The Solicitor-General provides expert advice about the instruments of appointment used for Heads of Agencies and Senior Executive Service Officers. The engagement of another independent expert to review the contracts has not been considered necessary;*
- *The performance management plans (PMP) for heads of departments and SES officers have been developed and continue to be enhanced;*
- *The PMP for heads of departments was most recently reviewed after the Government was elected. The Premier determined that the agreements for these HoAs for the current financial year should primarily reflect the following three broad elements:*

- *Implementation of the Government's major policy commitments;*
- *Implementation of the Budget handed down in August; and*
- *A focus on improved organisational performance.*
- *There has not been any agreement to action two of the other matters mentioned by the Committee; that is public reporting of the results of HoA performance appraisals and the elimination of salary maintenance agreements from future contracts.*

Having noted the Premier's response the Public Accounts Committee contends that further action is necessary to ensure continuing improvement to the processes which are in place for HoA engagement and performance appraisal.

The recommendations of the Public Accounts Committee strive to:

- Bring about greater transparency with regard to HoA performance;
- Provide incentives for better performance; and
- Improve financial efficiency and equity in relation to salary maintenance.

3.2 Recommendations

Performance Based Contracts

The Public Accounts Committee recommends that:

1. A review of the current HoA contract by an independent expert be undertaken to provide for contemporary performance based contracts for HoAs; and
2. The terms of future HoA contracts be reviewed with respect to the payment of the salary maintenance allowance, with a view to consideration of its elimination from future contracts.

Performance Appraisal Process

The Public Accounts Committee recommends that:

3. With respect to the performance appraisal process, a review be undertaken of the processes to identify and manage non-performance, along with consideration of introducing a mechanism to identify and encourage high performers at the HoA level; and
4. The performance appraisal process should include transparent outcome-focused indicators for HoA positions and that the result of assessment against these indicators be reported.

CHAPTER 4 - PUBLIC ACCOUNTS COMMITTEE OF THE 47th PARLIAMENT - REPORT No. 84: *FUNDING THE TASMANIAN EDUCATION FOUNDATION*

4.1 Background

The Tasmanian Education Foundation (TEF) was established with the aim of promoting the value of learning and education in the Tasmanian community. The likely benefits were seen as “*improved school retention rates and, in the longer term, a workforce with improved potential for economic output.*”⁶

By June 2009, the DoE had released \$250,000 (of a proposed \$1m allocated over 2 years in the 2008-09 Budget) to the TEF. The funding of the TEF was to be from both the government and private sectors, however delays in obtaining Deductible Gift Recipient status (from the Australian Taxation Office) meant that the TEF did not attract funds from the private sector and so was effectively unable to operate.

By the end of July 2009 all but one of the Foundation’s Board members had resigned leaving the TEF exposed and in breach of the *Corporations Act 2001*. Unspent funds from the \$250,000 originally received by the TEF at the date of the Auditor-General’s report totaled \$39,509.⁷

4.2 The Auditor-General’s Special Audit

The Auditor-General conducted an audit to examine the effectiveness of Government’s oversight of the expenditure, compliance by DoE with Treasurer’s Instructions, and compliance by the TEF with normally acceptable governance arrangements between April 2008 and July 2009.⁸

The Auditor-General made the following recommendations:

1. That the DoE should conduct a risk assessment prior to finalising any funding deed with the TEF or advancing further monies; and
2. That the DoE, in conjunction with the TEF, evaluate Government’s existing and further commitment to the TEF.

⁶Auditor-General’s Special Report No.84 Funding the Tasmanian Education Foundation October 2009, p. 6

⁷ *Ibid*, p.44

⁸ Auditor-General’s Special Report No.84 Funding the Tasmanian Education Foundation October 2009

4.3 Findings - Public Accounts Committee of the 47th Parliament

The Public Accounts Committee of the 47th Parliament received evidence from DoE concerning the recommendations made by the Auditor-General in Special Report No.84 and made the following findings.

Auditor-General - Recommendation No.1

The Department of Education should conduct a risk assessment prior to finalizing any funding deed with the TEF or advancing further monies.

DoE Response	<i>With regards to the recommended risk assessment... the Government's commitment to the TEF would need to be resolved before proceeding with a risk assessment. Given the discontinuation of the TEF strategy, ultimately no risk assessment was undertaken.</i> ⁹
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PAC Finding No. 9	The Public Accounts Committee finds that DoE has adequately addressed this matter in its response to the Auditor-General's Report.
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Auditor-General - Recommendation No.2

The Department of Education, in conjunction with the TEF, evaluate Government's existing and any further commitment to the TEF.

DoE Response	<p><i>"Following the Auditor-General's October 2009 Report, the Department entered into discussions with the TCCI about a plan to re-evaluate the original TEF proposal, to consider the experience of and work undertaken by the TEF Board, and to provide a robust re-evaluation of the relevance of the TEF goals and the capacity of the initiative to achieve them."</i></p> <p>The DoE advised the Committee¹⁰ that following the Auditor-General's report, although discussions took place between the TEF and the DoE around a proposed study to be undertaken by TEF in the first quarter of 2010, the TCCI determined not to accept any funding for the proposed study. In a subsequent communication between DoE and the TCCI it was resolved that the study would not be proceeded with.</p> <p><i>"Subsequently it was resolved that the plan would not proceed. Consequently, no further funding was invested in the TEF subsequent to the Auditor-General's 2009 Report and the TEF undertook no further work following that Report."</i>¹¹</p> <p>Also, <i>"given the discontinuation of the TEF strategy, ultimately no risk assessment was undertaken."</i>¹²</p>
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⁹ DoE written response to PAC follow up, received 30 April 2012, p. 2
¹⁰ *Ibid.* p 1-2
¹¹ *Ibid.* p. 2
¹² *Ibid.*

PAC Finding No.10	<p>The Public Accounts Committee finds that the DoE concluded that the TEF strategy be discontinued – thereby addressing the Government’s existing and further commitment to the TEF as required by the Auditor-General’s second (and final) recommendation.</p> <p>The Public Accounts Committee further finds that given the conclusion to discontinue with the TEF strategy, DoE did not take the steps to finalise its relationship with the TEF on a formal footing.</p>
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The Public Accounts Committee of the 47th Parliament conducted a review and follow up of Special Report No.84, and made the following additional findings in relation to its review:

- In light of affirmation from DoE that “the TEF did not produce any research or documentation that had a material value,” the Committee supports the Auditor-General’s findings that the Government did not receive value for money for the \$250,000 spent;
- Some question remains regarding the appropriate expenditure of some TEF funds;
- That the DoE did not take timely action to finalise its relationship with TEF and thereby ensure that outstanding monies at October 2009 be returned;
- That there is a lack of evidence to support the TEF articulating its requirements at the outset to TCCI with regard to specified outputs and key deliverables;
- That the DoE’s inability to produce any documentation around outputs and deliverables related to the work done by the TCCI on behalf of the TEF, is a direct reflection of the inadequate state of record keeping and lack of oversight by the DoE;
- That compliance with the Grants Management Framework Treasurer’s Instruction 709 did not provide DoE with an adequate safeguard over the spending of government monies in relation to the funding of the TEF; and
- That the internal processes within DoE for oversight of grant management and associated payments were not robust enough to prevent payments to an entity that was not exercising fundamental governance practices.

CHAPTER 5 - PUBLIC ACCOUNTS COMMITTEE OF THE 48th PARLIAMENT – REPORT No. 84 *FUNDING THE TASMANIAN EDUCATION FOUNDATION*

5.1 Summary

The Public Accounts Committee of the 48th Parliament notes the following actions taken by the previous Public Accounts Committee of the 47th Parliament in relation to this Inquiry:

- With regard to the question of appropriate expenditure of TEF funds in 2009 the Public Accounts Committee requested that DoE pursue this matter with Tasmania Police. Tasmania Police did not pursue that matter on the premise that if a breach had occurred it was of the *Corporations Act 2001*, which should be referred to ASIC for consideration;
- On 4 February 2013, the previous Public Accounts Committee had also written to ASIC raising matters concerning the question of appropriate withdrawal of funds from the government-funded TEF account;
- On 29 January 2014, the previous Public Accounts Committee resolved that the Chair write to ASIC reiterating the Public Accounts Committee position and requesting a progress report outlining the reasons why ASIC had not actioned the issues previously raised by the Public Accounts Committee;
- In a letter to the Public Accounts Committee dated 25 February 2014, ASIC confirmed that it had concluded a review of the matter, including reconsideration of the material provided by the Public Accounts Committee, Tasmania Police and the DoE in relation to the allegation of falsification of TEF minutes for the payment of, amongst other things, Director fees and that TEF operated without the minimum number of Directors for a public company. Following this reconsideration, and in view of the factors relevant to whether ASIC should take action, ASIC determined to exercise its discretion not to take further action in relation to the matter;
- This decision was based on ASIC's assessment that there was insufficient regulatory benefit in pursuing the matter; and
- The follow-up work of the Public Accounts Committee was interrupted by the election that took place in March 2014, and while a draft report was under preparation, the Inquiry was not finalised by the previous Public Accounts Committee.

On 18 August 2014, the Public Accounts Committee of the 48th Parliament determined it appropriate to revisit the matter with a view to finalising the Inquiry and the following events have taken place:

- The Public Accounts Committee referred the matter back to Tasmania Police, together with a copy of the letter received from ASIC dated 25 February 2014;

- In a letter dated 6 November 2014, Tasmania Police advised the Public Accounts Committee that in the absence of further evidence or additional allegations which require further review, the previous advice stands and Tasmania Police do not intend to conduct any further reviews or investigations into the allegations of misuse of the TEF funds;
- During its meeting on 26 November 2014, the Public Accounts Committee noted correspondence received from ASIC confirming the previous position that this matter would not be pursued on the basis of insufficient regulatory benefit in doing so, and that Tasmania Police had determined that there was insufficient evidence to conduct a prosecution. The Public Accounts Committee further noted that a considerable length of time had elapsed since the initial incident; and
- On 10 February 2015, the current Public Accounts Committee resolved to report on the work undertaken by the previous Public Accounts Committee and conclude the Inquiry.

5.2 Conclusion of the Public Accounts Committee

Based on the work undertaken and the evidence obtained by the Public Accounts Committee of the 47th Parliament, the Public Accounts Committee of the 48th Parliament:

- Has confirmed the position of ASIC and Tasmania Police with regard to this matter, and has determined that no further investigation is warranted.

5.3 Recommendations

The Public Accounts Committee recommends that the Department of Education:

1. Review processes in place to ensure future timely follow up of the Auditor-General's Special Report recommendations;
2. Only provide funding in accordance with a clear and concise funding instrument which has specific guidelines as to the purpose of funds, including required outcomes and key deliverables as well as mechanisms for monitoring and evaluation of the contract as it is performed; and
3. Undertake a review of their current process for administering grant payments to ensure that payments are only made to entities with sound governance practices in place.

DATE: 22 June 2015



Ivan Dean MLC
Chair