

**Submission
No 1**

INQUIRY INTO DIGITAL RESTART FUND BILL 2019

Name: Ms Sophie Cotsis MP

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SOPHIE COTSIS MP

MEMBER FOR CANTERBURY



22 November 2019

Abigail Boyd MLC
Chair
Portfolio Committee No. 6 (Transport and Customer Service)
Legislative Council
NSW Parliament
SYDNEY NSW 2000

Inquiry into the provisions of the Digital Restart Fund Bill 2019

Dear Chair

This letter and the enclosed attachments form my submission to the inquiry by Legislative Council Portfolio Committee No. 6 (Transport and Customer Service) into the provisions of the Digital Restart Fund Bill 2019.

NSW Labor strongly supports investment in digital infrastructure to improve the delivery of services for the people of NSW.

However, I have significant concerns about the specific provisions of this Bill.

On 20 November 2019, I gave a speech in the Legislative Assembly in which I set out those concerns (**Attachment A**). In response to my speech, the Member for Vacluse stated:

It was interesting to hear from the shadow Minister about the ICAC report. I understand that she is concerned that those learnings be brought into the administration and governance of this fund. That is a perfectly good point to make. But I am disappointed and caution Labor—even though it is supporting the bill—to **look beyond those concerns to the vision** and the customers who are at the centre of what this bill will deliver.

The Member for Vacluse later stated in her speech:

The member for Canterbury and shadow Minister said that Labor will not oppose the bill, but the approach it is taking **misses the wood for the trees**. I know that the Minister will take on board the shadow Minister's points about probity and governance because that is the kind of Minister he is.

In his speech in reply (**Attachment B**), the Minister did not address any of the concerns I raised.

I ask the Committee not to follow the advice of the Member for Vacluse quoted above. The details of this Bill should be scrutinised. That is Parliament's job.

Vague utterances about a vision of 'digital transformation' are no substitute for clear statements regarding the specific projects which the Government intends to undertake, the expected costs of those projects, and the outcomes those projects are expected to achieve.

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I am concerned the Minister is asking Parliament to approve the establishment of Fund worth \$100 million – which he alone would control¹ – without providing any specific information about how the Fund would be spent.

To date, the Government has declined to nominate specific information and communications technology systems which it proposes to upgrade through the Fund. The absence of this information will impede Parliament's future ability to hold the Government to account.

I hope the Committee will consider the issues I raised in my speech on 20 November 2019.

If the Committee would like copies of any of the documents I referred to in my speech, please contact my office by emailing canterbury@parliament.nsw.gov.au

Yours sincerely

SOPHIE COTSIS
MEMBER FOR CANTERBURY
SHADOW MINISTER FOR BETTER PUBLIC SERVICES

¹ Digital Restart Fund Bill 2019 clause 7

DIGITAL RESTART FUND BILL 2019

Second Reading Debate

Debate resumed from 22 October 2019.

Ms SOPHIE COTSIS (Canterbury) (15:58:42): I lead for the Opposition in debate on the Digital Restart Fund Bill 2019. Labor will not oppose the bill; however, we have significant concerns that we may seek to address through amendments in the Legislative Council. The source of our concern is the lack of publicly available detail regarding the proposed Digital Restart Fund. For that reason, we have requested that an upper House inquiry look into the provisions of the bill. I am happy to report that the inquiry is being held by Portfolio Committee No. 6 - Transport and Customer Service. Submissions are now open and will close on 12 January 2020. I call on all members of the public who are interested in digital technology, the digital economy, digital policy and matters relating to public expenditure to make a submission to the inquiry. In particular, it is my hope that the Auditor-General will provide some advice on whether the fund that the bill will establish is an appropriate way to manage significant public expenditure.

As I stated, Labor has significant concerns about the lack of detail in the bill. I note that this year's budget papers state that the fund will provide \$100 million to fund whole-of-government digital transformation. However, no detail was provided regarding specific information and communications technology [ICT] systems that the Government plans to upgrade. In his second reading speech the Minister for Customer Service spoke about how a new model for funding whole-of-government digital service products will encourage agile delivery methods. However, he never named a specific ICT system that would be upgraded through this fund. Labor is concerned by this lack of detail because clause 7 of the bill provides that the Minister is to control and manage the fund. The Minister appears to be asking for \$100 million in the form of a blank cheque that he could spend as he pleases.

Labor's concern is highlighted when one compares the bill to the Restart NSW Fund Act 2011. The bill and the Restart NSW Fund Act are very similar and it appears that the bill is modelled on that Act. The bill and the Act have the same structure and similar provisions. They both establish funds in the special deposit accounts to be used for particular purposes. However, section 6 of the Restart NSW Fund Act provides a very specific list of physical infrastructure projects that may be funded from the Restart NSW Fund. That list includes public transport, roads and hospitals. In contrast, clause 6 of this bill is extremely vague and broad. It provides that the fund may be used for projects that develop and implement digital and information and communications technology products or services that identify the actions required to be taken by an individual or on the individual's behalf in respect of significant events during the individual's life. The problem with this broad language is that the Minister could spend large amounts of taxpayer money on projects that satisfy this broad definition but deliver little practical utility for the public.

It should also be noted that there is an important difference between digital infrastructure and physical infrastructure: It is impossible to build a road or a hospital in secret. At some point, the existence of a physical infrastructure project will become known to the public, whether it is through the consultation process for an environmental impact statement or at the time a giant hole starts to be excavated. The same is not true for digital infrastructure. It is possible to spend large amounts of taxpayer money on digital projects without providing public details regarding the scope of a project or what it intends to achieve. That is why the Opposition is greatly concerned about this bill. We do not want the Minister to be able to spend up to \$100 million on vaguely defined projects with little transparency or accountability.

Another point of comparison between this bill and the Restart NSW Fund Act 2011 is the role of Infrastructure NSW, which the Opposition supported. I spoke in support of the establishment of Infrastructure NSW at the time. Section 8 of the Restart NSW Fund Act provides that funding may be provided for projects that are approved by the Minister on the recommendation of Infrastructure NSW. In contrast, clause 9 of this bill provides that funding may be provided for projects that are approved by the Minister on the recommendation of the Secretary of the Department of Customer Service. While neither the secretary nor Infrastructure NSW is truly independent of government, it would appear an assessment by Infrastructure NSW is more robust.

I note that section 13 of the Restart NSW Fund Act required that Act to be reviewed within five years of its commencement. A review of the Act was prepared by NSW Treasury and tabled in Parliament on 12 September 2017. The review found the objectives of the Restart NSW Fund Act remained valid and the terms of the Act remained appropriate for achieving those objectives. On this basis, the review stated that no legislative changes were recommended. In relation to Infrastructure NSW, the review stated:

The Act confers [Infrastructure NSW] with the responsibility for independently assessing projects and making recommendations to the Treasurer for the use of Restart NSW funds ...

The independent role of [Infrastructure NSW] ensures that projects are fully assessed on their merit, including as to whether they improve productivity and growth in the State.

I note that Infrastructure NSW is not truly independent. Section 7 of the Infrastructure NSW Act provides that Infrastructure NSW is subject to the control and direction of the Premier in the exercise of its functions.

However, section 8 (4) of the Infrastructure NSW Act 2011 provides that, if the Premier makes any amendments to strategies or plans submitted by Infrastructure NSW, the board of Infrastructure NSW may advise the Premier that it does not agree with the amendments and make that advice public. In this sense, Infrastructure NSW is more independent than the secretary of a department. I am particularly concerned that the Secretary of the Department of Customer Service also holds the role of Customer Service Commissioner, which I do not agree with. Assessment of a proposal by Infrastructure NSW should, at least in theory, make a proposal subject to expert professional analysis and advice. It is unclear why the Government has not followed the conclusions reached by NSW Treasury two years ago regarding the benefit of Infrastructure NSW assessing projects.

I assume it is possible that the Government does not believe Infrastructure NSW has the role of overseeing matters relating to digital infrastructure. However, that does not appear to be a view shared by Infrastructure NSW. Chapters 6 and 7 of the State Infrastructure Strategy produced by Infrastructure NSW in February 2018 deal with issues of digital connectivity, data usage and technological change. Another possibility is that proposals that could be funded by the fund are relatively small, whereas Infrastructure NSW generally provides advice on major infrastructure projects that have a total value of \$100 million or more. However, if this is correct, I think it could still be the case that Infrastructure NSW should assess how the fund will be spent because the value of the fund will be at least \$100 million.

A fundamental concern is that it is unclear why the fund is needed at all. If New South Wales government agencies wish to upgrade their digital infrastructure, they are already able to do so through normal budgeting and procurement processes. In 2016-17 the New South Wales Government spent \$3 billion on ICT. This is worth around 4.3 percent of all New South Wales government expenditure. Almost 5c of every dollar spent by the New South Wales Government is for information and communication technologies.

The Government claims the fund is necessary to enable whole-of-government digital transformation. However, existing New South Wales procurement laws and policies already allow for a whole-of-government approach to the procurement of goods and services. The Opposition is concerned that clause 7 of the bill would allow the Minister to control and direct the fund outside the New South Wales Government's Procurement Policy Framework. The framework is a policy set by the NSW Procurement Board under part 11 of the Public Works and Procurement Act 1912 (NSW). Compliance with the framework is mandatory for all government agencies to which it applies.

The NSW Procurement Board comprises secretaries of departments and, while it is subject to ministerial control, it has statutory functions that include the objective of ensuring best value for money in the procurement of goods and services. If the fund is not subject to the framework, this could allow the Minister to fund projects without complying with policies that require procurement of ICT worth more than \$10 million to go through gateway reviews and periodic checks in accordance with the New South Wales Government's ICT Assurance Framework or require the use of pre-qualified suppliers for ICT services. While it is likely the fund would be subject to the framework, this is not clear from the bill. I ask the Minister to address this issue in his reply.

An example of problems in relation to ICT procurement can be seen in a report published by the Independent Commission Against Corruption in January 2019 regarding the conduct of an ICT project manager at the former Department of Finance, Services and Innovation. Many of the functions of the former Department of Finance, Services and Innovation have been transferred to the new Department of Customer Service, which would be responsible for administering the fund. While the ICAC report relates to the conduct of one individual in 2016, it nevertheless provides a window into the types of problems that can arise in relation to ICT projects. This is a critical point and I hope that in his reply the Minister will be able to allay my concerns in relation to the ICAC report and recommendations.

ICAC found the project which was the subject of the report never had a business case prepared, had no formal budget or lines of budget reporting, had a short timetable for implementation, used a guesstimate for expected expenditures and could not be delivered by anyone within the former Department of Finance, Services and Innovation, which led to DFSI hiring an external contractor through a labour hire company. This contractor exploited weaknesses in DFSI's payment systems to have the department pay invoices to a company that he controlled. I stress that this has nothing to do with the Minister as the Minister was not involved in it. I believe the Minister would also be concerned about this matter because it occurred within his portfolio responsibilities at the time. A lot of those roles have been transferred to the Department of Customer Service.

It is important that ICAC's recommendations are taken seriously with respect to the function of this fund. Hopefully the inquiry will make equivalent recommendations. I want to stress that point. The ICAC report included 15 recommendations for DFSI to improve procurement and project management, and the former DFSI provided an action plan that committed to implement these measures. As responsibility for these matters appears to have transferred to the new Department of Customer Service, I ask the Minister in reply to provide detail regarding the status of the department's implementation of those recommendations. If the former DFSI provided an action plan, does that action plan transfer over to the Department of Customer Service? Will the Department of Customer Service implement the plan?

On page 5 of the ICAC report handed down in January 2019 it is stated that there was an investigation by ICAC concerning an ICT contractor working on an ICT project at the New South Wales DFSI who dishonestly and partially exercised his public official function in exchange for a financial benefit. Anybody who is interested can read the report. As I stated, ICAC made 15 recommendations. Will those recommendations be adopted by the new Department of Customer Service in relation to the Digital Restart Fund? I am the Minister to provide me with that information in his reply. Recommendation 10 reads:

That the NSW Procurement Board formally communicates to agencies that the SCM0020 and SCM0005 schemes are not to be used in lieu of the SCM0007 scheme.

I would like a response to that recommendation. Recommendation 11 refers to the DFSI. Again, does that mean the Customer Service department? It reads:

That DFSI develops a system for reporting and/or escalating red flags related to projects and procurement activities such as:

- the use of multiple purchase orders for the same supplier with respect to the same project or activity
- purchase orders being raised after the receipt of invoices
- purchase orders with dollar values corresponding to amounts that are just below those for which key processes (such as the Procure IT framework) apply.

There are 15 recommendations and I would like to hear from the Minister about what the Government is doing with respect to them. In relation to matters of oversight and transparency, I note clause 13 would require the Minister to provide a report relating to the fund each year. The clause would also require the report to contain an audit by the Auditor-General and the audit would be required to include whether the payments from the fund have been made in accordance with the bill. While this is welcome, it is also problematic.

As I have noted, the terms of the bill are extremely broad and vague. The Auditor-General would not be required to certify that projects had been appropriately identified for funding or whether the funded projects had met their objectives. Instead, all the bill would require the Auditor-General to certify is that the projects funded satisfied the extremely broad and ill-defined criteria provided by clause 6 of this bill. I also urge that the Auditor-General to make a submission to the inquiry into this bill.

Another of our concerns relates to cybersecurity. The bill is geared toward improving services from a customer service perspective. However, it does not deal with issues of cybersecurity and privacy. Labor believes that if \$100 million is going to be spent on digital infrastructure and services, there should be a strong focus on cybersecurity and privacy. We know what happened with respect to the Minister's office prior to the last election. I have spoken about it and an amendment was moved to the Fines Bill relating to what happens with data breaches. That is very concerning as governments across Australia and around the world move to digital and online services, transforming the way we get our information.

The concerns Labor has about who can access data are widely held. A report published by the Office of the Australian Information Commissioner in 2017 found that 69 per cent of Australians claimed at the time to be more concerned about their privacy when using the internet than they were five years ago. That report also found that 83 per cent of Australians believe their privacy risks are greater when dealing with an organisation online compared with other means. Most concerning was that 16 per cent of Australians stated that they would avoid dealing with a government agency due to privacy concerns. During budget estimates we asked questions about spending. At a hearing on 29 August 2019, the Commissioner of the NSW Police Force, Michael Fuller, APM, stated that he needed more money to deal with cybercrime. Specifically, he said:

... every year I go back to the ERC and I never argue for less, I promise you that; I always argue for more money for New South Wales police to continue to provide the highest level of service for the people of New South Wales. In saying that, whilst the \$583.6 million is fixed for the 1,500 officers over the four years, I will still go back doggedly every year and argue why we need more money—to look at cybercrime and other sorts of environmental changes, whether it is more police in the bush, rural crime, whatever that may be.

We do need more money to tackle cybercrime and Labor supports what Commissioner Fuller has said. According to the Australian Criminal Intelligence Commission, cybercrime is estimated to cost the Australian economy up to \$1 billion each year. We ask the Minister in reply to explain why the Government is investing \$100 million for vaguely defined "digital transformation" when the police commissioner is saying that he does not have enough money and he needs more for cybercrime. We understand that there needs to be digital transformation. Federal Labor technology shadow Minister Clare O'Neil yesterday gave an address to the Consumer Policy Research Centre conference. She said:

Australian public policy has fallen too far behind with respect to the pace of technological change.

I concur with her and support her statement. She went on to say:

For many Australians technology is one of the biggest issues in their lives. On average we spend six hours a day online. Many of us would spend more time on the Internet than we do with the people we love most in the world. As a parent, I know that the issues related to kids and tech are pretty much in constant discussion in households around the country.

Hear, hear! I absolutely support that in relation to being a parent. Kids using electronics rather than playing, conversing and socialising is one of our issues. But this is how we are living now and will be into the future as we continue to use technology. Clare O'Neil went to say:

When the Parliament does talk about technology, the conversation tends not to be a quality one. We usually talk about tech in the context of a flare-up. A bill is introduced which relates to a pretty specific area of technology which forces a truncated and urgent discussion.

She is absolutely right. Raising big and unfamiliar policy problems in the context of specific and urgent decisions is not conducive to exploring the issues properly. We saw that during the debate on encryption and metadata, when even some of the people advocating for the legislation did not seem to understand it properly. Shadow Minister O'Neil is saying is that we need a sustained public conversation about how we are going to manage this massive change in our lives. She makes some important points. I accept that this process will be continuous, particularly in terms of digital infrastructure projects. However, we need to hold the inquiry to look at the expenditure. The inquiry should look also not only at value for money but also to ensure that we include people in whatever product is designed through the digital fund.

I have spoken many times in this place about the number people in our community who feel digitally excluded because they do not have online access. They include people from multicultural backgrounds. Everything is online, so if you do not have a computer or are not computer literate—or if you do not speak and read in your own language—it is difficult and quite intimidating. It means that access to government services may not be available to those who need it most.

We recognise that the Government will be critical of our position. We anticipate Government members will say that we are raising issues to try to frustrate their efforts to act like an agile and innovative start-up. My concern is that the Government is not an agile start-up with a goal to disrupt old ways of doing business. The New South Wales Government is responsible for things including health and public safety. The consequences of poor decision-making can be matters of life and death.

In his second reading speech the Minister described the fund as, "providing seed funding that is akin to a private sector venture capital firm". The Minister stated that the fund will provide seed funding for prototypes to test if an idea meets customers' needs and if it does it will grow that funding gradually over time, rather than having a big bang release. The problem with that approach is that there is nothing to stop the Minister from approving 20 prototypes worth \$5 million each, only for each experiment to fail. That would squander \$100 million without any tangible benefits for the public. That is why the Government should clearly and publicly identify the systems that should be upgraded, specify the outcomes that those upgrades should achieve and either develop the capacity to develop the undertake the development in house or undertake a normal procurement process to select a suitable provider that can provide the service or infrastructure required. The argument that the pace of technology change justifies significant deviation from normal budgeting and procurement processes does not stack up.

I refer the Minister back to the ICAC report. We need to have a conversation about what the Federal shadow Minister for Innovation, Technology and the Future of Work, Clare O'Neil, said in her speech. We cannot just waste money. We need to ensure that government is held accountable and is open and transparent, particularly when it involves spending significant amounts of money on systems that could impact on the privacy and safety of citizens in New South Wales and, at the same time, exclude the people I mentioned earlier. The extent of the concerns raised by the Opposition is a consequence of the lack of detail and the ambiguity surrounding how the fund will be spent. We will not sign off on a \$100 million blank cheque. We need the information. We need details, project time lines and exact information. I am very pleased with the inquiry that has been established. As I indicated, the Opposition will not oppose the bill but we will ensure a rigorous process around its spending and the projects it funds.

Attachment B

Mr VICTOR DOMINELLO (Ryde—Minister for Customer Service) (10:17:42): In reply: As members have heard, this Government is committed to placing customers at the heart of everything we do, making New South Wales the best place to live, work and raise a family, which is why this Government is establishing the Digital Restart Fund. Just like the Infrastructure Restart Fund, the digital fund will allow us to take a whole-of-government view on delivering digital platforms and services for the future that meet customer needs and excellent customer service. The establishment of the Digital Restart Fund builds on this Government's world-leading customer service agenda. Over past eight years this Government has delivered.

We established Service NSW, transforming the dingy old shopfronts to modern service centres, making it far easier and quicker to access services, empowering staff to help people get things done, and making it just as easy to get things done online wherever people are at a time that suits them. This Government delivered FuelCheck, saving New South Wales drivers money every time they fill up at the servo. Only a few weeks ago this Government launched the digital driver licence—more than 800,000 people now have their digital licence. The Digital Restart Fund will build on our track record of delivery. The fund will enable us to turbocharge, and go faster and smarter in the delivery digital services. The fund is necessary to support digital transformation as we experience ever-increasing rates of technological change. I thank all the members for their support for this bill. It is truly transformational. I commend this bill to the House.

The DEPUTY SPEAKER: The question is that this bill be now read a second time.

Motion agreed to.

Third Reading

Mr VICTOR DOMINELLO: I move:

That this bill be now read a third time.

Motion agreed to.