

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

**INQUIRY INTO INTEGRITY, EFFICACY AND VALUE FOR MONEY
OF NSW GOVERNMENT GRANT PROGRAMS**

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At Jubilee Room, Parliament House, Sydney on Friday 16 October 2020

The Committee met at 9:00 am

PRESENT

The Hon. John Graham (Acting Chair)

The Hon. Trevor Khan

The Hon. Courtney Houssos

The Hon. Matthew Mason-Cox

The Hon. Natalie Ward

PRESENT VIA VIDEOCONFERENCE

The Hon. Lou Amato

Mr David Shoebridge

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The ACTING CHAIR: Welcome to the second hearing of the Public Accountability Committee's inquiry into integrity, efficacy and value for money of New South Wales Government grant programs. Before I commence I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respect to Elders of the Eora nation past, present and emerging, and I extend that respect to other First Nation people present. Today's hearing will focus on local council and Government grant programs. We will hear from the Independent Commission Against Corruption, the Auditor-General and the Department of Regional NSW.

Before we commence I will make some brief comments about the procedures. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. I note that I am serving today as Acting Chair, as we are joined by the Chair of the Committee, Mr David Shoebridge, via teleconference. Other Committee members are either present or joining us shortly. Parliament House is now open to the public. All visitors, including witnesses, are reminded they must register their attendance in the building by the Service NSW app. Please see the secretariat if you need assistance with this and please remember to maintain appropriate physical distancing.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. I remind everyone here today that Committee attendance is not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. Therefore, I request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances witnesses are advised they can take a question on notice and provide an answer within 21 days.

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PETER HALL, Chief Commissioner, Independent Commission Against Corruption, sworn and examined

The ACTING CHAIR: Would you like to make a short opening statement?

Mr HALL: If the members of the Committee would bear with me, it might take five minutes or so. There are some important issues in this inquiry. Accordingly, this statement is directed to some of those issues. In this opening statement I will deal with issues concerning integrity in relation to grant funding. The commission's written submissions to this inquiry cover a number of other matters, including compliance and evaluation of programs and grant applications. Paragraph 1 of the terms of reference, amongst other issues, raises for inquiry by the Public Accountability Committee issues concerning the integrity of New South Wales Government grant programs or grant schemes. A particular issue raised in paragraph 1 (b) of the terms of reference addresses an issue concerning the integrity of funding; namely, the scope of Ministers' discretion in determining which projects are approved. A further issue raised by paragraph 1 (c) of the terms of reference concern:

(c) measures necessary to ensure the integrity of grants schemes and public confidence in the allocation of public money, and

The terms of reference to which I have referred require consideration in my view of two matters. Firstly, the extent of ministerial power, including in particular ministerial discretion, in relation to determining outcomes or approvals of projects for which grant funding has been sought. Secondly, the legal bases upon which the exercise of such ministerial power or discretion may contravene integrity principles associated with public office-holding, and further, that could constitute corrupt conduct within the meaning of that expression as enacted in the Independent Commission Against Corruption Act 1988.

In relation to grant projects generally, in addressing these two matters it is necessary at the outset to say that there are, as observed in the commission's written submissions, a range of grant programs or schemes. That being the case, the nature and terms upon which such programs have been established assume importance. In general terms many, if not most, grant funding programs or schemes are established or founded upon well accepted principles or standards. These include processes for the transparent, fair and objective conduct and determination of applications in respect of such programs. Such principles are discussed in the *Good Practice Guide to Grants Administration* formulated by the Department of Premier and Cabinet: *Good Practice Guide to Grants Administration*, as updated in accordance with circular C2010-16.

Once a funding program has been created or established by direction of a department of government involving the formulation of the conditions upon which it is based and then activated by the appointment of persons to undertake the assessment of a public call for applications and the subsequent selection process, the funding program becomes an established government sanctioned administrative system in which members of the public, the applicants, participate. On the subject of ministerial power, whilst ministerial power, including discretionary power, may be exercised within a broad scope, it is not without limitation or constraint. Obligations in the exercise of a discretionary power may arise from the public office held, the particular power sought to be exercised or from legislation. Whatever its source, the principal obligation or requirement is that the exercise of the power should be for a public interest purpose.

Without detailing all the limitations and constraints on ministerial power the following may be noted. Firstly, standards in relation to public power are sourced in principles that protect and enhance the public interest. Such principles provide the benchmarks of integrity in both the conduct of public officials, including in Ministers of the Crown, and in the systems and the processes utilised by government and public administration. Secondly, the overarching principle that attaches to public office-holding and for which other principles are derived, the public trust principle, expresses the values as well as the conditions upon which power is conferred upon public officials, both those appointed and those elected alike. The significance of that public trust is addressed in the commission's written submissions to this inquiry. Thirdly, a fundamental principle is that:

... institutions of government and the officials and agencies of government exist for the public, to serve the interests of the public.

I quote from the Western Australian Royal Commission into Commercial Activities of Government and Other Matters report, chapter 1, part II. Fourthly, the exercise of ministerial power, in accordance with the principles that inform the exercise of public power, must be undertaken honestly and must be exercised properly in the public interest and not improperly for reasons or purposes that are extraneous to the public interest or to the purpose for which the power exists.

I briefly turn to the subject of ministerial intervention in relation to grant funding. Whilst every case necessarily turns on its own factual circumstances, if a Minister intervenes and overrides a government grant program or scheme, including in particular in relation to the decision-making processes by which successful applications are determined, and intentionally does so for purposes of possible electoral advantage, such intervention could constitute corrupt conduct under the provisions of the ICAC Act. In a case where the relevant

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Minister intervenes with the selection process with an intention of benefiting persons or entities for electoral advantage and who or which were not originally selected as the successful candidates, then significant questions, including questions of law, arise.

If it was asserted by a Minister or other public official that such an intervention by a Minister constituted a proper exercise of discretionary power then in that case two matters would arise. Firstly any such contention wrongly assumes that, as a matter of discretion, ministerial power can effectively negate or rewrite the terms and/or the operation of a duly established administrative system or grant program of the kind referred to in the Good Practice Guide to Grants Administration Guidelines.

Secondly, the principles concerning the mental element associated with the offence of misconduct in public office would need to be carefully assessed and applied. In accordance with those principles concerning what is termed the state of mind of the public official, including the principles discussed by the NSW Court of Appeal in *Maitland v R*; *MacDonald v R* [2019] NSW CCA 32, the intention or purpose of a public official if accused of an offence of misconduct in public office would need to be established. In particular, it would need to be established that the power or discretion was intentionally exercised for an improper or illegitimate purpose.

If in relation to the hypothetical case to which I referred of a Minister intervening in a grant program so as to alter its outcome, and at that time of intervening there was a combination of motives or purposes for the action of the Minister or other public official—what might be referred to as a mixed motives case—the relevant test to be applied is a test of causation: Whether any impermissible or illegitimate purpose was causative in the sense that but for its presence the power would not have been exercised. This may be referred to as the "but for" test to be applied in relation to a mixed motives case.

If an extraneous benefit to be derived by the exercise of the Minister who sought to intervene in the selection process, in the example I referred to, consisted of the prospect of obtaining an electoral advantage then notwithstanding the existence of any other notable purpose, that in itself could be sufficient to satisfy the "but for" test in determining an issue of corrupt conduct under the Independent Commission against Corruption Act. The circumstances of each case, of course, would need to be fully examined. I note in the commission's role in all of this two things.

Under section 2A of the ICAC Act the principal object is stated to be the promotion of the integrity and accountability of public administration. Further, in exercising its functions the Independent Commission against Corruption is required by section 12 of the ICAC Act to regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns. The commission's jurisdiction is exercised over a very wide range of public officials including a Minister of the Crown—see the definition of public official in section 3 (1) of the ICAC Act.

In its written submissions to the inquiry the commission acknowledged the existence of a legitimate discretionary decision-making power in a Minister of the Crown to bring political considerations into account on matters of policy formulation. What the commission does not accept, however, is a proposition that suggests or asserts that ministerial discretion is without limitation or constraint. There are constraints that arise from common law principles associated with public office. Dishonest or improper conduct by an elected official may constitute corrupt conduct. Improper conduct may be constituted by conduct that is in breach of the public trust. Improper conduct also may arise from conduct that is actuated or influenced by an extraneous or improper purpose or objective. Relevant states of mind of a public official associated with particular conduct, whether described as involving a purpose, an objective or an intention, are matters that are central in establishing whether the conduct is corrupt conduct under the ICAC Act.

The power of a public official, including a Minister of the Crown, to authorise or direct the use or application of public monies is a power of considerable significance. It is a power, of course, to be exercised appropriately and with an appropriate level of care. It is a power that should normally be exercised on a transparent and accountable basis. In these last comments I emphasise that the misuse or abuse of public power by a public official involving public monies, including grant funding for an improper purpose, can in some circumstances be corrupt. In the case of *Scott v Martin* [1988] 14 NSWLR 663, the Supreme Court sitting as the Court of Disputed Returns in a case that involved an allegation of bribery and the provisions of section 147 of the Parliamentary Electorates and Elections Act 1912, Justice Needham observed:

Unfortunately in modern times, there seems to be an accepted view that public monies are in the unrestricted gift of those in power. In some cases, the temptation is to use such resources for purposes of party political advantage.

There is currently a level of concern in the community in relation to conduct alleged to involve what is often referred to as pork-barrelling. Without embarking upon an examination of such conduct, it is appropriate to observe that the commission is aware of community concern in relation to such practices including, in particular, concern in relation to certain instances of grant funding. In undertaking its investigations, the commission does

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not rely solely upon complaints or notifications. Approximately two years ago the commission established a strategic intelligence unit.

The unit enables the commission to undertake intelligence assessment of corruption risk with a view to enhancing its proactive intelligence approach to investigations and its own motion power under section 20 of the ICAC Act. In conclusion, I referred earlier to the commission's paramount concerns, which are the protection of the public interest and the prevention of breaches of public trust. The community I suggest may have trust and confidence at least in relation to one matter and that is that the commission has the capacity and will do what is necessary to ensure integrity in funding, particularly in relation to program grants or, as necessary and in accordance with its established procedures, it will investigate alleged or suspected misconduct in relation to such grants. I thank the Committee for listening to the opening statement.

The ACTING CHAIR: Thank you. That was a lengthy opening statement but I think helpful in the circumstances to set out the principles. It is very important guidance for the Committee. Can you provide that opening statement to Hansard?

Mr HALL: I do have a copy available.

The ACTING CHAIR: I will commence with a couple of opening questions before handing to my colleagues. You have provided us with some real guidance on the principles that apply. You have dealt with ministerial intervention and also with ministerial discretion. One of the concerns from some of the submissions the Committee received relate to quite an extreme amount of ministerial discretion where there might be a recommendation but it is then really up to a Minister of the Crown to choose which project suits—literally perhaps choosing from a spreadsheet. What issues might that present and would that be of concern if that is the level of discretion that is applied?

Mr HALL: Could I just clarify the point that you wish me to respond to on the other submissions on ministerial discretion?

The ACTING CHAIR: On the point of ministerial discretion, at the point where a Minister is simply choosing which projects apply—perhaps just from a spreadsheet and with quite an extreme level of discretion—what issues does that present?

Mr HALL: The variation in grant program schemes, of course, has already been noted. One would start with an examination of what is the legislative framework for the program in order to determine issues of probity, fairness and objectivity in assessment. I observe that in many of these grant funding cases, those who apply spend a great deal of time and resources in formulating their applications. Some of them, of course, are not without great merit. I think many—if not most—often do have considerable benefit, which is all the more reason why there should be integrity in the processes. The legislation should provide the framework that will support and reinforce probity in the process, in particular in the selection and decision-making process.

It would be my respectful suggestion that one would commence an examination with the legislative framework. I think that it would be extraordinary if legislation was framed in a way that provided for a Minister of the Crown to have complete, unfettered discretion to override the scheme itself. As I said in my opening it is a government-sanctioned administrative system, normally established under legislation. Unless there was an express power in the legislation to override and negate that and to in effect remove probity out of the system—and one cannot even imagine that any legislature would entertain putting a reserve power of that kind in the legislation—unless that extreme measure was taken, the principles to which I have referred are there and must be respected and complied with.

If, for example, there are cases where there is intervention by a Minister of the Crown to skew or alter a result that has gone through a prescribed selection process—the ulterior motive being to be able to enhance the prospects of electoral victory in a marginal electorate—then as I have sought to make clear, that could be an illegitimate use of the power. I use the word "could" advisedly because as I have said it depends upon the facts and circumstances of every case. That is why inquiries in the commission sometimes take time to establish the basis for a decision taken. Did it comply with and proceed through accepted conventional processes? If it did not, why didn't it? What were the circumstances that could justify a departure? All of this indicates, in my view, that there is an element of rigour in determining how public power is to be exercised. I hope, Chair, that addresses your point.

The ACTING CHAIR: That is helpful.

The Hon. NATALIE WARD: Thank you, Chief Commissioner Hall, for assisting the Committee today. I have just a couple of questions. I suspect the majority of the time will be taken by my friends. I thank you for your opening statement. I listened with interest to your references to integrity, public confidence and a number of

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matters raised there. Thank you for that. This Committee is established by resolution to enquire into and examine the public accountability and service delivery of New South Wales government departments, statutory bodies and corporations. That is because the Committee and the House place a premium on integrity, efficacy and value for money by those entities. Do you agree with that?

Mr HALL: Sorry, the point of your question?

The Hon. NATALIE WARD: The purpose of this Committee. I am trying to agree with your opening statement about integrity.

Mr HALL: Yes. I understand the purpose and the noble objective, if I might respectfully say so.

The Hon. NATALIE WARD: This Committee—and indeed this inquiry—exists because the importance of public trust in integrity and efficacy of public institutions cannot be overstated. Would you agree with that?

Mr HALL: Absolutely. There has for many years been concern expressed in the literature—and I have followed it myself—firstly for the absolute importance of trust and confidence in the institutions of government, and in other institutions.

The Hon. NATALIE WARD: Thank you. You would say that would be critical, wouldn't you, to modern democracy?

Mr HALL: Absolutely critical.

The Hon. NATALIE WARD: Okay, we are agreed on that.

Mr HALL: I wholeheartedly agree, and that everything should be done to support trust and confidence. If trust and confidence get out of hand and grow to a level where people do have doubts about either personnel or the system and processes of government, it fuels cynicism. Government depends upon the people to support it just as much as the people depend upon government to support them.

The Hon. NATALIE WARD: You talk about the integrity of the processes. I wanted to pick up on that point in particular. I think your opening statement mentioned that that extended to the power conferred on public officials, whether they are appointed or elected. Is that correct? Did I hear that correctly?

Mr HALL: Yes.

The Hon. NATALIE WARD: In that regard, you would be aware that there have been two quite shocking breaches of the Premier's privacy this week by the ICAC. Are you aware of those?

Mr HALL: Could I just say that I do not wish to address any current matter that might be in the media or otherwise.

The Hon. COURTNEY HOUSSOS: Point of order: My point of order is in relation to the terms of reference and the question that was just asked. We are very clearly here with broad ranging terms of reference but that does not cover the events of this week. Unless they can be related directly to the terms of reference around government grants, I do not believe that that is within the purview of this inquiry.

The Hon. NATALIE WARD: To the point of order: The terms of reference that I mentioned in my question refer to government departments, statutory bodies or corporations. That was the resolution of the House. The inquiry is convened to look into those issues. In the opening statement, the witness opened the door by referring to integrity and public confidence. He agreed with me that that extended to public officials, whether appointed or elected. This body is here to talk about confidence and public integrity. I would like to know from this body whether that body's public integrity and processes, which we are dealing with directly—I have questions surrounding that. I think that it is directly relevant to the terms of reference and to the witness's opening statement.

Mr DAVID SHOEBRIDGE: I think that it is tangential at best to our terms of reference and I doubt that the Chief Commissioner has come here today prepared to answer that question. The question having been put, if the Chief Commissioner is in a position to provide an answer then I think that it is open to him to do so. If he is not in a position to provide an answer—given that I doubt it was part of what he prepared for today—then he can provide any answer he wishes to on notice. I think that would be the appropriate way forward.

The ACTING CHAIR: I will rule on the point of order in this way: I have two concerns about this. One is that I do think that this falls outside the terms of reference of the inquiry, noting the submissions that you have made. Given that it is into the integrity, efficacy and value for money of New South Wales government grant programs, I regard it as outside of the terms of reference. Secondly, the question relates to a current investigation.

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I agree, Chief Commissioner, that if you would like to put anything on the record then you are welcome to. You are certainly not obliged to.

The Hon. NATALIE WARD: You raised another issue that I would just like to address, about a current investigation.

The ACTING CHAIR: I have ruled on the point of order.

The Hon. NATALIE WARD: Point of order: Acting Chair, you raise the issue of a current investigation. I do not wish in any way to discuss the current investigation. I would not invite the witness to comment on that at all. What I am asking about is the efficacy of this institution, given that the witness opened the door. I would like to address and press my ability to ask those questions because it is an exercise of public power that the witness spoke about. He agreed that it is appointed or elected officials. He talked about integrity in the processes, which is what this Committee is dealing with. I would like to understand. I have two questions about that. I press to ask those questions. I think that people want to hear. The witnesses here and people would like to hear about it.

The ACTING CHAIR: Thank you for that submission. I have ruled your original point of order out of order in relation to the terms of reference. Chief Commissioner, you are welcome but not obliged to make any statement now in response.

Mr HALL: I just raise two points. Firstly, again the sound system is not coming across here too clearly. If you could, just formulate again for me exactly what it is that your question is directed to. Secondly, I have indicated that I do not wish today to directly or indirectly deal with any specific matter that might be in the public domain or perhaps that the commission might be investigating. It would be improper for me to do so. I am, however, here to assist this Committee in any way the commission can. I am very willingly here to do that. The third point is that once I am clear as to exactly what it is that the question is directed to, it may be appropriate for me to take it on notice rather than deal with it today. But I perhaps reserve on that aspect.

The Hon. NATALIE WARD: All right. Can I put it this way?

Mr HALL: If you would not mind just formulating again what the question is, I would be grateful.

The Hon. NATALIE WARD: Mr Hall, you spoke in your opening statement—you asked the question, Commissioner Hall, in your opening statement.

Mr HALL: Yes.

The Hon. NATALIE WARD: You spoke about the power conferred on public officials, whether appointed or elected, and you talked about the processes being very important and integrity in those processes.

Mr HALL: Yes, I did.

The Hon. NATALIE WARD: Do you agree with that statement?

Mr HALL: I do, yes.

The Hon. NATALIE WARD: How is releasing the Premier's private mobile number and details of her personal residence proper processes when those matters were supposed to be redacted by the ICAC and were not? How can we have any confidence in those processes that you say you uphold and that the entity upholds when the Premier's mobile number and private residence has been released?

The Hon. COURTNEY HOUSSOS: Point of order—

The ACTING CHAIR: Okay. A point of order has been taken.

The Hon. NATALIE WARD: How can we have confidence in your institution?

The ACTING CHAIR: Sorry, a point of order has been taken. I call the Hon. Courtney Houssos.

The Hon. NATALIE WARD: How can we have any—

The ACTING CHAIR: I call the Hon. Natalie Ward to order.

The Hon. COURTNEY HOUSSOS: Acting Chair, the member is clearly flouting your ruling. We are here to discuss important matters about Government grants. The member is clearly flouting your ruling to say that we need to focus on that issue. We have a very esteemed witness here and we are now spending our time debating a point of order

The Hon. NATALIE WARD: The inquiry—

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The Hon. COURTNEY HOUSSOS: I ask the Acting Chair to call the member to order, to bring her back to the terms of reference and to direct her questions through the Acting Chair.

The Hon. NATALIE WARD: I am happy to address that—happy to address them.

The Hon. COURTNEY HOUSSOS: It was requiring clarification. Come on, Natalie.

The Hon. NATALIE WARD: I beg your pardon? I am happy to address them. I am entitled to ask questions. I think people would like to know. We are here to deal with the integrity and efficacy, if I can deal with the point of order.

The ACTING CHAIR: All right. Thank you. I have heard the point of order.

The Hon. NATALIE WARD: The terms of reference deal with the integrity and efficacy of public institutions. This is a public institution which has released the Premier's private mobile number. They are asking us to have faith in their integrity. I would like to understand about the processes. I can confine it, so I can move on from that, to the processes involved.

The ACTING CHAIR: I am about to rule on the point of order. I ask the Hon. Natalie Ward to finish. There is no point of order at the moment. I regard the question as having been put. Again, the Chief Commissioner is welcome to respond or take this on notice or not respond at all. Then we will be moving on in the light of the limited time we have to examine the terms of reference of the inquiry. Chief Commissioner?

Mr HALL: The matter that has been raised falls within the ambit of the current public inquiry. Any events touching or concerning the commission in relation to public inquiry are subject to both public scrutiny but also our internal processes. In relation to, I think, the matter that has been raised all I can indicate is that I have directed that an internal investigation be undertaken, which is being undertaken, and that—

The ACTING CHAIR: Thank you.

The Hon. NATALIE WARD: All right. Could I ask just about the policy?

The ACTING CHAIR: No. Sorry.

The Hon. NATALIE WARD: Sorry: I just want to ask about the basis.

Mr HALL: I will finish on this point: Any issue like that would be dealt with following internal investigation in the public forum. I am not prepared, accordingly, to pre-empt the commission's processes which are currently being activated and dealt with.

The ACTING CHAIR: Thank you for that answer.

The Hon. NATALIE WARD: So the release of information that should have been redacted was not and we are being asked to have integrity—

The ACTING CHAIR: I ask the member to—I have indicated to the member that we are moving on.

The Hon. NATALIE WARD: All right. Can I just ask one more question?

The ACTING CHAIR: No. You are not welcome to. We can come back to this issue. I am keeping a list.

The Hon. NATALIE WARD: The witness is here. We would like to know.

The ACTING CHAIR: I am calling Mr David Shoebridge.

The Hon. NATALIE WARD: It is outrageous.

Mr DAVID SHOEBRIDGE: Commissioner, thank you for your opening today. Am I coming across clearly enough?

Mr HALL: Yes, thank you—loud and clear.

Mr DAVID SHOEBRIDGE: We had some evidence from the chief executive officer of the Office of Local Government, Mr Hurst, about the tied grants funding round for local councils which was some \$252 million in extent. When we are enquiring as to what, if any, notification had been given to councils who might be eligible, we were advised by Mr Hurst that his reading of the guidelines was that only once a council was identified and a project was funded did they become eligible, and therefore only once the funding was provided to that council were they notified that they were eligible, and that was the basis of the notification process. In your inquiry work have you heard about a notification process like that where you only become advised that you are eligible once a decision has been made to provide you with the funding?

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Mr HALL: I can say no, I have not. But I add that though the commission has been engaged over the years with matters touching on or concerning grant funding, I personally have not been involved in any matter that has thrown at the issue you have raised. In other words, I have not encountered in my experience the scenario you have outlined.

Mr DAVID SHOEBRIDGE: What would you say to a notification process for a funding pool, and in this case it is a funding pool which has \$252 million of public funding in it, where councils that were potentially able to access that funding—and in this case it was open to any council that had been the subject of a potential merger proposal—that only kicks in once somebody in government has identified a project in that council as eligible and approved for funding?

Mr HALL: Yes.

Mr DAVID SHOEBRIDGE: Do you have any observations about that kind of notification process?

Mr HALL: Mr Shoebidge, I am anxious to provide as much information to this Committee as I can. I am concerned that a matter such as you raised may already have been notified to the commission or may in the future be required by us to consider and deal with, so I really cannot comment on the matter that you have raised other than to say this: The guidelines normally provide for an open process, a fair process that complies with probity principles, as I have already stated. It would be open to a public organisation to try and, as it were, limit the likely field who would then become eligible to apply. But when I say open to it, it would still raise very serious questions as to fairness, as to the objectivity of a selection process. All of those matters would need to be considered to see whether, in effect, it is a process that it is being driven by an improper purpose to obtain a certain outcome rather than a merit-based process. I am afraid I cannot take it much further than that.

Mr DAVID SHOEBRIDGE: No, and I understand that you are answering in the general rather than to the specific program.

Mr HALL: Yes. That is a general statement, yes, not tied to any particular matter that might be in the public domain at the moment.

Mr DAVID SHOEBRIDGE: Could I ask you, then, on a sort of general proposition, not dealing with any one program, how informally is it that public funding is allocated in accordance with signed-off and transparent guidelines? How important is that, complying with guidelines that have been adopted?

Mr HALL: Yes.

Mr DAVID SHOEBRIDGE: Is that one of the integrity tests?

Mr HALL: It is. It is related to the questions of integrity, in my view. It is essential, I think, firstly for criteria—for selection or eligibility firstly, then selection, to be defined with some precision or specificity in fairness, both to those who may apply, but also in terms of a more general public interest. I have said essentially what I wanted to say.

Mr DAVID SHOEBRIDGE: For example, if guidelines have not been finalised, if there is a process under which guidelines go through to get finalised, it may have multiple ministerial sign-offs. If that process is in train and before the guidelines have been finalised, if projects were identified and approved for funding before the guidelines had been finalised, would that raise integrity concerns?

Mr HALL: Potentially it would, because if there is a lack of required development of a set of guidelines for a scheme it obviously leaves the door ajar for corruption, that is it is a corruption risk scenario. It means that firstly, there is a lack of objectivity and fairness in the process, but secondly, in terms of determining whether it was a merit-based outcome it becomes more difficult to discern whether there has been a departure from principles that inform the exercise of public power.

In other words, the more specific the criteria are, the more that benefits the applicants to know exactly what the targets are they have to meet to be eligible. And at the other end of the process, at the selection process, all the more important is it to be able to—for example an Auditor-General—review what happened to determine whether or not the criteria were adhered to. But if the criteria are deficient, inadequately phrased and so on, then it becomes more difficult to determine whether there has been a departure, or perhaps just mere inadvertence in processing the result.

Mr DAVID SHOEBRIDGE: Would you expect as a basic fundamental that there would be some kind of clear identified merit assessment of individual projects that would then be put in front of a decision-maker for formal approval? That documented merit assessment process, do you think that is a non-negotiable element in the allocation of public money through grants programs?

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Mr HALL: Certainly in accordance with proper practice and principle. It is, as I say, critical.

The ACTING CHAIR: While we are on that point I will ask about two other aspects of the grant approval process because you have drawn our attention to the good practice guide for grants. We have been asked about the assessment. I might secondly ask about a recommendation to a decision-maker. Again, that is fundamental to the grant decision-making process, that there is some recommendation that sits in front of a decision-maker from which they can then make their decision with whatever discretion they are permitted under the grants system. Would you agree with that?

Mr HALL: Yes. I think a recommendation made for selection should be a recommendation with reasons, firstly. Secondly, at the next stage the acceptance of the recommendation by the panel should similarly be supported by written reasons. In other words, accountability, transparency from start to finish.

The ACTING CHAIR: I will turn to the decision itself. Looking at the good practice guide, it is essential that there is a record of the decision.

Mr HALL: Yes.

The ACTING CHAIR: A record of an approval, signed and dated by the decision-maker would be the expectation of government. That is fundamental to the process?

Mr HALL: Yes, I would agree, Chair. The Committee would be aware, of course, of the report by the Australian National Audit Office. That is a very detailed report and it does contain many observations along the line that you are raising. There is, if I might say so with respect, much good work in that report addressing both probity, transparency and accountability issues such as the ones you have raised.

The ACTING CHAIR: Finally, were those things lacking? If either a written recommendation in front of a decision-maker, or no signed and dated record of the decision were not present, those things would be of great concern. Would you agree with that?

Mr HALL: Yes. As I have earlier indicated, what the commission would be looking for if it were called upon to examine such a matter, is firstly to establish precisely what are the conventional or prescribed processes and identifying at any one point whether there has been compliance or diversion or non-adherence. If the process has not been followed our next question would be: Why not? What is the explanation? Because often it can be a sign of irregularity and that irregularity could, depending upon those involved or who have played a role, what their intention or purpose was in not complying, or their explanation for not complying.

The Hon. COURTNEY HOUSSOS: Thank you very much for your time this morning and for your very informative submission to the inquiry. I come back to something that you touched on in your opening statement around the good guidelines. You mentioned a moment ago the Australian National Audit Office has undertaken quite a few recent and very informative inquiries. Do you think it is time to update those guidelines, given that they have been in place for over 10 years?

Mr HALL: I think the guidelines should be reviewed in order to determine whether they can be improved and brought up to what is now regarded as best practice. I would regard best practice as reflected in many of the observations in the Auditor-General's report, to which I have referred. It was a number of years ago since those guidelines were settled, as you would be aware. There is water under the bridge since then. Experience in life often indicates that it is time for reviewing, if only to ensure that the guidelines are adequate and do meet best practice.

The Hon. COURTNEY HOUSSOS: Is it your opinion that they do not meet best practice?

Mr HALL: I cannot make that judgment. I think they do address the headline issues of transparency, objectivity, fairness and merit-based processes. They flag and address the right issues. Whether or not, however, as matters of practice and procedure under those sub-headings the guidelines are up to scratch, as it were, up to standard, effective enough, I really have not set about the task of trying to determine whether that is the case or not. The matter you have raised, with respect, does warrant serious consideration. It seems that grant funding is becoming more common in the community and it is important to community groups, particularly in regional areas and I think members of the community deserve nothing less than having best practice in place.

The Hon. COURTNEY HOUSSOS: Things have moved on. I have another question on the guidelines. They are Department of Premier and Cabinet guidelines. In your opinion who is responsible for ensuring that those guidelines are applied? Is that the role of the Department of Premier and Cabinet? Do they apply to all departments? Can you provide the Committee with some clarity? Is it up to Ministers to be enforcing these as well?

CORRECTED

Mr HALL: Often, as I understand it, it is the Minister's responsibility to ensure that the process was followed. I cannot be absolutely emphatic that that is the only check. It does raise another issue, if I might address that. Yes, a department can prescribe the procedures but there is a place for some independent input into what is the system, what are the processes, what are the criteria and guidelines that should be applied so that it is not just simply a departmental set of guidelines. I think there should be some input from an independent agency. I have in mind, for example, the Auditor General although she may not be happy for me to mention that because her workload is already so heavy—but an independent office such as that. I think that would give—coming back to the trust and confidence of the community—a level of confidence that this is not just a government-sponsored scheme, a set of rules and criteria, but that it has had input from an independent agency. The actuality of doing that would probably improve the guidelines and the perception would certainly be positive that confidence in those guidelines would be enhanced.

The Hon. NATALIE WARD: I just wanted to turn to the same issue about best practice and confidence in the guidelines. What policies and procedures did the ICAC have in place regarding confidential information of witnesses and how is it protecting that confidential information, specifically in relation to redaction of information and will you make policies available to this Committee?

Mr HALL: I think you are coming back to the topic area that you raise before.

The Hon. NATALIE WARD: No, I am dealing with best practice and guidelines. I am not dealing with anything specific other than confidence in the ICAC and its guidelines.

Mr HALL: For what organisation, if I might ask?

The Hon. NATALIE WARD: I beg your pardon?

Mr HALL: I am not sure what organisation or scheme you are referring to.

The Hon. NATALIE WARD: In the ICAC, what policies and procedures do you have in place to ensure confidential information, that is best practice processes, is protected—specifically in relation to redaction?

Mr HALL: If that is seen to be within the terms of reference of this Committee?

The Hon. NATALIE WARD: It is in relation to best practice.

The ACTING CHAIR: It is a question about policy. I have not had a point of order.

The Hon. NATALIE WARD: People just want to know.

Mr DAVID SHOEBRIDGE: Point of order: It goes to this question but it also relates to the prior question that was raised by the Hon. Natalie Ward. As I understand it, ICAC made a non-publication order about both the information that was released and any content of the information that was released. In questioning from the Hon. Natalie Ward—I assume inadvertently—as I understand it the Hon. Natalie Ward has released details of what was in that confidential information.

The Hon. NATALIE WARD: It is on the public record.

The ACTING CHAIR: I call the Hon. Natalie Ward to order for the first time. A point of order has been taken and the member is not entitled to interrupt.

Mr DAVID SHOEBRIDGE: She released details of what was in that confidential information in breach of the ICAC order. I am not saying that ICAC order would prevent those matters being considered in this Committee but it is a matter we should take into account and hear the observations of ICAC in due course about that release of information on transcript. I ask that you invite the Chief Commissioner if he wishes to urgently upon notice provide any representations to us if we may wish to make any order in relation to the content of the information as released by the Hon. Natalie Ward. I think we owe the commission that.

The Hon. NATALIE WARD: To the point of order: That is quite a different proposition to the question but, nonetheless, the terms of reference of this inquiry specifically refer to measures necessary to ensure the integrity of grants schemes and public confidence in the allocation of public money. My questions are going directly to the issues of public confidence in the allocation of public money—that is, can the public be confident that the ICAC is using its funds to conduct public examinations fairly and professionally? I asked about processes. It would be ironic if the Public Accountability Committee rules out questions with respect to the accountability of a public body—if you are ruling out of order public accountability questions about this body.

The Hon. COURTNEY HOUSSOS: Further to the point of order: I will keep this brief because we are running out of time and this is a very important witness—

The Hon. NATALIE WARD: He can take them on notice.

CORRECTED

The Hon. COURTNEY HOUSSOS: —these are important issues that the Hon. Natalie Ward is raising but they are not within the terms of reference. ICAC does not receive Government grants, it does not administer a Government grants program and although confidence in the ICAC is important, and I would welcome terms of reference if the Hon. Natalie Ward wants to put those forward, but they are not directly relevant to Government grants.

The ACTING CHAIR: Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Further to the point of order: The reason I raise the point of order is on reflection about the content of the material disclosed by the Hon. Natalie Ward in earlier questions. I am concerned that the Chief Commissioner may be required to go back over that material, which may well be in breach of a non-publication order made by ICAC. I say again that non-publication order would not, of itself, prevent this Committee from investigating that but it is a matter we should clearly have in mind and consider before we allow a line of questioning or before we publish the transcript. The Chief Commissioner should be entitled to respond to that either now or with whatever urgency the ICAC thinks is appropriate on notice.

The ACTING CHAIR: The Hon. Trevor Khan on a point of order.

The Hon. TREVOR KHAN: Further to the point of order: Mr Shoebridge may have made the concession I would have sought. Mr Shoebridge and I have sat on a number of inquiries—including Prospect—where the question of the privilege of this Parliament to deal with matters has been concluded to be quite wide. Statutory secrecy, for instance, does not prohibit a line of inquiry by us. We saw that in Prospect and we have seen it in others including with the Auditor General. I think now he does not put the matter as high as I thought he was so I simply note that the point Mr Shoebridge makes may be relevant to the issue of the exercise of our discretion but the making of that non-publication order is not prohibiting on this line of questioning.

The Hon. NATALIE WARD: Further to the point of order: I press the question which in my submission is within the terms of reference. I have outlined why it is within the terms of reference because the terms specifically relate and reference to public confidence in the allocation of public money. It does not confine itself to grants, it is public money. My question was in relation to processes and the witness is welcome to take it on notice if we are pressed for time. It was about the policies and procedures—

The ACTING CHAIR: The Hon. Natalie Ward has made these points a number of times. I am preparing to rule.

The Hon. NATALIE WARD: I will not be threatened by members. I think we are entitled and the public wants to know what we can have confidence in and what we cannot.

The ACTING CHAIR: There are two issues here. Firstly, is the question within the terms of reference of the Committee. I have ruled on this previously and I will deal with it in a similar way.

The Hon. NATALIE WARD: Outrageous. It is outrageous.

The ACTING CHAIR: The Chief Commissioner is entitled to respond in anyway he chooses although the member is drifting outside the terms of reference of the inquiry. Secondly, on the question about the non-publication order. It obviously does interact in a complex way with parliamentary privilege. I will deal with it in the way that the member suggests, which is to invite Chief Commissioner on notice to provide any reflections that he would like to the Committee. Any other decisions about this will be dealt with in confidential committee proceedings relating to the transcript. Chief Commissioner, is there anything you want to say to respond to that lengthy interaction, noting the time?

Mr HALL: Yes, thank you Chair. Just two or three points. Firstly, so far as the terms of reference are concerned it is plain from the terms of reference what the ambit of this inquiry is. It is not for me to say whether the question raised is within or without the terms—

The Hon. NATALIE WARD: Correct.

Mr HALL: —of reference. However it would appear to me, with respect, there is a very powerful reason to say that the questions are not within the terms of reference. That said, I have previously said and I will repeat that any matters concerning the commission and its processes relevant to the current public inquiry are matters that will be dealt with by the commission. I have given an instruction for there to be an internal investigation carried out today, in fact it commenced yesterday, so that I am in a position during the course of the day to determine what should be done. I have indicated that ultimately once that inquiry has been completed, it will be dealt with in the public forum and that is essentially a matter for Assistant Commissioner McColl who is presiding. My view is that within the ordinary course of events, it would be a matter that we address publicly in the public inquiry.

CORRECTED

The Hon. NATALIE WARD: Will you provide those policies to this Committee?

Mr HALL: If I could just finish.

The Hon. NATALIE WARD: Will you provide those policies to this Committee?

The ACTING CHAIR: I will ask the Hon. Natalie Ward not to proceed in that manner.

The ACTING CHAIR: Chief Commissioner, we have run out of time in this particular session. Thank you for your attendance. Thank you for your submission, which is very helpful in guiding the Committee's work in this area. You have not taken any questions on notice in this instance although members may have subsequent questions. The secretariat will be in contact if that is the case. Thank you for your time.

Mr HALL: Yes, we will be happy to answer any questions on notice. Thank you.

Mr DAVID SHOEBRIDGE: Before the Chief Commissioner goes, there is that unresolved issue of the potential breach of the Chief Commissioner's confidentiality.

The Hon. NATALIE WARD: It is all public. I will not be threatened by you. It is all public and we have a right to know.

The ACTING CHAIR: Ms Ward, can you please come to order. You are entitled to make a point but you will do so through the Chair. You are correct, Mr Shoebridge. Chief Commissioner, you have been invited on notice to provide any guidance to the Committee in its considerations about how these proceedings interact with your non-publication order.

Mr HALL: Thank you.

The Hon. NATALIE WARD: Through you, Acting Chair, I just note that those issues are public.

Mr HALL: Thank you, Mr Acting Chair and members of the Committee.

(The witness withdrew.)

CORRECTED

JONATHAN WHEATON, Executive Director, Regional Programs, Department of Regional NSW, affirmed and examined

CHRIS HANGER, Deputy Secretary, Public Works Advisory and Regional Development, Department of Regional NSW, affirmed and examined

The ACTING CHAIR: Would either of you like to make a short opening statement?

Mr HANGER: I thank the Acting Chair and the Committee for the opportunity to represent the Department of Regional NSW at this inquiry. I would like to acknowledge that we are meeting on the land of the Gadigal people of the Eora nation this morning. I pay my respects to Aboriginal elders past, present and emerging and extend my respects to any Aboriginal people who are present or listening online today. I am the deputy secretary responsible for Public Works Advisory and Regional Development, the group that administers a suite of regional programs designed to improve the lives of people in regional New South Wales, increase jobs and improve community amenity.

Regional New South Wales is one of the largest and most diverse economies in Australia and is home to 40 per cent of this State's population. These communities in regional New South Wales are resilient, adaptive and varied. In recent times they have endured the economic and social devastation sustained in multiple crises including bushfires, drought, floods and now COVID-19. The Department of Regional NSW is committed to working with these regional communities and ensuring that government investment into regional New South Wales is fair and delivers outcomes for local communities and businesses. The \$1.7 billion Regional Growth Fund was announced in the 2017-18 budget. It is the mechanism to implement the Government's vision for regional New South Wales as outlined in the regional development framework and the 20-year economic strategy for regional New South Wales.

The regional development framework provides a scaffold for our investment and a model that builds on providing quality services and infrastructure in regional New South Wales, to ensure a baseline set of services and basic amenity across the entire State. It aligns our efforts around growing regional centres and looks for those locations that present opportunities for strong growth in population, jobs or both. We also look to unlock economic potential across the State. The 20-year economic vision is a clear blueprint for the future of the economic growth of regional New South Wales. It is the mechanism that we use to guide government investment and policy decisions to support regional economic development. That 20-year vision has mapped the State into 38 functional economic regions. These are the regions that we look at when we undertake the economic development strategies and programs that we will discuss today.

The overarching objective of the Regional Growth Fund is to facilitate the development of strong, diverse and innovative regional economies. Over the life of the fund we have seen over 4,000 applications to approve community amenity and support local economies, with a cumulative value in excess of \$5 billion. Through the fund to date, more than 2,000 projects are being delivered across every single local government area in regional New South Wales. The popularity and success of this fund is testament to a robust, evidence-based framework that has guided the development of policies and procedures for each of the funds that we will talk about today. For example, the Stronger Country Communities Fund has ensured that at least \$3 million is allocated to every single local government area in regional New South Wales.

The ACTING CHAIR: Mr Hanger, you are invited to issue a short opening statement. I just ask you to bring it to a head if possible, given the questions that we have.

Mr HANGER: The diversity of funding programs within the Regional Growth Fund is intrinsic to how we have supported regional New South Wales over the last couple of years. Transparency and integrity in program design and delivery is paramount for us. I look forward to assisting the inquiry in their deliberations today.

The ACTING CHAIR: Thank you for that opening statement. I just indicate before I hand to my colleagues that we welcome your appearance here today. Committee members are entitled to ask in any areas they like but the Committee has indicated that most of the questioning will be focused on the council areas. That means that, given the breadth of responsibilities that you have just outlined, you may be welcomed back to a future hearing. But just to indicate, we will principally be dealing with a more limited part of the responsibilities that you have just outlined.

Mr HANGER: That is fine. Thank you.

Mr DAVID SHOEBRIDGE: Thank you for your opening statement and for your attendance today. Did either of you have a role in the administration of the Stronger Communities Fund for the tied grant round?

CORRECTED

Mr HANGER: No.

Mr WHEATON: No.

Mr DAVID SHOEBRIDGE: Neither of you?

Mr HANGER: No, that program is administered by the Office of Local Government.

Mr DAVID SHOEBRIDGE: Is it entirely administered by the Office of Local Government?

Mr HANGER: Yes, they oversee and deliver that program.

Mr DAVID SHOEBRIDGE: You are aware of the program, I assume?

Mr HANGER: Yes.

Mr DAVID SHOEBRIDGE: What, if any, advice did your department offer to the Deputy Premier about the approval of the guidelines for that program?

Mr HANGER: I am not quite sure what our advice would have been. It is not a program that we oversee. If anything, it would have been reviewing what has been put forward by the Office of Local Government.

Mr DAVID SHOEBRIDGE: Given you are under affirmation, I am not really interested in speculation. I am interested in what you know. What do you actually know?

Mr HANGER: About the program?

Mr DAVID SHOEBRIDGE: About the signing of the guidelines, the approval of the guidelines by the Deputy Premier.

Mr HANGER: I was not involved in the signing or providing advice around that.

The Hon. TREVOR KHAN: Just so we are clear, Mr Wheaton, did you have any involvement in it at all?

Mr WHEATON: No, no involvement in the Stronger Communities Fund.

Mr DAVID SHOEBRIDGE: Before your Minister signs and approves a guideline for the distribution of a fund in the order of—initially it was \$212 million but it eventually became \$252 million—there would be advice, wouldn't there, to the Minister?

Mr HANGER: Yes, there would be. That advice may have come from the Office of Local Government, who administered the program.

Mr DAVID SHOEBRIDGE: We have separately asked the Office of Local Government and they have been required to produce all of the material they have. No such advice exists, at least according to the Office of Local Government. Could I ask you on notice to review the records of your department and provide to this Committee any such advice to Parliament?

Mr HANGER: Yes, happy to do that.

Mr DAVID SHOEBRIDGE: I also have a very specific question that I would like your answer on. The guidelines that have been provided to the Parliament contain the signature of the Minister for Local Government dated 27 June 2018. They contain the signature of the Premier dated 25 June 2018. They contain what appears to be the signature of the Deputy Premier but it is undated. Can you provide the answer on notice as to when exactly and by what method the Deputy Premier signed the guidelines?

Mr HANGER: We are happy to take that on notice.

Mr DAVID SHOEBRIDGE: There would ordinarily be a record of that.

The Hon. TREVOR KHAN: To be fair, Acting Chair—I will take a point of order.

The ACTING CHAIR: Yes.

The Hon. TREVOR KHAN: What is being asked of these witnesses, who are departmental witnesses, is—and I am not being derogatory—

Mr HANGER: No.

The Hon. TREVOR KHAN: But what Mr Shoebidge is asking is for these witnesses to determine something that the Minister did do. It may not be within their gift.

CORRECTED

The ACTING CHAIR: Yes.

Mr DAVID SHOEBRIDGE: I am comfortable with them taking it on notice. It may be that the answer comes back that that was all done entirely in the Minister's office—

The Hon. TREVOR KHAN: Yes.

Mr DAVID SHOEBRIDGE: —and they are not in a position to answer that.

The Hon. TREVOR KHAN: Yes.

Mr HANGER: Yes.

The Hon. TREVOR KHAN: I do not think they are in a position to interrogate.

The ACTING CHAIR: I think the member has made a very strong point. It is not necessarily a point of order but the witness is entitled—

The Hon. TREVOR KHAN: I know that.

The ACTING CHAIR: —to answer in the way they have been invited to.

Mr HANGER: Yes. We are happy to go through our records to see if there is anything that helps in regards to that question. But, as I have indicated, that is a program overseen by the Office of Local Government. We would expect that all the material related to the program they will hold.

The ACTING CHAIR: Good.

Mr DAVID SHOEBRIDGE: You see, one of the difficulties we have is that we have a series of emails from the Deputy Premier's office approving funding of millions of dollars to individual programs or individual projects to regional councils, but we have not to date been provided with any merit assessment or any indication of how those projects were identified and approved for funding by the Deputy Premier. So I am going to ask you now: Are you aware of any documentation within your department or any process in your department whereby the Deputy Premier was advised of, and notified of, these projects for funding for the Stronger Communities program?

Mr HANGER: No.

Mr DAVID SHOEBRIDGE: I am only talking about for grants.

Mr HANGER: Yes. As I have indicated, the program was overseen and run by the Office of Local Government. All the administration in regards to sort of project selection and process we would expect them to hold and be able to provide. I have indicated if we are able to provide material, we will take that on notice and happily come back to the Committee.

Mr DAVID SHOEBRIDGE: Could I ask you, as a matter of practice within your department, if there is a fund that is being administered by your department and there are potential projects to be funded [audio malfunction]. Is it the practice of the department to put a briefing note before the Minister that details the merits of the project and gives a recommendation to either fund or not fund? Is that the practice of your department?

Mr HANGER: Yes. That would be standard practice, yes.

The ACTING CHAIR: David, we are just starting to have some interference. I will call the Hon. Courtney Houssos and then I will come back to you for further questioning. I call the Hon. Courtney Houssos.

The Hon. COURTNEY HOUSSOS: I might continue from where I think my colleague left off. Thank you for your time this morning. You said that it would standard practice to provide an assessment and then a recommendation. What are the situations in which you would deviate from that standard practice?

Mr HANGER: They would be few. If we are talking about a sort of grants-based program, then typically you would receive applications. Those would be assessed. Recommendations would go up to the Minister. The Minister would make a final determination. It will depend on the program, though. Approximately half of the funding that is within the regional growth fund is from the Restart NSW fund, which is a legislated fund. So there the approval process is slightly different. There is an independent recommendation from Infrastructure NSW. The final decision is by the Treasurer but through the Expenditure Review Committee [ERC]. But the principle of a collection of information around projects, assessment and then a recommendation is pretty standard.

The Hon. COURTNEY HOUSSOS: You just touched—

The Hon. TREVOR KHAN: Sorry, can I ask a follow-up question?

CORRECTED

The Hon. COURTNEY HOUSSOS: Sorry. I just have one and then you can.

The Hon. TREVOR KHAN: Sure, yes.

The Hon. COURTNEY HOUSSOS: You said that part of the programs within the Regional Growth Fund are funded through Restart and they actually have to be approved by the Premier.

The Hon. TREVOR KHAN: No, by the Treasurer.

The Hon. COURTNEY HOUSSOS: Sorry, by the Treasurer—my apologies. Would you then, because the grant is under Regional NSW, you would be responsible for preparing those briefing notes and that recommendation, even though it is going to the Treasurer?

Mr HANGER: Ultimately it will be Treasury because the fund is overseen by the Treasurer, but there are a number of agencies who are responsible for administering Restart programs: The Department of Regional NSW, for instance, was leading the Resources for Regions program when that was in Restart. Transport for NSW is responsible for fixing country roads, as an example, but the ultimate recommendation for approval of funding out of Restart will be a submission prepared by Treasury.

The Hon. COURTNEY HOUSSOS: Even though you have a role in the fund, if it is being approved by the Treasurer, the Treasurer will then prepare the recommendation.

Mr HANGER: Yes, because they oversee the fund.

The ACTING CHAIR: We might just go to Mr Khan, briefly.

The Hon. TREVOR KHAN: Yes. Sorry, just with regard to that involvement of Restart, does that require, for those projects that are going to be funded out of that part, for instance, a business case to be prepared?

Mr HANGER: Yes. Business cases will be prepared for a full range of programs, particularly, obviously, the more money or the more complex a project is. But for Restart programs, there is a legislated requirement that the project achieves an economic benefit for New South Wales, so not only a business case—

The Hon. TREVOR KHAN: I do not want to cut in. So that means, what, a benefit-cost ratio [BCR] greater than one?

Mr HANGER: That is a cost-benefit analysis. A business case you can assess and undertake a cost-benefit analysis and for Restart you need to show that there is an economic benefit, which is typically are benefit-cost ratio above one, yes.

The Hon. TREVOR KHAN: And the difficulty that creates is that, when you are looking at projects in regional New South Wales, it is sometimes difficult to get to that magical number, is it not? That has been one of the difficulties that has arisen with the formulas that have been applied in that regard?

Mr HANGER: It can be more challenging. Obviously, economic benefits in larger population centres are easier to quantify. That is not to say that there are not projects across regional New South Wales that have been successful but it is fair to say that it is probably easier in larger centres because the benefits of the projects that you are talking about accrue more easily in those larger centres.

The Hon. TREVOR KHAN: Yes. So, I suppose I am getting to this point: The criteria that apply in determining these can be quite varied. By way of example, in the COVID circumstance you may take a more flexible view of the criteria because, essentially, you want to get the money out the door and people building stuff, or doing stuff, really quickly.

Mr HANGER: Yes.

The Hon. TREVOR KHAN: So that the rigour that you would apply in terms of the criteria matches the circumstances at least in part that you are presented with. Is that right?

Mr HANGER: Another way to think about it is that for every program there are clearly objectives that the Government is trying to deliver against and you need to make sure that the processes for the administration and delivery of the program are going to achieve those objectives. For instance, as you say, for stimulus programs you may still want to see that they have an economic benefit and you may still want to undertake cost-benefit analysis and ensure business cases are there, but it may not be a threshold against which funding is determined whereas a legislated fund like Restart has that requirement that projects have a benefit cost, or achieve an economic benefit for the State. That is generally assessed through a benefit-cost ratio above one.

CORRECTED

The Hon. TREVOR KHAN: Yes. I accept all that you say. So the objective, for instance, could be some social objective which is completely divorced from economic returns. I use by way of an example, frighteningly, the suggestion of making more available at sporting grounds women's change rooms.

The Hon. NATALIE WARD: Hear, hear!

The Hon. TREVOR KHAN: A relatively low cost-benefit ratio, but perhaps a good social good is achieved out of the exercise.

Mr HANGER: Absolutely, and one of the classic examples is water security. That is particularly true for smaller communities. As I have indicated, one of the ways in which benefits are sort of quantified is by population. So if you have small communities who have critical water needs, it may be challenging, given the cost of the infrastructure you need to put in place to achieve that positive BCR. But, nevertheless, I think everyone would agree water and water security is vital for communities across the State and it should not be denied to people because it has not necessarily achieved an economic return.

The Hon. TREVOR KHAN: Apart from some procedural issues is it reasonable to say we cannot really come to a situation of creating a formula that one size fits all in terms of grant funding programs? They are tailored to the circumstances that are presented.

Mr HANGER: Absolutely. And that is why there is a suite of programs within the Regional Growth Fund. There are programs that are targeted to economic outcomes. There are programs that essentially you would say are targeted towards community outcomes and amenity. Again, I mentioned the Regional Development Framework, which is that overarching structure through which we think about how we are going to support the development of regional New South Wales, and that needs to pick up both economic as well as social amenity. The program, the guidelines and the assessment we use for projects that are funded obviously needs to be tailored to the objectives that we are targeting.

The Hon. TREVOR KHAN: If you have a program that has, for instance, a high social amenity component in it and a lower emphasis placed upon the economics, that of necessity means that somebody has to in effect assess the social benefit to be obtained. That would be right?

Mr HANGER: Absolutely. And there are methodologies to do that. We have used what is called choice modelling or stated preference survey to essentially understand, to put it basically, what is a community's willingness to pay or preference when looking at a range of different projects that are going to deliver community outcomes. Do they prefer putting shade cloth over a pool, or do they prefer lighting on the netball courts? Do they prefer upgrading the local theatre? There are very robust ways of assessing that independently that gives us insight into that community's preference that is not a benefit-cost ratio per se but can provide in some instances a monetised way of thinking about that if required.

The Hon. TREVOR KHAN: Essentially is it not really that somebody has to make a subjective assessment as to what is the better outcome?

Mr HANGER: Yes.

The Hon. TREVOR KHAN: For instance, the Minister may have a different view of what is a subjectively more beneficial project than the department has put up. That would be right?

Mr HANGER: That would be right, yes.

The Hon. TREVOR KHAN: It does not necessarily mean that the assessment made by the Minister with regards to the preference of one project over another is corrupt or wrong or a mal-administration of the fund, it is just a different assessment. That would be right, would it not?

Mr HANGER: And another element that is really important here is these funds have been oversubscribed in I think almost every round that has gone out. We are often talking three to four, to sometimes eight times oversubscribed and therefore there are decisions that need to be made about which of those projects are going to get funded. And you are right, the decision sits with the Minister and they are there to bring ministerial insight and discretion to that decision.

The Hon. TREVOR KHAN: And of necessity not everyone is going to be happy with the outcome.

Mr HANGER: No, and unfortunately, for examples of significant oversubscription, one of our funds was a \$100 million round with \$800 million-worth of applications. Essentially seven out of eight people were going to be disappointed. That is challenging to deliver those messages and it is obviously challenging to then select if you have got multiple projects that are all eligible but a limited funding pool, a decision has to be made.

CORRECTED

The Hon. COURTNEY HOUSSOS: I will follow up on something the Hon. Trevor Khan was raising about the question of ministerial discretion. How do you manage that? Do you require written reasons if the Minister diverges from your recommendation?

Mr HANGER: Yes. The Minister will sign off on a brief and they will sign off and say: These are the projects that we approve from the projects that are put forward.

The Hon. COURTNEY HOUSSOS: Is it required to have written reasons if they diverge from your recommendation? I understand the signature.

Mr HANGER: Yes. They should document why they have chosen projects. That can be: We agree completely with what is in the brief. Or it may be if they decide that there are going to be other projects that are funded, that should be documented.

The Hon. COURTNEY HOUSSOS: You as the department obviously retain that? That is a fairly simple question but I want to put that on the record.

Mr HANGER: Yes. That should come back to us, yes.

The Hon. COURTNEY HOUSSOS: I am not sure whether you saw the testimony of the ICAC Commissioner this morning. In his testimony and also in his submission he referenced the Department of Premier and Cabinet guidelines for governing grants, best practice I should say, or good practice for grants programs. You are aware of those guidelines?

Mr HANGER: Yes.

The Hon. COURTNEY HOUSSOS: Do you take those into account when you start drafting guidelines for future grants programs?

Mr HANGER: Yes. As well as, there is a Treasury circular around program evaluation. In the design of programs there is obviously a range of guidance documentation that informs the structure of what we do, the processes and then the evaluation of those programs to make sure that they are meeting the objectives that were set out.

The Hon. COURTNEY HOUSSOS: In terms of the original guidelines that you are charged with drafting—

Mr HANGER: Original program guidelines?

The Hon. COURTNEY HOUSSOS: Yes. Sorry, the original program guidelines that would be natural that you would draft for the Minister, you would take those specific broader government policies into account when drafting those guidelines. Is that correct?

Mr HANGER: That is correct.

The Hon. TREVOR KHAN: On that line, not all grants programs that are set up essentially arise out of you drawing up the objectives. There would be some where essentially a Cabinet decision has been made which is communicated through DPC that says: This is what you are going to do. That would be right?

Mr HANGER: That would be right, and there will also be instances where, for instance, we might be collaborating with the Commonwealth. The recently announced Bushfire Local Economic Recovery Program is an instance where there is matched funding between ourselves and the Commonwealth and the guidelines need to be developed in consultation with them. Yes, there can be a range of different inputs to the initial program initiation.

The Hon. TREVOR KHAN: You might in some of them wholly construct it, and in other ones you are essentially doing the fuzzy bits around the edge, but otherwise you are really being delivered a fait accompli. Would that be right?

Mr HANGER: Yes. Again, depending on the funding source—and I go back to Restart—there are some very clear legislated requirements about Restart and any guidelines that are associated with funding programs out of that funding source need to adhere to that.

The Hon. NATALIE WARD: In relation to the Hon. Courtney Houssos' question about signing off on briefs and recommendations that you have put up to a ministerial office, I think your testimony was that the Minister if they did not agree with your recommendations had to put reasons why?

Mr HANGER: They should. Best practice is they should.

The Hon. NATALIE WARD: You said they should. Best practice is that they should?

CORRECTED

Mr HANGER: Yes.

The Hon. NATALIE WARD: Where does that come from? Is it a requirement or is it a recommendation?

Mr HANGER: It is best practice. It is a recommendation.

The Hon. COURTNEY HOUSSOS: It is in the DPC policy.

The Hon. NATALIE WARD: When you say it is best practice, where does that come from, that requirement or best practice arrangement? Where is the authority for that, I suppose? Is it a requirement that they put reasons why?

Mr HANGER: No. But, as you would have seen, probably in the ICAC submission as an example, in terms of transparency it is helpful to know what the decisions have been and why there might be a divergence between what has gone up and what is ultimately decided.

The Hon. NATALIE WARD: I understand that and I accept that it is helpful. I am not trying to quibble or disagree I am trying to be really clear on whether it is actually a mandated requirement or whether it is recommended as best practice they should?

Mr HANGER: No. It is not mandated.

The Hon. NATALIE WARD: That you are aware of. I am not trying to quibble with that, I am trying to be really clear about it. You could get a brief back foreseeably which is not out of order.

Mr HANGER: Yes.

The Hon. NATALIE WARD: It is perhaps not best practice but it might just be: No, disagree with those. Go to those.

Mr HANGER: Yes.

The Hon. COURTNEY HOUSSOS: I want to clarify, you talked about this and I appreciate it is hard to be general because you administer a large range of grants, but there is a clear distinction between a grants program for something that is an emerging crisis like bushfires or COVID-19, versus a grants program that is being run in an orderly way, being established by a decision of Cabinet or as an election commitment and is then being rolled out. There is a clear distinction between those two types of grants programs. Would you agree with that?

Mr HANGER: I am not sure what the distinction is. There is obviously a far shorter period of time in those crisis situations to establish a program and start to deliver it but the architecture around program design and delivery should be the same as far as is practicable within the time available.

The Hon. COURTNEY HOUSSOS: That is very helpful. Thank you, Mr Hanger. I want to ask you about changing guidelines. What is the process that your department has in place for making changing to guidelines because you did reference that in your submission—that yours have come through multiple iterations in some instances?

Mr HANGER: We will take feedback from communities and industry depending on the objective of the guideline. The most recent example of that is the Resources for Regions Program. The first six rounds of that program were funded out of Restart NSW so it had that requirement for a benefit cost ratio above one. That program targets mining impacted communities. After round six of that program it was becoming clear that the types of projects coming forward were struggling to meet that requirement and those communities expressed a strong preference that as well as looking at the economic opportunities, they wanted to understand and be able to put forward projects to support community amenity.

As we have discussed, it can be challenging to meet that threshold benefit cost ratio requirement. So we consulted with those communities and developed a set of guidelines for round seven of the program that enables a broader suite of projects and removes the requirement for that benefit cost ratio. That fund is now funded out of Consolidated Revenue, giving us an ability to continue to support those mining communities. It shows that we can adapt programs when required in response to feedback from communities around the targets that those programs deliver.

The Hon. COURTNEY HOUSSOS: Do you have any formal consultation process in place for changes to those guidelines or do you just expect that it is going to be rigorous?

Mr HANGER: I might ask Jonathan Wheaton to respond because he undertook that consultation process.

CORRECTED

Mr WHEATON: For the Resources for Regions Program round seven we revised that program directly with the mining impacted councils. We had acknowledged that the program was not working as effectively as it could and there were some outcomes that did not align with the objectives of the program previously. For instance, there were highly mining impacted areas such as Singleton that had not been funded in the last couple of rounds. So we directly engaged with Singleton and other local government areas to redesign the program together to better meet the needs of those communities and have a program which ensured that the funding for that program would go to the most mining impacted areas.

The Hon. COURTNEY HOUSSOS: So essentially the change of guidelines is if that in practice it is not meeting the objectives of the fund?

Mr WHEATON: That is an example where it was obvious and there lots of public commentary around that program having run six rounds, it could be more effective in the way we were running it. Some programs might run many rounds with only slight adjustments to the guidelines but for the Resources for Regions Program it was more of a full refresh of how that program was run based on the reflections and the evaluation of how effective that program was running for the community.

The Hon. COURTNEY HOUSSOS: Mr Hanger, in terms of the programs you administer, do you always require an application form for all of the grants you administer?

Mr HANGER: Yes.

The Hon. COURTNEY HOUSSOS: Okay. Is there any situation where you think it would be appropriate for there not to be an application form?

Mr HANGER: No. I cannot think of an instance where there would not be documentation about a project.

The Hon. COURTNEY HOUSSOS: I wanted to ask you about the approval—

The ACTING CHAIR: Just returning to that question because it was more specific than that. It is actually about the application form rather than documentation.

Mr HANGER: Some of the programs will not have public application processes for them. We may have material that has been submitted for a program but it may not be a formal application. People may, for instance, bring forward business cases and we need to look at those in the context of a program so not every single project will have a formal application. We may have representations from people that we need to be able to assess through a program.

The ACTING CHAIR: Obviously you administer a range of grants, could you provide on notice an indication about which ones do have an application form and which ones do not?

Mr HANGER: Yes.

The Hon. COURTNEY HOUSSOS: What is the process of engaging with you to give a business case if it is not applying for a funding program? Does a local community group come and see you, a local MP comes to see you, another Minister comes to see you with a business case and says we want to fund this? Do you then try and find a way to fund it? Is that it?

Mr HANGER: There are a range of programs with formal open application rounds. The Resources for Regions Program, for example, opens and closes a formal application process and councils and communities submit a formal application for that program during that funding round. Growing Local Economies is a different example of a program that we oversee. It was essentially open at all times. It had published guidelines and criteria and what needed to be submitted were business cases that met the criteria of that program. It does differ and we do have communities that may bring forward projects outside of when we have programs open. Our role is to understand what is going to help communities develop and that might be economic or it might be social.

We want to be aware of those projects even if there may not be a suitable program available because part of our work is making sure that when programs are available—stimulus for COVID-19 and recovery for bushfires would be examples—if those programs are not available we still want communities to tell us what things will help them recover from bushfire or recover from stimulus. In that environment we want to say that even though there is not a program available currently, we want to understand what will help you. We are happy to take business cases or information that communities have to help inform us when money does become available under the programs we put forward.

CORRECTED

The Hon. COURTNEY HOUSSOS: Just one clarification on that. When you say you ask for general information and feedback— When you say that a \$100 million program that is oversubscribed eight times, you are talking about outside of that? Just general information you are receiving, is that right?

Mr HANGER: One of the branches in my group is called regional development. There are 100 people based across the State whose job is to work with those communities and industry to understand what types of projects and services are required to help support those communities. That information is not restricted to when we have a program open for applications. They need to understand a full range of issues in those communities at all times. As we think about program design, we need to not only review what has come through formal processes but also understand more broadly the environment in those communities.

So rather than giving a closed-door "sorry there is no money available at the moment, we are not able to engage with you" response, we ask our staff to make sure they are aware of all the activities underway across the community. If there are funding opportunities relevant to ideas that are brought forward, we will direct them through that process. But if there is not, we still want have awareness of that because it informs future policy and future program design.

The Hon. COURTNEY HOUSSOS: I understand. I have one final matter about the Regional Growth Fund. I understand it has six different funds that sit underneath it. Can you tell me about the approval process for something outside of a specific fund? Actually, sorry, let me ask you firstly, do the six funds all get signed off individually by individual Ministers? Is that correct?

Mr HANGER: It will vary. Some of those funds are funded out of Restart NSW. These include Growing Local Economies, Resources for Regions until round seven—

Mr WHEATON: The Regional Growth - Environment and Tourism Fund.

Mr HANGER: All Restart NSW. I talked through the approval process there briefly but I will cover off again is—

The Hon. COURTNEY HOUSSOS: That is okay. The one I am interested in is the Regional Cultural Fund.

The ACTING CHAIR: Perhaps before you go to that, could you provide us on notice with the approval process for each of the funds in that broader fund?

The Hon. COURTNEY HOUSSOS: Sure. In terms of the Regional Cultural Fund, if there was something that was a cultural application but outside the Regional Cultural Fund, how else could that be approved under the Regional Growth Fund?

Mr HANGER: It may for instance be eligible under the Stronger Country Communities Fund. Is there a specific example or specific project?

The Hon. COURTNEY HOUSSOS: Yes. A \$30 million grant was given to the Riverina Conservatorium of Music for the construction of a new recital hall. We have been told that it was approved under the Regional Growth Fund and I am trying to get a sense of who would have approved that.

Mr HANGER: There are two elements to that project, stage one and stage two. Stage one of the project is essentially a refit of the building. I do not know if you know the conservatorium well but it is currently on leased premises at Charles Sturt University. That lease is due to expire this year and it needs to move premises. The first stage is a fit-out of the facility to enable that to occur, into a disused government building in the CBD in Wagga Wagga. It is essentially funding that was signed off by government through the Expenditure Review Committee to enable the move of the conservatorium into that new facility.

The ACTING CHAIR: When you say "essentially signed off by ERC", who signed this off?

Mr HANGER: Well, ERC has approved the funding.

The ACTING CHAIR: On the recommendation of which Minister?

Mr HANGER: I believe that will be through Property NSW because it is a government building that they are moving into, but again I can check.

The ACTING CHAIR: So some Minister has to take this to ERC.

Mr HANGER: That is correct.

The ACTING CHAIR: You are saying that would have been the Minister responsible for Property NSW.

CORRECTED

Mr HANGER: It could have been—

The ACTING CHAIR: I am happy for you to clarify that on notice.

Mr HANGER: Yes.

The Hon. COURTNEY HOUSSOS: And you talked about stage two.

Mr HANGER: Yes. Stage two was a \$20 million pre by-election commitment. The important thing to understand about stage two is that significant work still needs to be done on the business case. When you talk about a \$30 million grant—and this is true for all of the programs and projects that we fund—they are all subject to meeting criteria in a performance-based funding agreement. The funding goes to those recipients when they have delivered the milestones in the projects.

The Hon. COURTNEY HOUSSOS: They have to show that they are progressing along their milestones.

Mr HANGER: They have to show their progress.

The Hon. COURTNEY HOUSSOS: Yes, I understand that.

The ACTING CHAIR: Who made that decision about stage two?

Mr HANGER: That was a pre by-election commitment. It was announced by the local MP.

The ACTING CHAIR: Who was that?

Mr HANGER: That was Daryl Maguire at that point.

The ACTING CHAIR: Right. That was announced by Daryl Maguire but he was at that stage a Parliamentary Secretary, not a decision-maker. Who was the decision-maker for this grant of \$20 million?

Mr HANGER: That is a Government election commitment. With all of the other Government by-election or election commitments, they ultimately get signed off and funded through the budget process.

The ACTING CHAIR: I think it is very important that a government delivers on its election commitments. The Government is entitled to make whatever commitments it likes. The Executive of the Government then has to subsequently make an administrative decision to allocate \$20 million to fulfil that election commitment. Who made that decision?

Mr HANGER: That decision would have been as part of the funding for the other election and public commitments that the Government makes. It is ultimately signed off by ERC.

The Hon. NATALIE WARD: Is it on the Treasurer's recommendation?

Mr HANGER: Yes.

The ACTING CHAIR: I invite you to clarify that on notice. You have again referred to the ERC process. Could you clarify who is the Minister who took that to the ERC, who provided that recommendation? It may indeed be the Treasurer or it may have been the portfolio Minister. Could you clarify that on notice?

Mr HANGER: Yes.

The Hon. NATALIE WARD: Can I just ask a follow-up on that point? Isn't there another option? It could have been a Minister, it could have been a particular person or it could have been part of a bundle of election commitments. Could that be another possibility? I am not trying to quibble with it but is there another option? Each local member says, "This is what I want for my electorate, which I should do", and that bundle goes to ERC as election commitments.

Mr HANGER: Typically they are all bundled up; that is correct.

The ACTING CHAIR: Correct, although taken to ERC by a Minister would be the usual practice. Rather than speculate, if you could clarify on notice.

Mr HANGER: Happily.

Mr DAVID SHOEBRIDGE: The first part of my question is probably going to be dealt with on notice. Your exact words were "should have been". Is that because you do not have any specific knowledge sitting there now?

Mr HANGER: Sorry, in reference to—

CORRECTED

Mr DAVID SHOEBRIDGE: You said the decision should have been made by ERC.

The Hon. NATALIE WARD: It might help, Mr Shoebridge, if you clarify which decision you are referring to.

Mr DAVID SHOEBRIDGE: The second round of the funding of the conservatorium. You said that it should have gone to the ERC.

Mr HANGER: I will clarify on notice but my understanding is that was part of the funded election commitments for the Government and so would have been signed off as a bundle, as they often are, by ERC. I will take that on notice and clarify that.

Mr DAVID SHOEBRIDGE: But my understanding is that there is a multiple-stage process before something gets to the ERC. There is the initial uploading of a project. Can you take us through the stages that a project goes through before it gets to the sign-off by the ERC?

Mr HANGER: For an individual project, it can also be that the ERC decides to provide funding for a project or a program and that work then commences. To talk through the example of the passage through to ERC of the Growing Local Economies program, which we oversee, an applicant—

Mr DAVID SHOEBRIDGE: If that is the one under which the Riverina Conservatorium was done, then yes, please do.

Mr HANGER: The process would typically be—and generally is—that a business case is submitted or an application is submitted for a program. The application is assessed; the business case is assessed. The outcomes of that inform ERC, which will then determine whether that project is funded. In Growing Local Economies, you have an application form and business cases that need to be submitted. Those projects are then independently reviewed by Infrastructure NSW, who provide a recommendation. Treasury will write a submission and advice because that program is funded out of Restart NSW. Then ERC and then ultimately the Treasurer will sign off on funding for a project through Growing Local Economies.

Mr DAVID SHOEBRIDGE: To the extent that that material is in your domain, could you provide that relevant material to the Committee on notice? That is the business case, the application and whatever other material you have a copy of for the Riverina project. Did the Premier have any role whatsoever, either by reference to her opinion, by email, directly or indirectly, in relation to either of those rounds of funding for the Riverina project?

Mr HANGER: I am not aware, but she would obviously be sitting in the ERC.

The Hon. NATALIE WARD: She would be in the ERC.

Mr DAVID SHOEBRIDGE: All right. Do you know if this was a project that was supported by Mr Maguire—is that your understanding—the local member?

Mr HANGER: Yeah. I understand that, as the local member, he was quite supportive of that project.

Mr DAVID SHOEBRIDGE: At what stage were these two projects funded? What dates?

Mr HANGER: I will confirm. I believe the first was 2017 and the second commitment would have been approximately mid-2018 when the by-election was on, but I am happy to confirm those dates.

Mr DAVID SHOEBRIDGE: Are you aware whether or not a conflict of interest was ever placed on the record by the Premier, given she was in a close personal relationship with Mr Maguire, who was—

The Hon. NATALIE WARD: I object. Point of order: I think this question is out of order and we have at length this morning dealt with some of these issues. This is presently a matter that is under investigation by the ICAC. I do not think it is appropriate for these witnesses to be answering in these circumstances. It might be something, following the investigation, that is appropriate but I ask that you to rule it out of order. It is under present investigation. It is not a matter at the moment that I think is necessary or critical to this Committee. I ask that you rule it out of order. I do not think it is fair to these witnesses at all.

Mr DAVID SHOEBRIDGE: Well, my response is that it is clearly within the terms of reference and that is not a point of order.

The Hon. NATALIE WARD: My point of order was that it is under investigation, not that it is not within the terms of reference. They are different points.

The Hon. COURTNEY HOUSSOS: To the point of order: The issue that we were dealing with this morning was that we were questioning the ICAC Commissioner about a current investigation.

CORRECTED

The Hon. NATALIE WARD: And I was shut down.

The ACTING CHAIR: Ms Ward.

The Hon. COURTNEY HOUSSOS: In the context of this, we are actually asking the witnesses, perhaps, information that has come out as a result of the current investigation but it relates directly to a project that is clearly within the terms of reference. I do not think that it is going to impede the current investigation that is being undertaken by ICAC in any way for the witnesses to provide us with the information.

The Hon. NATALIE WARD: Further to the point of order: It is very often the practice of the House where a matter is under investigation, for example, the Hon. Shaoquett Moselmane or other matters that are under investigation, that we would be mindful of that. I ask that this Committee be mindful in its questioning in this. I have no issue with this Committee investigating what we need to do and doing our job. I am certainly not trying to impede that in any way, but there is a current investigation being undertaken by the ICAC and I do not think it is fair to these witnesses to comment, given the circumstances that that will be diligently investigated by the ICAC. I think that the question is out of order and that we should move on.

The ACTING CHAIR: Thanks for all those contributions. I will ask all Committee members to be conscious of not impeding any of the current investigations. I do not regard the question as being out of order in that the Parliament and this Committee also have a role to do. I will ask the witness to provide any information they can in response to that question.

Mr HANGER: I am not aware that a conflict of interest declaration has been provided.

The ACTING CHAIR: And you have said you are not aware.

Mr DAVID SHOEBRIDGE: [Inaudible].

The ACTING CHAIR: On notice, are you happy to confirm that?

Mr HANGER: The?

The ACTING CHAIR: You have said you are not aware. Understood.

Mr HANGER: I am not aware. Happy to review.

The ACTING CHAIR: On notice, could you confirm whether you do hold any record?

Mr HANGER: Yes.

The ACTING CHAIR: All right. Mr Shoebridge, does that conclude you are questioning on that particular manner? Thank you. I think I have got one more—

The Hon. COURTNEY HOUSSOS: I think I have one more.

The Hon. NATALIE WARD: Sorry. Were we not coming back to me?

The Hon. COURTNEY HOUSSOS: Yes. That is right.

The Hon. NATALIE WARD: Thank you—some time ago.

The ACTING CHAIR: Good. Over to you.

The Hon. NATALIE WARD: Would it be usual for a conflict of interest form to be signed where a local member has advocated for a project, an election commitment and the ERC has signed off on it? Would be usual for an ERC member to have to fill in a conflict of interest form in those circumstances?

Mr HANGER: No.

Mr DAVID SHOEBRIDGE: Point of order—

The Hon. NATALIE WARD: Sorry, no. He has answered the question. He said no.

Mr DAVID SHOEBRIDGE: Point of order: It is an unfair question because we are talking about very unusual circumstances where a local MP is in a close personal relationship with the Premier. I think it is unfair to the witness.

The Hon. NATALIE WARD: To the point of order—

The ACTING CHAIR: I do not believe—

The Hon. NATALIE WARD: I am trying to get some context.

CORRECTED

The ACTING CHAIR: Sorry. Ms Ward, there is no point of order. You are entitled to ask that question and the witnesses in total to answer.

The Hon. NATALIE WARD: Thank you, Chair. I just wanted to put some context around the question arising from Mr David Shoebridge about whether, in the context of a by-election, an election commitment and the parties that sit around the ERC—the Premier, the Treasurer, the Deputy Premier and the finance Minister—that would be the usual practice in those circumstances. I think your answer was no.

Mr HANGER: They would obviously need to note if there was a project that was coming forward but that is sort of their standard sort of responsibility in that environment.

Mr WHEATON: So I would say the Department of Premier and Cabinet Secretary is the secretariat to the ERC and so then any of the processes around the decision-making declarations and otherwise would be a matter for the secretariat of ERC.

The Hon. NATALIE WARD: And a conflict of interest would arise if, for example, the Premier was to herself benefit from that project, or the Treasurer.

Mr WHEATON: And an extension of that also is that it is a subcommittee of Cabinet, therefore protected by the Cabinet protocols. So I am unsure around the level of information that can be shared publicly around those decisions.

The Hon. NATALIE WARD: Thank you. I was not actually going to that content. I just have some questions around cumulative grants.

The Hon. COURTNEY HOUSSOS: Can I just ask one more question on that final thing?

The Hon. NATALIE WARD: Yes, of course. Sure.

The Hon. COURTNEY HOUSSOS: I just want to ask you, in terms of the Riverina Conservatorium, on the Regional Growth Fund website it is not on the website. At what point does it get put on the website? It has been approved, if the funding has been approved, why is it not on the website?

Mr HANGER: Because the project, at this point, it is only stage one that is being delivered. Is it not? Stage one is not there?

The Hon. COURTNEY HOUSSOS: Nothing is on the website.

Mr HANGER: All right. We will have a look at that. All projects that are funded under the Regional Growth Fund should be picked up. Stage one was actually a direct consolidated revenue grant to Property to undertake that work. So that was not funded under the Regional Growth Fund.

The Hon. COURTNEY HOUSSOS: I am sorry, it was a stage one—

Mr HANGER: Stage one is—

The ACTING CHAIR: It was consolidated revenue to Property NSW, a grant, and what was stage two? What was the source of the funding?

Mr HANGER: Stage two is \$20 million that is reserved for development of the auditorium.

The ACTING CHAIR: Yes, but I am asking about the source of the funding, though. From what funding source was that drawn?

Mr HANGER: That would be the Regional Growth Fund.

The ACTING CHAIR: Yes.

The Hon. COURTNEY HOUSSOS: At what point with that normally get put on the website?

Mr HANGER: When the final business case and an investment decision is made. So there is funding that has been reserved for the project, as there often is for projects, to ensure that they can proceed with confidence that the money is going to be available. But, very importantly, as we have talked about in regards to business cases, there needs to be an approval process and an understanding of the best way to deliver the project.

The Hon. COURTNEY HOUSSOS: So can we publicly announce in the media but not on the website—is that right—until the business cases approved?

Mr HANGER: Yeah.

The ACTING CHAIR: I think you have taken on notice that the fact that you will check why it is not on the website and respond to that.

CORRECTED

Mr HANGER: Yes.

Mr WHEATON: I might just clarify—

The ACTING CHAIR: Yes?

Mr WHEATON: —in terms of those two stages, which might be of use. So the stage one \$10 million necessarily is not a grant because it is an allocation to another government agency in the New South Wales Government. So it is not a grant that is paid to an external entity like a council. So that was a decision of \$10 million that was then an allocation to Property NSW to deliver stage one. For stage two, as was mentioned, is a by-election commitment and so that is a commitment for the Government to then progress with that project and, then, subsequent to then a public commitment, there are a number of different steps that would need to be met in order for that to be made a grant to an applicant; or, again, if it is Property NSW, an allocation of funding be made. So that \$20 million component is a public commitment of the Government.

There are a number of steps that will need to be made. Currently a strategic business case is being undertaken for that stage two \$20 million and it is not ready for an allocation of funding to be made. So there is the public commitment of the funding and it is a reserved funding. That is why it is not on the website. It is a public commitment for the Government to progress with that project but there are a number of checks and balances that the department and other agencies will work together to determine the best way forward for that project to be realised for the community.

The Hon. COURTNEY HOUSSOS: Are there any projects that do not progress through their business case not being up to scratch, or it might be a public commitment but you cannot allocate the funding? Is there a time period that you have that allows that? Are there projects that can get stuck in that particular continuum forever?

Mr WHEATON: Ah—

The ACTING CHAIR: Then we are going to Ms Ward.

The Hon. COURTNEY HOUSSOS: Sorry. Yes, this is—

The Hon. NATALIE WARD: You can take it on notice, if you like.

The ACTING CHAIR: The witness is welcome to answer the question.

Mr WHEATON: Unless the Government has committed publicly to a time frame, there is no set time frame for when that \$20 million commitment would be realised for the community of Wagga Wagga.

The ACTING CHAIR: Ms Ward?

The Hon. NATALIE WARD: Thank you. There are two main areas I want to touch on. I will start with the more general one first. I want to talk about the cumulative effect. In your assessment of grants and funding, you look at the purpose, obviously, and the requirements to be met. Is part of your assessment, to put it bluntly, how much other funding has gone to a particular area? Is it one of the considerations?

Mr HANGER: In what way?

The Hon. NATALIE WARD: So, a grant is for a particular purpose or theme, if you like—regional growth or sport. As part of the process of your recommendations or looking at those, do you ever say, "All right, we've got all these grants?" On the face of it, you talked about thresholds and—I am asking about volume. If a number of grants have gone to a particular area, do you take that into consideration and say, "It looks like this particular area has not received a lot, or this particular area does seem to have received a lot?" Or is that not part of your consideration?

Mr HANGER: I might start with a general recap of how the Regional Growth Fund is set up.

The Hon. NATALIE WARD: That is where I was going to go first, and I thought I would just go to this one.

Mr HANGER: Sorry about that. There are a range of programs. Some of those programs are designed to ensure—as I have said, for Stronger Country Communities in particular—that every local government area has a base level of funding across those three rounds of \$3 million. That ensures that for programs where there is a risk that communities that may not necessarily either have the populations that are going to support strong business cases—they are still able to access funding.

Also, in terms of funding available, we look at the capacity of communities to be able to deal with the funding that is coming through at the moment. We do try to both support them in how it is that they can deliver

CORRECTED

what is quite a record number. I mentioned there are over 2,000 projects that are underway across regional New South Wales at the moment and that is at a period when many of those communities are significantly stressed. We do try to take those factors into account and provide flexibility to work with councils to ensure that their communities continue to benefit, even if they may be struggling under a volume of investment at the moment.

The Hon. NATALIE WARD: What I am asking you, then, is if a particular area looks to have received quite a lot of funding—not whether they can cope with it, but just on the merits of volume of the cumulative effect across various funds—is that something that you look at or take into consideration? If it is not, say so.

Mr WHEATON: It is in some of our guidelines that geographical distribution of funding can be taken into consideration by the panel.

The Hon. NATALIE WARD: You put it much better than I can; I obviously need another coffee. Thank you. So, it is.

Mr WHEATON: Yes, only where it is stipulated in our guidelines. We have public-facing guidelines in terms of the assessment criteria that the projects will be assessed against. The different components that a panel could take into consideration—you would imagine that with the 93 local government areas in regional New South Wales, the circumstances are very different—

The Hon. NATALIE WARD: Yes. That is my point.

Mr WHEATON: —around the capacity of communities, councils or other organisations in areas such as, say, Central Darling Shire compared to Coffs Harbour or a community that has a greater level of capability across multiple organisations. So, we do as far as possible design our programs to take into account the different capabilities and capacities of those areas, to make sure that those communities do not miss out.

The Hon. NATALIE WARD: And would you agree that potentially at the other end of the scale where communities have seemed to have received a number of grants in a closer proximity of time—one explanation for that could be that they have missed out previously because they did not fit into that criteria or this criteria and there is now a catch-up, if you like? Particularly in infrastructure there might be a catch-up period where there are a number of grants and they might be cumulative. Is that something that you think is a possibility and can occur?

Mr HANGER: Yes. Mr Wheaton will talk more about resources for regions, but he indicated Singleton as one example. I think everyone would acknowledge that they are a heavily mining-impacted community. They did not receive and they were unable to bring forward projects in earlier rounds of that program that were successful. The program has been redesigned to make sure that those communities—even if they have been unsuccessful previously—are able to, through a robust process, bring forward projects and be successful in subsequent rounds.

The Hon. NATALIE WARD: Did you want to add something to that, Mr Wheaton?

Mr WHEATON: I was going to say that it really does come down to the program design. We had a Drought Stimulus Package, which looked at ensuring that the areas that had the highest impact of drought were prioritised for funding over the projects less impacted.

The Hon. NATALIE WARD: Whether they are small or large, capable or not capable, inundated with grants or not, that is the criteria?

Mr WHEATON: That is exactly right. And so, as far as possible we really try to discount the capabilities of an area or an organisation to deliver a project because we have mechanisms to support the project delivery through Public Works Advisory and on the ground support from our staff. If we do not believe a council, as an example, has the capabilities to deliver a project—notwithstanding that it aligns very strongly with what we are trying to achieve and that we would deliver great benefits to that community—we would provide a different way of making sure that project could be delivered for the community, but provide our support through Public Works Advisory or through other mechanisms where there might be that capability or capacity gap with a council.

The Hon. NATALIE WARD: Thank you. That is very helpful. But also, in circumstances where—just park their capability or otherwise. It might be in areas where they are very capable of delivering and it might be that a cumulative volume of grants in a geographical area comes about because there is, for want of a better word, catch-up in that area. Do you see what I am saying? I am trying to say it without saying it. The political word is that there is pork barrelling in that area. Sometimes it can just be that there has not been a lot there and they are catching up and they now significantly qualify for a number of these grants. Could that be the case and do you agree with that or disagree?

Mr HANGER: That could be the case. Government can work out where it wants to focus funding because it believes those communities have missed out.

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The ACTING CHAIR: Ms Ward, I might come back to you, unless you want to put one final question.

The Hon. NATALIE WARD: I just wanted you to talk—I was going to ask this first—about the design of the Regional Growth Fund. That is why I wanted to ask about that. I was going to ask you generally but I thought it would be faster to be more specific about it. Was that a factor in the design of the Regional Growth Fund?

Mr HANGER: Yes. You look at where there may have been very clear underinvestment or unmet need. So, for instance, the streams that are in the Regional Growth Fund—there are streams for economic activation. Specifically there are called-out streams in the community space—broad, like Stronger Country Communities. But there is an acknowledgement that significant investment was required in community sporting infrastructure, so there has been a sporting infrastructure fund. There have also been dedicated rounds through Stronger Country Communities for localised sporting infrastructure. So, yes, we do look at where the needs are and how we design programs to support what communities are telling us is required.

The ACTING CHAIR: Thank you, Mr Hanger. I might start on that point. You have talked about the 38 economic regions. When you look at the State, that is how you are looking at them. I might preface this firstly by saying that I know you administer a lot of funds. I would like to focus in on the Stronger Country Communities fund for that reason—and perhaps just on round three, the most recent round. I am interested in how that fund is structured as an example of the sorts of funds you are administering. To what extent do those economic regions around the State factor into that fund? Are they considered separately in the fund?

Mr HANGER: The functional economic regions that are outlined in the 20-year vision inform the Growing Local Economies fund, which is the fund that is focused on economic activation across regional New South Wales. Stronger Country Communities is targeted at community amenity. And so, the way in which that program is established is to provide a dedicated baseline of funding to every local government area. There are weightings for population and there is also a weighting for remoteness. So, we use the Rawlinsons building index because it costs more to construct further west.

The ACTING CHAIR: Yes. For the Stronger Country Communities Fund, looking at its most recent round, essentially there is a formula that means that each area receives a relatively equal amount, subject to the formula. Is that correct?

Mr HANGER: That is correct.

The ACTING CHAIR: And within that there is a significant amount of discretion as to which projects get up. Is that correct?

Mr HANGER: In what sense is there discretion? If I talk through the application process for round three, councils and community groups could submit applications for the program. There was input provided by Government MPs on the projects within those local government areas [LGAs] that were within their electorate. Ultimately the Deputy Premier signed off on the projects that were to be funded.

The ACTING CHAIR: Tell us exactly what is the role of those MPs? What precisely do they do in the assessment process?

Mr WHEATON: I can talk to that. Each Government member was asked to review all of the projects that had been submitted in local government areas that were covered by their electorate. They were asked to review projects against two of the program criteria and asked to rank those either low, medium or high in terms of alignment to those criteria. Likewise, we had department staff undertake those same assessments. From memory, in round three that involved 1,300 projects around New South Wales across the 93 local government areas. I will say that it covers Lord Howe Island and the Unincorporated Far West as well. Those rankings—the low, medium and high from both the department and the MP—then go through a senior officers panel or a decision panel, which makes the recommendations for the projects.

The ACTING CHAIR: Yes. Appropriately—this is the case in many grants programs, Federal and State—an MP might have input into the local government areas in the electorate. For example, the member for Cootamundra might have input into those areas around her electorate. One of the documents, though, shows the MPs who are having input into it. For example, in Port Stephens the Stronger Country Communities assessor seems to be Stephen Bromhead. Why is that the case, given that it is not his electorate?

Mr WHEATON: It is only Government MPs or representatives that are in Government who are asked to do those assessments.

The ACTING CHAIR: Right. So, when you say they are assessing those local government areas in their electorate—

Mr WHEATON: They would do those, and some MPs had coverage across non-Government seats.

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The ACTING CHAIR: Right. So, they might assess local government areas that are not in their electorate at all—

Mr WHEATON: Correct.

The ACTING CHAIR: —or that might be some way from their electorate.

Mr WHEATON: I do not know specifically who had the coverage over all of those. It might be Parliamentary Secretaries or other representatives that have been selected by the Government to provide input into the process for the electorate.

Mr HANGER: Prioritisation.

The ACTING CHAIR: This is starting to sound more unusual. For the electorate of Port Stephens does the local member have any input into the process? Does the local member, Kate Washington, have any input into the grants her community receives under this scheme?

Mr HANGER: She can obviously put forward supporting documentation for projects.

The ACTING CHAIR: So, she can recommend it.

Mr HANGER: Yes.

The ACTING CHAIR: Understood. In terms of the assessment, which is the question I am asking, does she have any input into the formal assessment?

Mr HANGER: Not in the formal assessment, no.

The ACTING CHAIR: But Stephen Bromhead, in this instance, does?

Mr HANGER: As Parliamentary Secretary for that broad area, yes.

The ACTING CHAIR: But it is not just Parliamentary Secretaries who have this role, is it? This is Government MPs.

Mr HANGER: Government MPs for their electorates, yes.

The ACTING CHAIR: Yes. But you are not telling me that Parliamentary Secretaries are the only ones exercising these assessment functions, are you?

Mr HANGER: No. Government MPs for their electorates and then—I believe it was Parliamentary Secretaries, as well, for other regions.

Mr WHEATON: It was either Parliamentary Secretaries or MPs nominated by the Deputy Premier's office.

The ACTING CHAIR: Who may or may not have been Parliamentary Secretaries?

Mr WHEATON: The office would facilitate MP input. The department does not facilitate the MP input on projects. That is done by the Deputy Premier's office.

The ACTING CHAIR: I am aware of a number of grant schemes that have MPs involved in the decision. I am not aware of another one that has Government MPs only involved in the scheme. Are you aware of one, Mr Hanger?

Mr HANGER: Of another scheme that only has Government MPs?

The ACTING CHAIR: Yes, in the assessment process.

The Hon. NATALIE WARD: I am not running interference at all. It is important that you answer, but it might be that it is not within your remit to answer. If you want to take it on notice, I think it is important that we clarify this. I think you said it is not something you determine, but I think the Committee should hear. You might want to take that on notice. You might just not know.

The ACTING CHAIR: The witness is entitled to answer in any way.

Mr HANGER: I might take that on notice. I cannot think of any immediately, but I will take that on notice and come back to the Committee.

The ACTING CHAIR: Yes. I might put it to you that it is a very unusual arrangement to have MPs from another electorate entirely in some fly-in fly-out arrangement making assessments about communities that might be some way from their own local patch.

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Mr HANGER: All of the program guidelines spell out that input from a range of stakeholders will be taken into account. There is the facility to be able to take advice from those organisations and people who will be able to provide advice around projects.

The ACTING CHAIR: Yes, agreed. You have taken on notice that question about whether you are aware of any other programs. In relation to any other programs you specifically administer, do any of those have Government MPs making the assessment?

Mr HANGER: No, not that I am aware of.

The ACTING CHAIR: Alright. I might turn to Mr Shoebridge, at that point.

The Hon. NATALIE WARD: Can I ask a follow-up on that topic before we go to someone else?

The ACTING CHAIR: I am conscious that Mr Shoebridge has not had very much time and Government MPs collectively have.

The Hon. NATALIE WARD: You can take it on notice, if you like.

The ACTING CHAIR: If you want to be quick, you are welcome.

The Hon. NATALIE WARD: I will be quick. Thank you, Chair. Just on those, would you have a number of MPs who may—so, it was not just one. There would have been a number of MPs who had made suggestions about areas that are not necessarily in their electorates. Would that be the case?

Mr HANGER: Yes.

The Hon. NATALIE WARD: Because there are a number of MPs who might, for example, look after an area and suggest that this would be good for Port Stephens or this would be good for Wollongong or this would be good for seats that are not necessarily their own. Would that be the case?

Mr HANGER: For instance, the regional roads Minister will obviously have insight into a range of road projects that might benefit a community if that was what was to come forward. The regional youth Minister may have perspectives on regional youth projects, which were the subject and the focus for round three.

The Hon. NATALIE WARD: And as an upper House member or a resident of an area, I might go into that and say that we need women's change rooms and a sporting field. That would not be completely out of the ordinary, would it?

Mr WHEATON: No.

The Hon. NATALIE WARD: Maybe upper House members is a step too far.

The ACTING CHAIR: Just to clarify, though, the distinction here is between the assessment process and anyone making any recommendations.

The Hon. NATALIE WARD: Sure, I understand.

The ACTING CHAIR: Alright. I am calling Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Thank you both again for your evidence. I assume that the rationale for the local Legislative Assembly member having input is because that MP would ordinarily have good ties with the local community. Is that the rationale?

Mr HANGER: Yes. As we have indicated, there is a range of stakeholders who may be able to provide a perspective on a project.

Mr DAVID SHOEBRIDGE: I am putting my question here to the MP involvement. If you could limit your answer to that, that would be helpful.

Mr HANGER: A local MP should be able to bring a perspective on projects in the LGAs within their electorate.

Mr DAVID SHOEBRIDGE: So, what on earth is the rationale for excluding a local MP simply because of their political allegiance?

The Hon. NATALIE WARD: Point of order: I am not sure that the witness needs to agree with the premise of that question. I do not know that they can form the view that it was for that reason.

The ACTING CHAIR: I am conscious of the time. The question is in order, although the witness should answer in a way in which he is comfortable.

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Mr DAVID SHOEBRIDGE: What is the rationale for excluding local MPs by reason of their party affiliation?

Mr HANGER: Local MPs can provide support for projects regardless of their political persuasion. That comes through. In regards to the final decision, as is outlined in the guidelines for round three, that was a decision made between the Deputy Premier and the regional youth Minister taking into account all the input that came through the assessment process. They can provide their perspectives and their support for projects within the local government areas within their electorates.

Mr DAVID SHOEBRIDGE: Who made the decision to exclude non-Government local MPs from having an assessment role? Who made that decision?

Mr HANGER: All program guidelines are ultimately signed off by the Ministers responsible.

Mr DAVID SHOEBRIDGE: So, in this case, it would have been the Deputy Premier who made that decision?

Mr HANGER: The Deputy Premier and the regional youth Minister approved the guidelines for this program. That is correct.

Mr DAVID SHOEBRIDGE: You said—correct me if I am wrong—that the department does not facilitate MP input into the assessment process. That is done by the Deputy Premier's office. Is that right?

Mr WHEATON: I might clarify that. Administratively it is done online, so the access to the system to be able to have input on all of those projects is administered by our program team. In terms of selection of the elected representative who is to provide input on the project, that is a matter for the Deputy Premier's office. As an example—I will have to double-check the record—but as I understand the western New South Wales Minister provided the input on all of the western local government area submissions.

Mr DAVID SHOEBRIDGE: That is Adam Marshall, is it?

Mr WHEATON: Correct.

Mr DAVID SHOEBRIDGE: A number of documents have been produced to the House under calls for papers which would cover the MP input, but there are very few, if any, records of actual MP input into any of the three rounds of Stronger Country Communities funding. Is that because those records are not held by your department?

Mr WHEATON: No. They should be recorded as part of the full panel assessment process. It would be a comprehensive assessment spreadsheet that would have all of the different views—both MPs' and the department's—and the panel records and recommendations in a document. That record would be held by the department.

Mr DAVID SHOEBRIDGE: It should have—if it was covered by a Standing Order 52—been produced by the department to the Parliament. Is that your understanding?

Mr WHEATON: I would have to check to see whether there were any redactions or otherwise claimed over that, to see whether that information had or had not been provided. I understand that we have had a call for papers and all of the papers and records at the department would have adhered to that.

Mr DAVID SHOEBRIDGE: Could you just confirm on notice that all of the documentation about the MP inputs has actually been provided in accordance with the Standing Order 52? If for some legitimate reason it has not, could you identify that reason on notice?

Mr WHEATON: Certainly. I will take that on notice.

Mr DAVID SHOEBRIDGE: The final issue I would like to ask you about is the allocation of funding in rounds one and two of Stronger Country Communities. You said the decision was to give each council \$3 million as the starting point. Was there any consideration given to the fact that some councils have a couple of thousand residents and some councils in regions have tens and tens of thousands of residents and therefore the \$3 million per council may provide a substantial skew in terms of the allocation?

Mr HANGER: The \$3 million is over three rounds of the program. The baseline for round one was \$750,000. Round two was a \$200 million round and the minimum for LGAs there was \$1.5 million. As I think I mentioned earlier, population is considered and is a weighting to the funding that is provided for local government areas. We do look at both providing a baseline to ensure that regardless of where a person is based there is a level of funding that can go to that community, to bring forward and support for projects that are

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important to them. We also understand that both population and, as I also indicated, remoteness are factors that are taken into consideration in the funding distribution for local government areas.

Mr DAVID SHOEBRIDGE: Over three rounds it never goes under \$3 million for a council. Is that right? The population figure does not take you backwards; it only takes you forwards.

Mr HANGER: That is correct.

Mr DAVID SHOEBRIDGE: Was there consideration given when that funding formula was developed that it would have a very, very large skew towards Coalition-held seats in the regions? Was there any consideration given that it may produce a very highly politicised delivery of funding?

Mr HANGER: No. We do not look at the political mix of the local government areas, which is how this funding is distributed. As I have indicated, we wanted to make sure there was a baseline. We have talked about a range of different ways that programs are delivered. A range of programs are competitive. As we have indicated, especially for economic programs, that causes challenges for smaller communities where it is harder to quantify the benefits to achieve some of those economic outcomes. The premise of Stronger Country Communities was very much that amenity framework that we are talking about in the regional development framework. It goes to making sure that wherever you live in regional New South Wales, you will still be able to access funding for the projects that—

The ACTING CHAIR: Mr Hanger, I am going to stop you there. We have come to the end of our time. I have one final question from the Government and we will be concluding.

The Hon. NATALIE WARD: Thank you. I just have one question on the Port Stephens example. Do councils have input into grants such as this? And in the Port Stephens case, did Port Stephens Council have input into that grant?

Mr WHEATON: They would have submitted the applications for rounds one and two. Only councils were eligible to apply. Under this program it was only councils that had an allocation of funding. In that allotment of funding, they would bring forward a project up to the total and, in some cases, over that total that has been allocated to them for round three. Councils, as well as other community organisations, were eligible to put forward applications.

The Hon. NATALIE WARD: And that is not a Coalition-skewed seat—

The ACTING CHAIR: I am going to have to bring us to a close. We have reached time. Thank you both for attending this hearing. The Committee has resolved that answers to questions taken on notice—and you have taken a number of questions on notice—be returned within 14 days. The secretariat will contact you in relation to the questions you have taken on notice. As I indicated at the beginning of the session, we have dealt principally with a narrow range of the funds you deal with. We do expect to be talking to you again at some point in the future. We thank you for your time today.

Mr HANGER: Thank you. If required, we are very happy to come back again.

(The witnesses withdrew.)

(Luncheon adjournment)

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MARGARET CRAWFORD, Auditor-General of New South Wales, affirmed and examined

SCOTT STANTON, Acting Deputy Auditor-General of New South Wales, sworn and examined

CLAUDIA MIGOTTO, Assistant Auditor-General, Performance Audit, Audit Office of New South Wales, affirmed and examined

The CHAIR: I mention before I invite witnesses to give an opening statement that we are joined by our colleague the Hon. Lou Amato via the Webex system. Ms Crawford, would you like to make an opening statement?

Ms CRAWFORD: I thank the Committee for inviting me to appear today. Just to assist the Committee in its inquiries, I will very briefly overview the relevant work undertaken by the Audit Office in assessing grants administration. I will stick pretty closely to the submission we made. As noted in that submission, the Audit Office has conducted five performance audits over the past seven years that have examined selected grants administration processes in detail. These performance audits have encompassed regional assistance programs, grants to non-government schools, government assistance to industry, regional road funding and the ClubGRANTS scheme. Reference has also been made to this inquiry about a 2009 performance audit which resulted in an update to guidance that is provided by the Department of Premier and Cabinet and that guidance is still in place.

Other performance audit reports have also touched on issues relating to grants administration whilst not being a primary focus. For example, my recent report on support for regional town water infrastructure found that a number of projects funded under the New South Wales Government's Safe and Secure Water Program round two had not been recommended through the advertised technical review panel process. I also, as you know, undertake financial audits which include entities managing grant programs. This work provides assurance about the accuracy of the entities' financial statements taken as a whole but also including the accounting for grants administered. On occasion, matters identified through this process are followed up in more detail through a performance audit.

The findings of the reports included in my submission to this inquiry have identified some consistent themes regarding the improvement opportunities available to agencies that administer grants. These reports have identified some consistent gaps in the monitoring of grants programs and whether they are achieving their intended outcomes. All five performance audit reports identified weaknesses in how the responsible agencies had monitored, whether funds were being allocated according to the grant program guidelines, whether they had set targets were consistent with the program objectives, evaluated the outcomes or measured benefits against the grant program objectives. The reports also highlighted that grant program objectives and guidelines should be clear and consistently applied. This was particularly important for transparency and fairness in the application assessment process.

These reports also demonstrated the importance of keeping accurate records and maintaining transparency about how and to whom grant funds have been allocated, as well as publicly reporting information about overall fund allocation and achievement of program objectives. So, the administration of grant programs continues to be a focus in my published audit program. Given the scale, particularly at the moment, of the Government's response to recent emergencies including COVID-19, I have just commenced an audit related to grants administration for disaster relief, which will examine the \$750 million small business support fund set up to support businesses affected by bushfires and COVID-19. Some other forthcoming audits, one that is currently close to finalisation involves the waste levy and grants made for waste infrastructure, and that is examining the effectiveness of the New South Wales Government in minimising waste sent to landfill, including through waste infrastructure grants programs.

We will also shortly commence a more general grants administration audit that will look at the governance, probity and benefits realisation for a number of grants programs across a number of agencies. And we have also flagged that we will do an audit of investment in regional development looking at whether regional development and grant programs are well coordinated and are delivering the improvements that the program set out. So, that is an overview of what we have done and what we are proposing to do. I will pause there and hopefully answer your questions.

The Hon. COURTNEY HOUSSOS: Thank you for your time this afternoon and for your very useful submission to our inquiry. I have few questions across a broad range of topics but I want to start with something that we heard from the ICAC Chief Commissioner this morning that you might not be familiar with. I do not expect the you have been watching our proceedings closely.

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Ms CRAWFORD: I might have had a little look.

The Hon. COURTNEY HOUSSOS: One of the things that he suggested this morning was that it actually makes your job easier as the Auditor-General to do your work if there are clear criteria that you can judge the grants programs against, is that correct?

Ms CRAWFORD: That would be correct because audits always assess or provide assurance of performance against criteria, so establishing clear criteria is always helpful.

The Hon. COURTNEY HOUSSOS: In undertaking your review, I understand that you do your financial audits and then also your performance audits, which are slightly different. In doing that, are you checking whether a grants program is conforming to broader government policies or is it more about the way that the actual financial accounts are being marked off?

Ms CRAWFORD: Sort of both. I mean, we audit every State government agency every year, so what the financial audit is looking to do is really just account for the funding that is provided for grants and how that is expended. I will perhaps defer to Mr Stanton to add to this after I have finished speaking. That is what the financial audit does. It is not really looking to see whether every grant allocated went to the right agency or whatever, it is really the accounting for those funds. I have lost track of the first question. A performance audit will look in the first instance at that legislative framework, what the grants program is intended to achieve and how the relevant agency has set up the arrangements for the program, and we will audit against that as opposed to a set of generalised guidance. Having said that, obviously we would have regard to some of the key principles about probity and effective management of grants programs, which are more, sort of, general principles.

Mr STANTON: I think you have answered it very well. Certainly, our focus from a financial audit point of view is very much on did the grant transaction take place, was it accurately recorded in the records and reflected in the financial statements? And, like the Auditor-General said, our audit is focused on assurance that the financial statements as a whole is accurate, not necessarily an individual grant program, that is more in Ms Migotto's area.

Ms MIGOTTO: And in performance audits we can and do have regard to government policy and how that is expressed may be through legislation or grant guidelines or broader policy objectives that the grant is intended to fulfil. That is quite a significant point of awareness that we would have going into performance audits.

The Hon. COURTNEY HOUSSOS: Just to clarify, it is not an evaluation against broader Government best practice guidelines? I draw the exact example of the ICAC submission and the information that the ICAC Chief Commissioner provided around the DPC guidelines. Would your audits evaluate whether grants programs are in accordance with those?

Ms MIGOTTO: We have broad regard to those guidelines but they operate at quite a principles level, so what we would usually take into consideration in assessing grants performance is relevant legislative frameworks, grants-specific guidelines and the mechanisms that agencies have set up by way of an assessment process. That all should be ideally stepped out and we will assess the performance of a grants program against those sorts of issues.

The Hon. COURTNEY HOUSSOS: Can I just bring you to the approvals part of a grants process, both the individual grants and the guidelines themselves. In terms of the approval process of the individual granting of grants, what is the expectation in your audits that a Minister will undertake in order to fulfil those obligations?

Ms CRAWFORD: At a very high level, our expectation is that the agency follow the published guidelines for eligibility, assessment criteria, the process that they have said would be followed, the purpose/intent of the grants program, so we are always looking to see whether what actually happened reflects what is communicated to be what is supposed to happen.

The Hon. COURTNEY HOUSSOS: I am getting specifically to the Minister saying, "Yes, we are going to approve this grant." Is an email enough? Do you need a signature from a Minister? What do you think is appropriate?

Ms CRAWFORD: I might defer to Ms Migotto for the detail, but I guess, fundamentally, clear documentation as to the reason for a decision, whether it is either supportive of the recommendation made to the Minister or, in fact, whether it is contrary to that.

Ms MIGOTTO: The approval environment can be different depending on the structure of the grant. I understand this Committee has heard a bit about grants from the Restart NSW fund, for example. Those have been subject to some of our performance audits and that requires Infrastructure NSW to make a recommendation to the Treasurer who then provides that recommendation to the Expenditure Review Committee, so that is quite a structured approvals process that is established in law. But that sort of process is not necessarily uniform across

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all grants processes. In terms of the standard of evidence that we require, as Ms Crawford has said, certainly documentation and clear justification is a basic standard that we would be looking for in a performance audit.

The Hon. TREVOR KHAN: A program such as what has been rolled out for bushfire relief is going to be far more flexible in terms of both the criteria that is applied and in a sense the documentation that supports it, is it not? In a sense, that is much less robust in terms of both criteria and the paperwork administration it seems to me, would that be right?

Ms CRAWFORD: We have not audited that program yet, we are about to, but I guess what you are referencing there is the proportionate nature of the administrative arrangements—

The Hon. TREVOR KHAN: Yes.

Ms CRAWFORD: —relative to the intent of the program, the speed with which it needs to be delivered et cetera. They are the matters that we would consider when we audit that program so we are unlikely to say, "Well, you know, you did it so quickly." We are looking for a proportionate arrangements that clearly go to the intent of the program and then having established that, how well did the agency actually carry out that intent.

The Hon. COURTNEY HOUSSOS: The main focus of our hearing today is the Stronger Communities Fund. I understand you have not undertaken a specific audit into that program but in some of the documents that were presented to the Parliament in a call for papers was an email that said, "For audit purposes I need an email approving that". Is that best practice?

Ms MIGOTTO: It is really hard to generalise. An email is a State record, so hypothetically that can be a form of justification or explanation. It really depends on what is in the email.

The Hon. COURTNEY HOUSSOS: To reiterate your earlier testimony though, you would be looking for a clear statement, a signature or some kind of indication that the Minister had approved it and the reasons for that? That is really what you would consider best practice?

Ms MIGOTTO: I think what I said earlier was that we are looking for clarity around the justification for the decision-making; whether that occurs at ministerial level or a departmental level might vary from case to case.

The Hon. TREVOR KHAN: Again, if we use the example of the bushfire relief, you would not be expecting to see a ministerial signature on every grant that was approved for that style of program, would you? You cannot establish a best practice and say that every program is going to need to be signed by a Minister. With respect, that would be ludicrous, would it not?

Ms CRAWFORD: The onus of developing the arrangements is really with the agency. Our role then is to provide assurance that the proper processes were then followed. The answer to your question is no, we would not expect that. If the agency has designed a program that requires that then we would expect it, but if they have designed a program that does not require it then we would not. We would be looking at what was the design of the program and had they followed consistently and transparently that process.

Mr DAVID SHOEBRIDGE: Thank you, Auditor-General and everyone. There is no difficulty with there being delegations and ministerial power being delegated down provided it has clear guidelines and a procedure to allow that delegation to happen, is that right?

Ms MIGOTTO: In general terms, that is right.

Mr DAVID SHOEBRIDGE: Could I ask you about some of the evidence about the Stronger Communities Fund. The second round of that is being called the tied grants round, which was some \$252 million. If there is a pool of public money available for, say, a group of councils or a set group of entities that are established in the guidelines, is notification to the potential applicants something you would look at from an audit point of view, that there has been adequate notification to the pool of potential applicants?

Ms MIGOTTO: It would generally be dependent on the structure of the grants process and whether the grants were delivered through an expression of interest process, which is not necessarily the case in every instance and not in every instance that we have conducted performance audits on. It is hard to be more specific than that, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I will give you the scenario from the Stronger Communities Fund Tied Grants round. As I said, this pool of money ended up being something like \$252 million. The guidelines were amended in the middle of 2018 to open up. It was about merged councils. The first round of Stronger Communities funding had been to give money to councils that had been merged and then in the middle of 2018 it was expanded

CORRECTED

to cover councils that had been merged or were the subject of a merger proposal. Are you at all familiar with those two tranches of grants funding?

Ms CRAWFORD: Only at a general level through following this inquiry and other reporting. We are yet to commence an audit that would look into that in more detail.

Mr DAVID SHOEBRIDGE: I understand. We had some evidence I found quite challenging from the head of the Office of Local Government in relation to that second pool of funding, the \$252 million which was available for councils that had been the subject of a merger proposal. He said that councils were only notified about being eligible for it—this is from a pool of some 33 councils that were the subject of merger proposals—that there was no notification to all 33 councils. In fact, notification only ever happened once a project in a council area had been approved and it was only once a project in the council area had been approved that that council was technically eligible. Therefore, it was only once all the decisions had been made that they were notified about this pool of potential money for merged councils. Have you come across that kind of notification process where the notification follows the decision to give a set of money to one of a number of potentially available recipients?

Ms CRAWFORD: Not to my knowledge in the time I have been Auditor-General, but I might defer to Ms Migotto who may have reference to previous audits.

Ms MIGOTTO: None of our audits that we have mentioned in our submission highlight a notification process like that. It is perhaps worth noting for the benefit of this Committee that we have indicated that we may look at this program specifically as part of our performance audit program. As much as we would like to be helpful to this inquiry process, we do intend on moving forward and looking at that program in more detail. We will ultimately be helpful for the Parliament in conducting a detailed performance audit of that. We would not want to necessarily prejudice that process by expressing an opinion on these things here today that we then are going to go forward and audit in a greater level of detail potentially. Having said that, of course, with your permission, Auditor-General, we are happy to be as helpful as we can today.

Mr DAVID SHOEBRIDGE: Maybe we will lift it to putting this at a more general proposition rather than delving down into this one particular project, despite it being such a large grants round. What about the concept that you have a set of guidelines that may apply to a group of, say, 100 entities but then the entity administering that fund says, "We have a set of guidelines that say you only become eligible out of a group of 100 entities once the decision-maker administering the fund has decided to give you money, Until such time you are not technically eligible and therefore you do not get any notice of the potential of this fund." How does that fit?

Ms CRAWFORD: Mr Shoebridge, the way you describe it does on face value seem to be a bit odd if that was how it worked. I am thinking through as you speak that there may be some occasions where a particular program has very explicit targeting to achieve a particular outcome. In that case there may be an assessment by an agency of what organisations et cetera would be eligible given the particular targeting of a program. Again though, I do not think we have audited anything that we could rely on to back that up. That may be an occasion where you may, in fact, be very targeted in your allocation as opposed to just a general open up to anyone to apply.

Mr DAVID SHOEBRIDGE: If that was the case, you would expect to find some kind of detailed preliminary analysis—

Ms CRAWFORD: Absolutely.

Mr DAVID SHOEBRIDGE: —that this is how it is targeted, this is why it is happening and then some kind of documentary record to that effect.

Ms CRAWFORD: Yes, absolutely. One of the things that we have found through our audits is the need for absolute clarity of the objectives of the program and how it will proceed is what we would always be looking for.

Mr DAVID SHOEBRIDGE: Can I ask if you have come across grants where one agency approves the funding but another agency assesses the projects?

Ms MIGOTTO: Yes, so regional assistance grants, approving the funding and assessing the projects, so in that case there is a process whereby INSW—actually, the regional water infrastructure grant is probably a better example of that. The Department of Planning, Industry and Environment made recommendations to INSW about water infrastructure grants that should be approved. That is an example of one agency making recommendations about grants that could be approved and another agency making further recommendations to the Treasurer about what should be funded out of that.

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Mr DAVID SHOEBRIDGE: In which case you would probably find two sets of authorisation and documentation, I assume? One is in the initial agency that assesses the merits of the project and gives a recommendation based upon merits, and that would be documented, and the another assessment in the funding agency that says, "This has come with this recommendation and we are going to fund it because it meets certain criteria." You would normally expect to see two parallel or a two-stage assessment process and, at some point, a merit assessment?

Ms CRAWFORD: What we would be looking to see is an agreement between the parties as to what is intended to happen, what the role of the assessing agency is and what the role of the recommending or approving agency is. So, we would be looking for, again, clarity over what criteria we would apply at each stage.

Mr DAVID SHOEBRIDGE: Alright, and then some documentation expressly going through the criteria and the merit assessment with a considered sign off. Is that a non-negotiable part of the documentation?

Ms CRAWFORD: When you say non-negotiable I have to pause because it will depend on how the program has been established and the criteria that was applied et cetera. But normally you would be looking at clear documentation of decision-making, yes.

Mr DAVID SHOEBRIDGE: Thank you.

The Hon. TREVOR KHAN: I am not revisiting something that occurred this morning but I want to go to chapter 1 of the submission that ICAC made in regards to another inquiry. I think some of us are on so many inquiries that we do not know what we are doing. ICAC made a submission, I think, to this committee with regard to the funding of various bodies, including your own. No, it was in a special report of ICAC on the need for a new funding model for ICAC. Again, this is not what this morning was about, so I just want everyone to relax. The commission started off by saying:

The Commission is presently funded through a mix of appropriations approved by Parliament and grants from the Department of Premier and Cabinet (DPC).

The only reason I use those words, and irrespective of what we think about the current model of funding for ICAC or indeed the Auditor-General's office, I take it that when the commission uses the term, "grants from the Department of Premier and Cabinet" it is not a term of art, that is a term of science. In a sense, they are receiving a grant approved by the department, is that right?

Ms CRAWFORD: Okay, hopefully Mr Stanton is going to help me on this. It is a grant in a different meaning than what you are looking at in this inquiry between a principal department in a cluster arrangement that really passes through funding appropriated in the form of and it is called a grant, but it is quite a different concept than what you are looking at.

The Hon. TREVOR KHAN: Indeed, I think I would absolutely agree with that proposition. I am going to what must be the most extremist, in the sense of, use of the term grant. I am putting to you that, in fact, through government, unlike perhaps there are questions that are being posed by various members of this Committee to various witnesses, the nature of the term and the nature of the funding arrangements cover a huge spectrum that is reflecting on the circumstances that apply at the time.

Ms CRAWFORD: Prior to coming here today I did take some time to look at the Commonwealth guidance around grants administration. I found that quite helpful in that it distinguished very clearly between grants programs to external bodies and grants that may apply between government agencies. That distinction is made very explicitly so that sort of helps me. Mr Stanton, in the financial audit we are looking at grants between cluster agencies, is there anything you would like to add about how that is defined or the general usage of that term?

Mr STANTON: I think you have explained it well but it is probably more of a history thing in that it is all about the appropriation to the cluster principal department and is really a pass through, as the Auditor-General said. It is in that nature and it is probably more of an accounting term that has been framed from an accounting standard point of view. It is a grant in the context rather than an appropriation, and that is sort of more how it plays out in the financial statements.

Ms CRAWFORD: I can really confuse you by calling it deemed appropriation.

Mr DAVID SHOEBRIDGE: It has always been my understanding that the focus of this inquiry has been those external grants. There is a pool of public money available, how that is then allocated to external entities pursuant to some kind of rationale. They are the grants that this inquiry has been focusing on.

The Hon. TREVOR KHAN: Sure. I am not disagreeing with that proposition at all.

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The ACTING CHAIR: I have some questions about grant schemes to those external agencies and a couple of the essential elements of those. The first of those, I think you would agree, that is just essential is every grant scheme distributing money to those external agencies should have a decision-maker. There should be someone who is making a decision, however that is constituted. That is quite a fundamental principle, is it not?

Ms CRAWFORD: Yes.

The ACTING CHAIR: Secondly, it would be very unusual for there not to be a recommendation. In government there would usually be a recommendation: This is what you might choose to do. Then the decision-maker chooses to do that, or to vary it, or not do it at all. That is usually a reasonably fundamental part of a grant scheme.

Ms MIGOTTO: If we are talking in broad terms, that is correct. I would highlight a difference from that approach though, which is grants to non-government schools. Which is another performance audit that we have conducted. The way that schools become eligible for those grants is under the Education Act. They are eligible as a non-government school under that legislation. The department then has a funding formula that it applies.

The ACTING CHAIR: That is a good example. Either a recommendation or a formula would be another way.

Ms MIGOTTO: A set funding formula, exactly.

The ACTING CHAIR: But something that is clear, transparent.

Ms MIGOTTO: That is right. There is not necessarily a recommendation from a funding formula, because the funding formula is the recommendation, in a way.

The Hon. TREVOR KHAN: Indeed, if you look at the grants to non-government schools—starting to transgress onto somewhat tender ground—actually there is not transparency, for instance with regards to the moneys that are provided to the Catholic school system, is there? Indeed, it is a bit of a mystery as to how the money that is handed over is then distributed between the various schools.

The ACTING CHAIR: That is a subsequent distribution. Transfer from government to the system is quite clear.

The Hon. TREVOR KHAN: That part of it is transparent, but the actual end part is not.

Ms MIGOTTO: Mr Khan, it is correct what you say, and that is what we found in our performance audit report, that once it enters the Catholic school system it is distributed by the Catholic school system and that was not transparent to us during the conduct of that audit.

The ACTING CHAIR: Just to be clear, I am not asking about the activities of numerous organisations outside of government. I want to ask a question about grant schemes by government. That is, the other fundamental principle is there must be a decision. There is a point of decision and that should be documented in some way. That is just fundamental to the operation.

Ms MIGOTTO: As a principle.

Ms CRAWFORD: Certainly as a principle. There may be some exceptions, but certainly we have not come across any that I am aware of.

The ACTING CHAIR: One of the concerns that the Committee has dealt with and the Parliament is dealing with is in relation to the Stronger Communities Fund, the suggestion that there is a decision-maker, there has been a decision but there is no written, signed brief recording that decision. I do not want you to necessarily comment on the—

Ms CRAWFORD: That program.

The ACTING CHAIR: —specific nature of that, because I think that would be unfair to you without having examined it in much closer detail, although it is something I might encourage you to do in some near future occasion. The idea that there is a point of—

The Hon. TREVOR KHAN: Did you not write to the Auditor-General?

The ACTING CHAIR: That was another matter. The idea that there is a point of decision, but thinking about the fact that it might not have been recorded, there might not be in government a written, signed brief recording that decision. That would certainly be of concern to you, would it not?

CORRECTED

Ms CRAWFORD: Yes, absolutely. And in fact nearly all of our audits of grant programs have made reference to absence of documentation, especially documentation being very specific as to the reason for the decision, or especially if a recommendation is overturned. We have called that out in I think all of these audits that we have referenced, we found examples where documentation has been lacking and have made a point to call that out.

Ms MIGOTTO: The Committee might want to have regard to the State Records Act as well in its consideration, because where we have called out lack of transparency over recording key decisions, we broadly make reference to that legislation and the obligations that it provides as well.

The ACTING CHAIR: Understood. You have referred to the reasons, it would be good if the reasons were recorded. I am winding back to something even more fundamental, which is recording the signature and date of the decision-maker. It would be very unusual not to record that, would it not?

Ms MIGOTTO: Yes.

Ms CRAWFORD: Yes.

The ACTING CHAIR: In relation to the point you made about the State Records agencies. Those records agencies and the State Records Act require the retention of certain information. Thinking about the sort of information that should be retained around that decision, if there is information that is material to influencing the decision, that would be the sort of material you would want to see kept under those provisions, would it not?

Ms MIGOTTO: That is certainly the sort of material that we would look to see in the conduct of the performance audit.

The Hon. TREVOR KHAN: That is not quite the question that you were asked. You are asking that, is it?

The ACTING CHAIR: No. I am thinking in this case something in the electronics space, if something is material to weighing up an assessment about which projects are funded and which are not, it is material to the decision-making process, it is recorded at the time, that is the sort of material that would start to attract obligations under the State Records Act requiring to be retained so you could do your job. Is that correct?

Ms MIGOTTO: Broadly, that is correct.

Ms CRAWFORD: Broadly. I guess it goes—

The Hon. TREVOR KHAN: That assumes that the record exists, does it not? You can criticise a grant scheme for not having proper documentation, but you cannot then ping them under the State Records Act if they do not have the proper recommendation.

The ACTING CHAIR: Just to reassure the member, I am heading somewhere entirely different.

The Hon. TREVOR KHAN: As long as you are.

Ms CRAWFORD: I am not sure if I am going to put my foot in it then. I was going to reference again the proportionate nature of programs. Again, it depends. If it is a small amount of money to be distributed, very broadly you may have one piece of evidence that collectively assesses, for example. It is proportionate, I think, to the amount of money, the purpose of the program, eligibility, et cetera.

The ACTING CHAIR: For example, if there were a criteria being applied to the decision that influenced what the decision was and that record had been created, you would expect it to be retained so you could do your job.

Ms CRAWFORD: Yes. If the record has been created we would expect it to be retained.

The ACTING CHAIR: And you would be concerned if it was destroyed.

Ms CRAWFORD: We would call that out as a potential finding in an audit, yes.

Mr DAVID SHOEBRIDGE: It would be unlawful. If the record was destroyed it would be unlawful.

Ms MIGOTTO: We would have to take that on a case by case basis.

The Hon. TREVOR KHAN: It would not, for instance, be unlawful—and this is not necessarily any of the criteria—if the record was lost or destroyed through inadvertence or otherwise. It might be, from an audit point of view, inappropriate. But there is a difference between the inadvertent loss—perhaps the wrong word—of a document and the deliberate destruction of a document to hide a chain of decision-making. That would be right, would it not?

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Ms CRAWFORD: I do not think we would be going—we would be calling out what happened. We would be looking for the evidence and describing in our audit as a finding what occurred, and probably not going beyond that.

Mr DAVID SHOEBRIDGE: It is now about falling in front of the tractor, or placed in front of the tractor.

The ACTING CHAIR: I was not going to go there, but only because I am in the Chair. I would offer you the chance to respond to that, but I think I can see you declining. One of the concerns about the Stronger Communities Fund, again I do not really expect you to comment on the specifics of the fund—

The Hon. TREVOR KHAN: Although you keep referring to it.

The ACTING CHAIR: —it is a very broad criteria. For the tied funding grants around, essentially the criteria is as simple as the New South Wales Government will make these decisions according to New South Wales Government priorities. That is about the guidance that is provided. As a result nearly anything fits in that scope of works. To me that seems very, very broad, in fact so broad it makes it impossible to then go back and audit. There is no sense of concrete purpose for this guide, anything could happen. It then makes it very difficult for you to do your job, again. Do you have any observations that you would like to make about how broad that statement is, or how broad things should be in general?

Ms CRAWFORD: I think you are correct in saying if that was the nature of the guidance that would make it very difficult to audit compliance against that guidance. Having said that, I am interested in one of our earlier audits, again before my time, but the one on industry assistance. That audit then stepped back further and to what was intended, what was the policy frame and the intention and really said: Were the arrangements appropriate to deliver on government's intent with that program. And made some commentary, I believe, that was critical of adding clarity to how was that intent actually delivered at the time and over time. The audit would approach that slightly differently than just saying you have either complied or did not comply with your own guidelines.

The Hon. COURTNEY HOUSSOS: Ms Crawford, the Committee has received in previous hearings some testimony about the most significant amount of money that was transferred in the second tied grant round, which is the one we are most concerned about. I am not going to put the specifics to you. I do not think that is fair and obviously I do not want to prejudice any future investigations. I ask some general questions about the allocation of funding and if funding is coming either from a grants program that has been clearly approved in the way that it should, or whether it is coming from the Treasury, from the consolidated fund or the managed fund. Can you talk through what would be the appropriate approvals if it were not coming from the money that had been disbursed to the grants fund, but instead was coming from Treasury? Would that require sign-off from the Treasurer?

Ms CRAWFORD: I am not sure I could comment really without knowing real life circumstances. I do not know that I can make a general response to that unless, Mr Stanton? No. Ms Migotto?

Ms MIGOTTO: No. As we have talked about, there are specific legislative requirements for funds like Restart NSW. I think there are a different set of arrangements around things that come out of consolidated funding. We would happily take that on notice and provide what information we can.

The Hon. COURTNEY HOUSSOS: I might reframe it and put it on notice for you. The question I am really asking is if it is coming from the consolidated fund then there is a different approval process than if it is coming from a grants fund. Is that correct?

Ms CRAWFORD: Yes.

Mr STANTON: Yes.

The Hon. COURTNEY HOUSSOS: I also wanted to ask you about the follow the money provisions, which again came from the ICAC submission and talked about the need for more transparency for government funding once it does go from the government to the private sector or the not-for-profit sector or more broadly is disbursed. Would you be able to provide us with some comments around how that could work in practice?

Ms CRAWFORD: It is a matter for the mandate that has been pursued for many years here in New South Wales. We are at odds with other audit offices around Australia and New Zealand in not having that mandate. In practical terms though it would really simply apply to a performance audit, not to a financial audit, to a performance audit and it would be a matter of again identifying what was intended through the program and then being able to look to see whether in fact that was actually delivered. That is how we see that mandate. It is

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just follow what was the Government intending in the granting of funds to a non-government agency, did that non-government agency actually deliver on what was required.

The Hon. COURTNEY HOUSSOS: You mentioned that New South Wales is one of the few jurisdictions that does not have these provisions.

Ms CRAWFORD: I think it is almost the only one now.

The Hon. COURTNEY HOUSSOS: ICAC again referred to the Australian National Audit Office and a significant number of audits that they have done. There is no formal way for them to be implemented in New South Wales legislation if it is not done through a policy of, say, Department of Premier and Cabinet or through a government body. There is no interaction between you and the Australian National Audit Office?

Ms CRAWFORD: I can assure you there is a lot of interaction but we do not do joint audits, no, because we both operate under our own legislation, so we do not operate jointly but we certainly do speak a lot.

Mr DAVID SHOEBRIDGE: That should disturb all decision-makers if there are secret gatherings of Auditors General. Probably a good thing.

The Hon. COURTNEY HOUSSOS: Definitely.

Mr DAVID SHOEBRIDGE: In terms of documentation, have you noticed any instances where there has been a parallel chain of communication, an informal non-accessible chain of communication that has led to decision-making? Here I am thinking in particular of the spate of communications we see on encrypted platforms such as Signal or WhatsApp, or maybe by text message. Have you come across that at all in any of your auditing of any grants?

Ms MIGOTTO: No, is the short answer to that question. Just to explain the performance audit process a little bit, what usually happens is that we commence with an information request to agencies and we ask them to provide us with all information that is relevant to the topic that we are auditing. Something like an encrypted communication by a messaging app has never been furnished, as far as I am aware, through that information request process. We can conduct certain investigative approaches in our analysis of information. But I am not aware that we have ever applied that in a grants administration process where it would flush out a parallel communication process like the one you have just described. The information that is provided to us is collated and given to us by the agency itself. Then if there are gaps in that, obvious gaps in decision-making or documentation of decision-making, for example, we would seek to further understand why those gaps exist.

Mr DAVID SHOEBRIDGE: You have never been provided with an exchange of text messages, for example, in any of these grants audits?

Ms MIGOTTO: Not that I am aware of, no.

Mr DAVID SHOEBRIDGE: Has it ever raised concerns within the Audit Office that none of these style of records, these more ephemeral communications, have every been produced? I am thinking now they are becoming increasingly prevalent in our communications. Has it ever been raised in the Audit Office about catching these more ephemeral forms of communication?

Ms MIGOTTO: The way we capture those more ephemeral things is in interviewing a range of stakeholders. We interview staff at all levels of an organisation and we conduct those interviews in confidence. We have an expectation that staff as public servants will be honest with us about their communications as part of that interview process. That is the main way that we reassure ourselves that there is not something going on outside of the documentation that we are not necessarily seeing.

Mr DAVID SHOEBRIDGE: I have got to say from my experience of decision-making and human nature it seems to me that it would be hard to credit that at no point in any of these grants programs has there been no relevant communication about decision-making via at least text message. Do you think I am being too suspicious about human activity?

Ms MIGOTTO: I think where gaps in documentation have existed in the grants programs that we have examined, we have certainly called those gaps out, where decisions have not been recorded or there is insufficient information to demonstrate why a particular organisation has received a grant. We have certainly covered that issue in detail in a number of our performance audit reports. I agree with you though, we have not necessarily gone to the cause of that, whether there is some sort of parallel communication method, but yes, we have made comment on that.

The Hon. TREVOR KHAN: A telephone call or a chat over a coffee is a parallel form of communication, is it not? It is not a method of recording the approval of a grant, or the suggestion of the approval

CORRECTED

of a grant. It does not really matter if it is a conversation or a WhatsApp chat. It is just not what you do. That is essentially the position, is it not?

Ms MIGOTTO: Yes, that is correct.

Ms CRAWFORD: It is sort of an aside, but I know that even myself, sometimes when we get to the end of an audit, not so much a grant audit but just audits in general, there are often communications, for example, between myself and the secretary of an organisation to close down any perhaps unintended confusion about our findings and the like. I personally, if I am using text messaging I take a photo of that text message and put it on our files. I am very conscious that whatever medium you use, you keep the record. But we would not necessarily go to every organisation and say: Hand over your mobile phones. In fact, I doubt that we could do that. I do not know about that.

Mr DAVID SHOEBRIDGE: Do you think it might be, at a minimum, prudent to express overtly in any funding guidelines that decision-making needs to be recorded, it needs to happen through formalised channels and if there is any relevant communication on whatever channel, that needs to actually be recorded to expressly State that? Then I do not know how you would go about checking the compliance with that in an audit process. I am sorry if that is two propositions in one. Is it just too hard?

Ms MIGOTTO: I guess your question does not just relate to funding guidelines, I think it is the obligation of public servants to record their activities. That is expressed in the State Records Act. It does not mean you have to jot down the minutiae of your day, but obviously things that influence outcomes, particularly outcomes for the community, things that influence the transfer of money, they are the things that public servants are required to make records of and required to make those records accessible to us in the conduct of our work.

Mr DAVID SHOEBRIDGE: Have you ever come across Ministers who have a separate email account where relevant information regarding a grant or a decision in relation to a grant has come through an email account separate to what is publicly provided or used in their day-to-day work as a Minister?

Ms MIGOTTO: We have not audited ministerial email accounts as far as I am aware. I could point you to one example where we have commented that a decision made in a Minister's office was not transparent, and that was in relation to the Transport Access Program. That was not about a grant in particular, but it was about funding to improve train station access and a recommendation about projects went into the Minister's office and a different outcome came out and we were not able to oversight the reason for that. That is probably an example of the sort of thing that you are trying to draw out here, Mr Shoebridge. But we have not looked at whether that was managed through parallel email accounts or the suggestion that they might exist in that case.

Mr DAVID SHOEBRIDGE: Is that because your auditing power does not extend into Ministers' offices? Or is it just where there is a sort of protocol to draw the line for documentation?

Mr STANTON: I think with some of these things you are talking about, it is up to the agency to have appropriate systems in place to record the transactions to evidence those transactions. As auditors we are looking for appropriate audit evidence, no matter what form it comes in and we will assess that evidence as presented by the agency. I guess we would look at the evidence that is given by the agency for whatever we are looking at.

Mr DAVID SHOEBRIDGE: But if it is made in the ministerial office it is not an agency decision. I go back to that question, do your audit powers extend to where decision-making is made within a ministerial office?

Mr STANTON: But we may not have to go that far to actually get the evidence we require. The agency is holding—

Ms CRAWFORD: For example, Mr Shoebridge, we do not have automatic access to Cabinet. Because many decisions, of course, are made through Cabinet processes, we ask for access via Department of Premier and Cabinet and as a matter of convention we are provided with that access, but our legislation does not provide for that automatically.

Ms MIGOTTO: So it is more about the nature of the information rather than the person who holds it.

The Hon. MATTHEW MASON-COX: Just a simple question, and I might have overlooked this in some of the material, is there a best practice guide about how to establish a grants program and what the fundamental elements should be for government agencies?

Ms CRAWFORD: I think reference has already been made that here in New South Wales there is guidance provided by DPC. That guidance was last updated in 2010 and that still is the substantive piece of guidance for New South Wales public servants. We have looked more broadly for other guidance and there are many examples. Perhaps the one that I referenced earlier by the Commonwealth Government is really quite a comprehensive and practical guide that may be worth looking at.

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The Hon. MATTHEW MASON-COX: The 2010 Premier's guidelines, in your view do they need to be updated?

Ms CRAWFORD: In fact I understand that it was last updated as a result of a performance audit by the then Auditor-General. I have looked at it and I consider that it covers off—at a principle's level it is still quite useful. It just perhaps does not go as far, for example, as the Commonwealth guidance, which is more, without being overwhelming, more detailed and is very, very clear on roles and responsibilities of Ministers and departments, et cetera. Whereas the DPC guidance does not go quite to that extent. In 10 years there are probably many things that have happened that would benefit some sort of update of that guidance.

The ACTING CHAIR: Turning back to the State Records Act, since you have raised this a couple of times, I want to confirm that the State Records Act applies to ministerial offices.

Ms MIGOTTO: It does, yes.

The ACTING CHAIR: In fact there is a higher threshold for the Premier's office over other ministerial offices, when one looks to the things that might be required for the State Archives.

Ms CRAWFORD: That has not come to our attention in the conduct of an audit.

The ACTING CHAIR: I might put it to you and ask you to take it on notice. It appears that briefing notes or papers maintained in the Premier's office are required to be retained in the State Archives, whereas briefing notes or papers of other Ministers are rarely required to be retained in the State Archives if they are of broader significance, separate to having to keep them for administrative or audit purposes, which applies strictly to both situations.

Ms CRAWFORD: What would you like for us to do?

The ACTING CHAIR: I am interested if you have any views about that, on notice, the limitations of that application or how broad it is.

Ms CRAWFORD: We may take that on notice, look at the requirements and reflect as to how they may or may not have impacted either past work that we have done or possible future work.

The ACTING CHAIR: Thank you for your attendance today and for your submission setting out some of the general principles that will inform the work of the Committee and its report. It has been very helpful. The Committee has resolved that the questions you have taken on notice are to be returned within 14 days. The secretariat will be in contact with you about that.

(The witnesses withdrew.)

The Committee adjourned at 14:30.