



PARLIAMENT OF AUSTRALIA • THE SENATE
SENATOR THE HON. BRIDGET MCKENZIE
*Leader of The Nationals in the Senate
Senator for Victoria*

29 April 2020

Senator Anthony Chisholm
Committee Chair
Senate Select Committee on Administration of Sports Grants
Parliament House
Canberra, ACT, 2600

Senate Select Committee on Administration of Sports Grants

Dear Chair,

Anthony,
Thank you for your correspondence on the 13 of March 2020. Please see attached my written submission to the Senate Select Committee on Administration of Sports Grants.

With regards to the decision brief of the 4 of April 2019, I reiterate that I did not make any changes or annotations to this document or its attachments after this date and that it was my expectation it would be processed in a timely and appropriate manner.

Nevertheless, changes were made, and administrative errors occurred with processing the brief of which I take responsibility as I always have as a Minister for my decisions and actions and those of my office.

I trust my submission is of assistance to the committee.

Yours sincerely,

Bridget McKenzie

Senator for Victoria
Leader of The Nationals in the Senate

Statement to the Senate Select Committee on Administration of Sports Grants

Senator the Hon. Bridget McKenzie

29 April 2020

INTRODUCTION

1. On 13 March 2020, Chair, Senator Chisolm requested that I make a submission to the Senate Select Committee on Administration of Sports Grants. Under the Westminster system, it is ultimately the Minister who must take responsibility for decisions made in her portfolio. Ministers are rightly held to account by the Parliament, and through the Senate estimates process and the committee system. I therefore welcome this opportunity to explain the process and correct misconceptions about the *Community Sport Infrastructure Grant Program* (CSIG program).
2. The Auditor-General's report *Award of Funding under the Community Sport Infrastructure Program* (the ANAO Report) and the submission to this committee by the Secretary of the Department of Prime Minister and Cabinet¹ identified some shortcomings in the administrative processes in both Sport Australia and in my Ministerial office. I acknowledge these findings and, as the former Minister for Sport, take responsibility.² More materially, I personally failed to declare two memberships to the Prime Minister in a timely manner and hence breached his Ministerial standards.³ I took the appropriate action of Ministerial responsibility under the Westminster system of accountability and resigned.

¹ Gaetjens, P. 2020. *Submission 1, Senate Select Committee on Administration of Sports Grants*; retrieved from: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Administration_of_Sports_Grants/Adm_inSportsGrants/Submissions

² See public statement on 2 February 2020; retrieved from: <http://www.bridgetmckenzie.com.au/Media/Media-Releases/ID/1280/MEDIA-STATEMENT>

³ On which see further below paras 48-54.

3. The information set out in this statement has been prepared to the best of my knowledge and recollection given:
 - a) once I left the Sports portfolio, my office no longer had access to the records, emails, other papers and correspondence that Sport Australia and other officials provided to the ANAO; and
 - b) following the prorogation of the 45th Parliament, documentation that did not form part of the official record keeping was routinely disposed of. Regrettably, this has limited my capacity to fully respond to some of the issues raised through this inquiry.

OUTLINE OF SUBMISSION

4. This submission will outline the rationale for the CSIG program, its design, purpose and benefits. It will seek to respond to many of the issues raised throughout the public debate regarding the program, including claims of politicisation. It will address some of the issues raised in the ANAO report followed by a discussion about the importance of Ministerial discretion in government. Finally, the submission will address the issue of conflict of interest as it relates to my membership of organisations.

MISCONCEPTIONS ABOUT THE PROGRAM

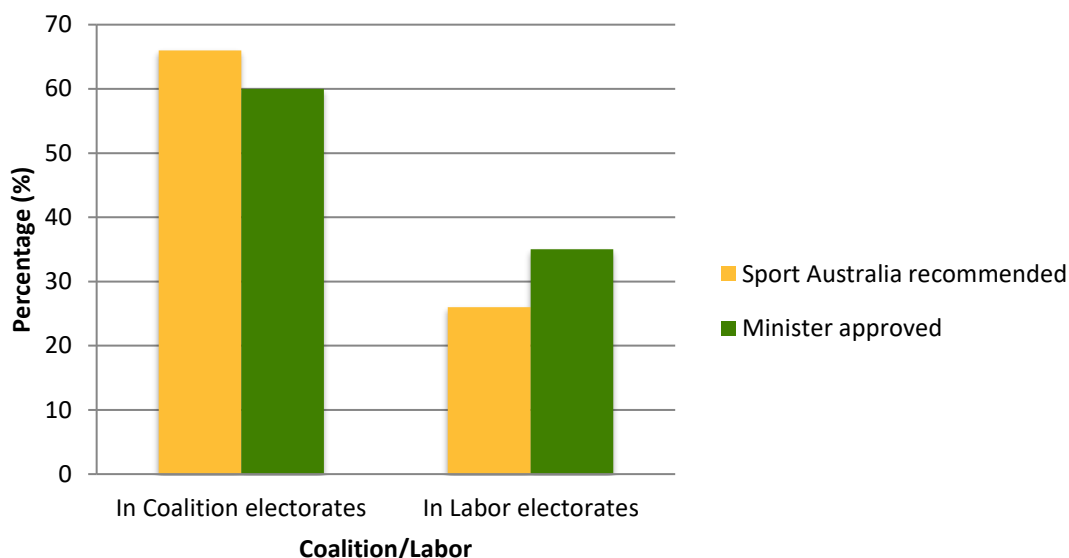
5. Unfortunately, in much of the commentary about the CSIG program, there have been incorrect assumptions about the grant process itself. More fundamentally, there has been, on occasion, a casual disregard for the responsibility that a Minister of the Commonwealth has to execute final discretion in her portfolio in order to ensure fairness and to achieve the broader objectives of the elected government.
6. My decisions saw grants distributed more evenly by state, region, sport, organisation type and funding stream than if the recommendations of Sport

Australia or the methodology seemingly favoured by the Auditor-General⁴ were adopted. The CSIG program was highly successful and I am proud of what the Government was able to accomplish through the program.

7. For clarity, despite some media reports, I was not responsible for the *Female Facilities and Water Safety Stream* program, nor decisions to award funding to professional sport organisations announced throughout the 2019 election campaign.
8. In response to the ANAO report, some commentators have claimed that I did not exercise my Ministerial authority in an appropriate manner, that the process was negatively politicised. I reject this interpretation and the facts refute it. The criteria I sought to apply is set out in paragraph 30. My objective when exercising my ministerial authority was to see more communities benefit, across a wide range of sports and local clubs, to ensure the funding resulted in a fairer overall outcome, with more clubs funded across more regions than would otherwise have been the case. Whilst not my purpose, analysis shows **more** funding went to Labor-held electorates than Sport Australia had recommended. Only 26 per cent of Sport Australia's recommendations were in Labor-held electorates. I **increased** this to 35 per cent (Graph 1). Similarly, Sport Australia recommended that 66 per cent of grants be awarded to electorates held by the Liberal and The Nationals parties. Under my authority, this was **reduced** to 60 per cent (Graph 1).⁵ Additionally, my Ministerial discretion resulted in more projects being funded in rural and regional Australia, an outcome I am particularly proud of.

⁴ ANAO report p.33. See further below: para 38-41.

⁵ My office did not have access to Sport Australia's 'recommendations' across three rounds. These statistics and those in Graph 1 are from ANAO report: para 4.28.



Graph 1: Percentage of projects by electorate incumbency⁶

RATIONALE FOR THE PROGRAM

9. I am a firm believer in the power of sport. It brings people together and improves the health of individuals and communities. Sport provides opportunities for us to learn the essential character traits of sportsmanship, determination, reward-for-effort, teamwork and fairness. Particularly in regional Australia, sporting clubs and associations are often run by volunteers who provide an invaluable service to their communities. It is disappointing that these clubs have been unwittingly caught up in what has been a partisan campaign to discredit a program that I believe has been overwhelmingly successful and beneficial to hundreds of communities around the country.
10. It was my honour to serve as Australia's Minister for Sport from December 2017 until the 2019 Federal election, at which point I was appointed Minister for Agriculture. As Sports Minister, I was responsible for the policy settings and the decision-making process for the CSIG program.

⁶ Graph 1 compares percentage of Sport Australia recommended projects and Minister approved projects in Coalition and Labor held electorates. This highlights that the Minister approved fewer projects in Coalition seats and more in Labor held seats than Sport Australia recommended.

11. The investment into community sporting infrastructure was a key component of *Sport 2030*, the Liberals and The Nationals Government's National Sports Plan.⁷ The Australian Government has a clear and bold vision for sport in Australia — to ensure we are the world's most active and healthy nation, known for our integrity and sporting success. Key initiatives of *Sport 2030* ranged from Better Ageing grants, investment in high performance sport, the development of world leading sport integrity framework and agencies, strengthening Australia's sporting industry and, importantly, encouraging community sporting clubs to increase participation.

12. As Minister, it was my over-arching policy view that increasing participation in sport and physical activity in the community had significant social, mental and physical benefits for all Australians. It was a key priority of mine to broaden the focus of Sport Australia to the wider community, not simply elite sports. This intent aligned with the original objectives of Sport Australia as outlined in *The Australian Sports Commission Act 1989*.

IMPLEMENTING POLICY, GUIDELINES AND PROCESS

13. A 2018 Budget application for the CSIG program and other initiatives of *Sport 2030* went through normal government processes. The Government's Expenditure Review Committee approved funding for \$29.7 million for the CSIG program. Following the announcement, \$29.3m of the \$29.7 was allocated to Round 1 of the CSIG program.

14. The provisions for and exercise of Ministerial authority in the case of the CSIG program was conducted within existing Commonwealth legislated requirements. In the 2018-19 Budget, the Government made the decision to administer the CSIG program through Sport Australia. As a result, practices deemed usual across other government agencies and

⁷ Australian Government. 2018. *Sport 2030*, Sport Australia; retrieved from: https://www.sportaus.gov.au/data/assets/pdf_file/0005/677894/Sport_2030_-_National_Sport_Plan_-_2018.pdf

departments were not required because it was not governed by the *Public Governance, Performance and Accountability Act 2013* nor the *Commonwealth Grant Rules and Guidelines 2017 (CGRG)*.⁸ In part, this resulted in applicants not being given an adequate understanding as to why they were or were not successful.⁹ I note and support the ANAO's recommendation that the *CGRG* be amended to include corporate Commonwealth entities such as Sport Australia.¹⁰

15. Guidelines for the CSIG program were developed by Sport Australia in consultation with my office and Department of Health officials. Sport Australia also consulted with State and Territories during the development of Guidelines.¹¹
16. The Guidelines reflected the Government's intent for the CSIG program, encouraging applicants to engage with local government, sporting groups and clubs, peak sporting organisations and others. This included Members of Parliament, other Ministers and the Prime Minister's Office, who became sources of information in relation to applications. Brian Boyd, the Executive Director of Performance Audit Services Group at the ANAO, has told this committee, "*we would not agree that there was a clear causal relationship*" between 'inputs' from Members of Parliament and grants being approved.¹² I took representations from my colleagues into account and I take responsibility for decisions made.
17. Local representations were also sought in recognition of the varied capacity between applicants. In particular, it was recognised that volunteer-run clubs would have to compete against Local Governments, National Sporting Organisations and professional sporting bodies, which have professional grant writers.

⁸ See *ANAO Report*: paras 4.2-4.

⁹ As noted in *Submission 1*: para 10.

¹⁰ See recommendation in *ANAO Report*: para 4.7.

¹¹ Sport Australia, 2018. *Community Sport Infrastructure Grant Program: Program Guidelines* (August) (Program Guidelines); retrieved from:

https://www.sportaus.gov.au/grants_and_funding/community_sport_infrastructure_grant_program/resource/s2/CSI_Grant_Program_guidelines.pdf

¹² See Boyd, B. 2020 (13 February) *Commonwealth of Australia Official Committee Hansard, Senate Select Committee on the Administration of Sport Grants*: p.8.

18. The CSIG program was extremely, perhaps even wildly, popular.

Consequently, it was heavily over-subscribed. I note that the ANAO report concluded that it would have been preferable for Sport Australia to have designed tighter criteria in their eligibility Guidelines in order to have prevented the subsequent disappointment in the community.¹³ The CSIG program opened on 2 August 2018 and closed on 14 September 2018, by which time Sport Australia had received 2,056 applications seeking \$396.6 million in funding – more than thirteen times the \$29.7 million the Government had budgeted.

19. Of the 2,056 applications, Sport Australia deemed 1,943 eligible to receive funding. It was clear that an increase in the quantum of funding was needed; I actively pursued this outcome within the Government so more clubs and communities could benefit. Accordingly, I wrote to the Prime Minister seeking additional funding rounds as so many worthy projects and clubs would otherwise miss out. Given the popularity of the CSIG program, the Government made a decision to fund a further two rounds; \$30.3 million was announced in MYEFO 2018 and \$42.5 million announced in the 2019-20 Budget.¹⁴ At the end of three rounds, the Government funded 684 projects across the country – roughly one third of those originally deemed eligible to be funded by Sport Australia.

20. The factors considered in my Ministerial office are those outlined in Appendix 5 of the ANAO Report.¹⁵ Primarily, I wanted the spread of grants to be geographically broad across the country. Additionally, I aimed to support a diverse range of sports so a wide cross-section of the community would benefit. And finally, I wanted to see as many local sports clubs as possible benefit from the CSIG program. To achieve this, I made the decision to fund more lower cost projects as this would result in 31 per cent more local community club applications being approved for funding than otherwise.¹⁶

¹³ See *ANAO Report*: paras 8 and 2.5.

¹⁴ See *ANAO Report*: Table 1.1: CSIG program funding rounds, p.16.

¹⁵ See *ANAO Report*: pp.75-6.

¹⁶ Acknowledged in the ANAO report at para 4.36.

21. My Ministerial office requested Sport Australia incorporate federal electorates in a spreadsheet as a proxy for the measurement of geographic spread. On 26 September 2018 Sport Australia provided a list of all applications that included electorate details. Subsequently, working spreadsheets were colour coded, using a colour related to the party that held the electorate in which the project was located. On 1 October 2018 Sport Australia provided to my office further information on the number of applications from each electorate. This information assisted my decision-making with respect to priorities outlined in Appendix 5 of the ANAO report.¹⁷ Prior to signing all three funding decision briefs, I requested a report detailing proportional data on the number of projects and funding amount by state and electorate.

22. Over the course of the program, there were 'emerging issues'¹⁸ such as clubs receiving state government funds. This meant five new projects were added and four existing project applications were amended, this was in keeping with the Guidelines. My then Chief of Staff emailed Sport Australia in late March 2019 to outline the reasons for these project inclusions. These nine projects were approved in the Round 3 decision brief signed by me on 4 April 2020.¹⁹

THE ANAO REPORT

23. Three of four of the ANAO report's recommendations related to Sport Australia and one to the Department of Finance. I support all the recommendations. However, I would like to clarify a number of assertions made in the report.

¹⁷ See *ANAO Report*: p.75.

¹⁸ *Program Guidelines*: Section 8.1

¹⁹ Refer to my statement made 5 March 2020; retrieved from:

<http://www.bridgetmckenzie.com.au/Media/Media-Releases/ID/1265/Statement--Senate-Estimates>

a) *Claim of a 'parallel process'*

24. The ANAO Report erroneously claims that my office ran an assessment process in "*in parallel*".²⁰ The actions of my Ministerial office and of Sport Australia were part of one and the same assessment process. As stipulated in the CSIG program's Guidelines,²¹ my Ministerial office used Sport Australia's compilation and assessment of eligible projects to inform my final decisions. As already stated, the intent was to ensure a fair and broad distribution of grants given the overall objective of *Sport 2030*, advancing community sports participation across the country so more Australians could be more active more often.²²

25. Ministerial discretion was built into the CSIG program from the start. Consistent with the CSIG program Guidelines, former CEO of Sport Australia Kate Palmer has told this committee, "*We were anticipating that she (the Minister for Sport) would be considering undertaking a process. I would not call it a parallel process. It was expected that the Minister would consider other factors.*"²³ All projects selected for funding were approved to receive it.

b) *Claim of favouritism for electorates deemed 'marginal' and 'target'*

26. There has been extensive media commentary about use of the terms 'marginal' and 'targeted' electorates within my Ministerial office, highlighted in the ANAO report. I am advised that these terms were obtained from a memo with an attached spreadsheet, emailed by a former Ministerial Adviser to themselves. It is asserted throughout the ANAO report, apparently based on this singular email, that there was a marginal seat strategy conducted within my office that influenced the success of grant applications.²⁴ The ANAO argues that this former Adviser's memo

²⁰ See e.g. ANAO report: para 10.

²¹ See Section 8, particularly 8.1 of *Program Guidelines*.

²² Australian Government, Sport Australia (2018). *Sport 2030*: pp.4-5.

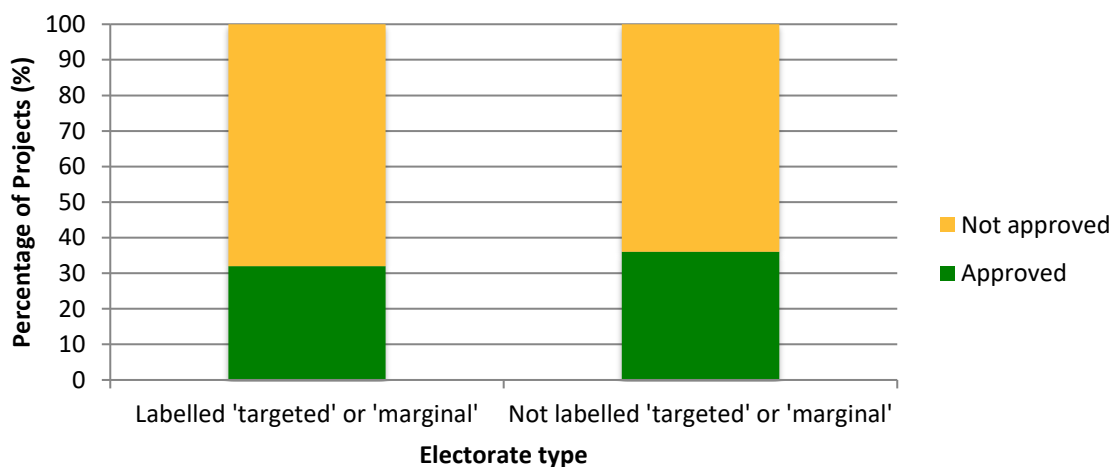
²³ Palmer, K. 2020 (28 February): *Commonwealth of Australia Official Committee Hansard: Senate Select Committee on Administration of Sports Grants*: p.6.

²⁴ See ANAO Report: paras 18; 24; 3.20-1; and the text box on p.52.

underpinned the methodology of my office.²⁵ I unequivocally reject this premise and the facts themselves contradict it.

27. This former Adviser's memo was **not** used as a basis for my decisions at any stage in the process. The memo was **never** provided to me or seen by me.

28. More significantly, there is no statistical case to support this narrative. Under my discretion, applications in seats classified in the former Adviser's memo as 'marginal' and 'targeted' were funded at a rate of 32 per cent. Applications not labelled as 'marginal' and 'targeted' seats were funded at a rate of 36 per cent (Graph 2).²⁶ Clearly, applications in electorates labelled 'marginal' and 'targeted' in the former Adviser's memo were never given any precedence or special treatment.²⁷ As the Prime Minister has said, applications in seats deemed as 'marginal' and 'targeted' in the memo succeeded at a statistically similar rate to applications in any other part of the country.²⁸



Graph 2: Percentage of projects approved by electorate type²⁹

²⁵ See ANAO Report's statistical arguments in paras 4.24-36.

²⁶ According to analysis in *Submission 1*: Table 3.

²⁷ For example, as highlighted in the ANAO report (para 4.26), five out of the seven applications assessed with a score of 90 or above that were not approved for funding by me were in electorates labelled as 'marginal' or 'targeted'.

²⁸ See comments in Morrison, S. 2020 (2 February). *Prime Minister's Press Conference*, Canberra.

²⁹ Graph 2 compares 'marginal' or 'target' seat project approvals with approvals for all other seats.

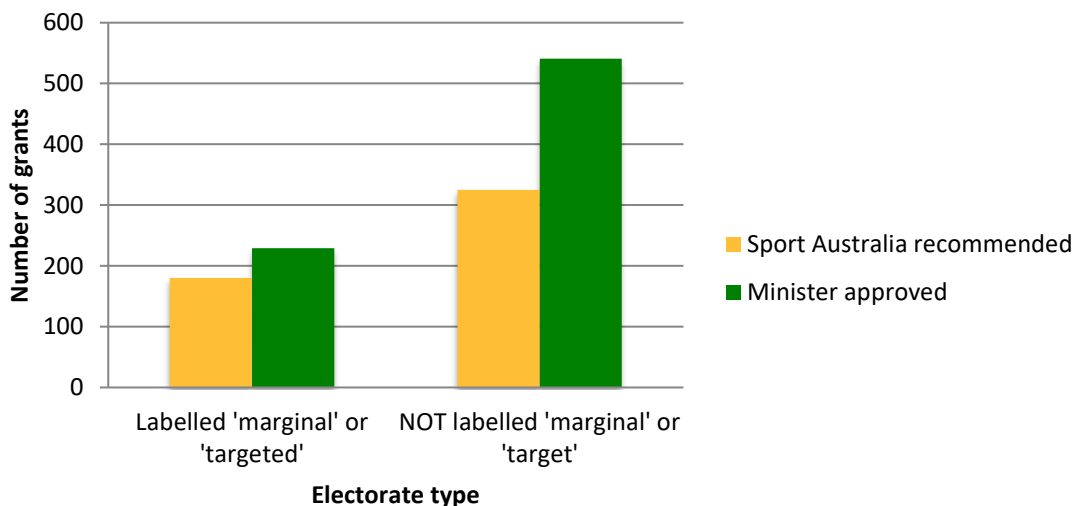
29. Furthermore, 30 per cent of the applications listed as ‘successful’ in the former Adviser’s memo and spreadsheet were never approved for funding in any of the three grant rounds, according to analysis by the Department of Prime Minister and Cabinet.³⁰

30. The statistical argument in the ANAO report rests on the premise that I approved grants in electorates labelled in the former Adviser’s memo as ‘marginal’ and ‘targeted’ more than Sport Australia recommended. It is true that in these electorates, Sport Australia recommended 180 projects be approved but I ultimately approved 229, representing a 27 per cent increase in approval.³¹ However, the Department of Prime Minister and Cabinet has revealed the ANAO’s analysis here to be incomplete, as it has failed to compare this statistic with that of electorates **not** labelled as ‘marginal’ and ‘targeted’ in the former Adviser’s memo. As noted in Submission 1, the percentage increase in approved projects in ‘marginal’ and ‘targeted’ electorates is in fact **smaller** than the percentage increase in approval of applications in electorates not labelled ‘marginal’ or ‘targeted’. In these electorates, Sport Australia recommended 325 grants, but I approved 541, representing a 39 per cent increase.³² **To be clear, my discretion saw 27 per cent more success in ‘marginal’ and ‘targeted’ seats but 39 per cent more success in all the other electorates, highlighted in Graph 3.** Clearly, there is no statistical case for the claim that applications in electorates labelled ‘targeted’ and ‘marginal’ in the former Adviser’s memo performed disproportionately better than applications in any other electorate.

³⁰ See *Submission 1*: para 16 and Table 1.

³¹ *ANAO Report*: para 24.

³² See statistics and analysis in *Submission 1*: paras 22-23 and Table 4.



Graph 3: Number of successful projects by electorate type³³

c) Criticisms of Sport Australia

31. The bulk of the ANAO report and three of its four recommendations refer to Sport Australia. These relate to program design, strategies for demand management, oversight of conflicts of interest, adherence to program Guidelines, and the importance of ensuring recording practices regarding decision-making rationale.
32. The ANAO report and evidence to this inquiry highlight the subjective outcomes of Sport Australia's ranking processes, including a failure to manage in one case a deviation of 30 points between individual assessors.³⁴
33. Despite numerous requests, my Ministerial office was not provided with a detailed overview of each of the projects nor a rationale for Sport Australia's internal recommendation methodology. Sport Australia did not explain the material difference between project rankings and its recommendations.³⁵

³³ Graph 3 confirms that the exercise of Ministerial discretion saw a greater increase of projects funded in electorates NOT labelled 'marginal' or 'target' than those labelled 'marginal' and 'targeted', in comparison with Sport Australia recommendations.

³⁴ See *ANAO Report*: para 2.25.

³⁵ *ANAO report*: para 4.13.

34. Whilst not required, Sport Australia officials did not seek formal approval for the CSIG program Guidelines from either myself as Minister or from Sport Australia's board. This shortcoming could be addressed with the adoption of recommendation 4 of the ANAO report.
35. As evidenced in this inquiry, the issue of conflict of interest within the organisation's assessment team remained 'unresolved and unmanaged' for the entire CSIG program.³⁶ This resulted in one professional sport receiving a head start on application writing and hence disadvantaged small local clubs relying on volunteers to write and submit applications.
36. The ANAO report concluded there were numerous concerns regarding the administration of the CSIG program by Sport Australia. This has been actively acknowledged by the organisation itself in these hearings and Sport Australia has set about rectifying. This is a move I wholeheartedly endorse.
37. However, it remains problematic to argue that Sport Australia's rankings and recommendations, that resulted from a process that the ANAO has revealed to have had so many flaws, should have been followed *carte blanche* by myself. I remain confused by the competing conjectures raised in the ANAO Report, which simultaneously argues for unbiased administrative processes, whilst exposing Sport Australia's flawed and biased administrative processes. Furthermore, it is odd that the ANAO report can, on the one hand, expose Sport Australia's procedural flaws, yet on the other, use the rankings and recommendations produced from this very same flawed process, as the yardstick to measure how my Ministerial approvals correspond with 'merit' and/or 'value for money' as determined by Sport Australia.³⁷

³⁶ See further discussion between Senator Canavan, M. and Palmer, K. 2020 (28 February): *Commonwealth of Australia Official Committee Hansard: Senate Select Committee on Administration of Sports Grants*: p.9.

³⁷ Moreover, concepts of 'value for money' and 'merit' are inherently subjective.

d) Misperceptions about the ranking system

38. The false claims of negative politicisation have been further confused by the concept that originated in the ANAO report that all projects over a rank of 74 should have been funded. The Auditor-General Grant Hehir stated “...the magic in it is that in a normal process for decision making on grants where you have got a merit assessment is that you undertake assessments, you rank, and you fund according to rank.”³⁸ If this methodology for awarding funding had have been followed it would have led to 30 Coalition electorates receiving nearly half of all available funding and 22 electorates, including 14 Labor-held electorates, receiving no funding whatsoever.

39. The Auditor-General’s assumption is that if a hard floor of 74 out of 100 ranking points had been applied across the CSIG program then the most meritorious projects would have been funded.³⁹ Putting aside the flaws that the ANAO has itself identified in Sport Australia’s ranking processes, this suggestion misunderstands the process and objectives of the CSIG program and has only served to confuse public commentary and perceptions about allocation of funding. This one narrow metric was never intended to be the only criteria to award funding. Ranking points was only one aspect of Sport Australia’s methodology for producing its recommendations, which principally factored in value for money considerations. Most importantly, it was not the only factor taken into consideration in my final determination, which sought to ensure a fair and broad distribution of grants by state, region, sport, and organisation type.

³⁸ Hehir, G. 2020 (13 February): *Commonwealth of Australia Official Committee Hansard: Senate Select Committee on Administration of Sports Grants*: p.24.

³⁹ See ANAO report: paras 17 and 3.12.

40. The fact that Sport Australia's recommendations also varied from its own project rankings demonstrates that the ranking score was never intended to be the only metric. Sport Australia ranked some projects very high but did not necessarily recommend them for funding. For example, in Round 1, Sport Australia recommended 109 projects ranging from a ranked score of 97 to a ranked score of 59.
41. The simplistic methodology suggested by the ANAO actually reinforces the argument for Ministerial discretion in grants processes as a means of ensuring wider government objectives are achieved and to avoid perverse outcomes that can occur when only one narrow metric is used.

THE IMPORTANCE OF MINISTERIAL DISCRETION

42. I make no apology for exercising Ministerial discretion. To do so was my prerogative, but more importantly, it was my responsibility. In the Westminster system, Ministers are given the responsibility of making the final decisions in the execution of programs in their portfolios. The Public Service advises Ministers and carries out their decisions. Whilst it can make sense for some decisions about less significant matters to be delegated entirely to public servants, in our democracy it is Ministers who are expected to arbitrate and intervene in order to implement the policy of the elected Government. This is because Ministers are accountable to Parliament and, by extension, to the people for the expenditure of their money as taxpayers.
43. The CSIG program Guidelines were explicit that the Minister was to exercise discretion in the awarding of grants.⁴⁰ Officials from Sport Australia,⁴¹ the Department of Health,⁴² the Secretary of Prime Minister and

⁴⁰ "The Minister for Sport will provide final approval," and "...other factors may be considered when deciding which projects to fund." from the Guidelines: 8.1.

⁴¹ "...Minister McKenzie was the ultimate approver..." Palmer, K. 2020 (28 February): Commonwealth of Australia Official Hansard, Senate Select Committee on the Administration of Sport Grants: p.6.

⁴² Beauchamp, G. 2020 (28 February): Commonwealth of Australia Official Committee Hansard, Senate Select Committee on the Administration of Sport Grants: p.27.

Cabinet⁴³ and the ANAO⁴⁴ have all unequivocally acknowledged the primacy of final Ministerial approval.

44. While the ANAO report accepts the primacy of Ministerial discretion *prima facie*, it does raise a technical question regarding the statutory basis of my discretion, specific to this grant process.⁴⁵ The ANAO's legal concern, however, was not raised with me, or my Ministerial office, by Sport Australia or the Department of Health prior to the commencement of the CSIG program.⁴⁶ Nor was it flagged during the rigorous 2018-19 Budget process in which the Government agreed to the CSIG program being funded and administered through Sport Australia. I expect the Australian Public Service would resolve such legal issues, if they exist, prior to advising a Minister on how she should proceed with the expenditure of public monies.

45. Irrespective of its statutory status, it is well established in Common Law that Ministerial discretion is not plenary. Its application must be legal, reasonable and fair. As lucidly enunciated by Justice Michael Kirby, it is "*the obligation of a Minister to act in good faith, according to law, adopting fair procedures and without the operation of irrelevant and irrational purposes is well settled in this country's constitutional and administrative law.*"⁴⁷

46. The example of the CSIG program actually reinforces the argument for upholding the principle of Ministerial discretion in our democracy. On receipt of Sport Australia's recommendations for Round 1, I relayed my concerns, highlighting the lack of geographical distribution of projects. Sport Australia's evidence to this committee, is it did not see its role as ensuring there was a broad spread of grants geographically. As John Wiley,

⁴³ See *Submission 1*: 8-9.

⁴⁴ See *ANAO Report*: paras 13 and 1.7.

⁴⁵ ANAO's acceptance of the principle of Ministerial discretion: *ANAO Report*: para 1.7. In para 1.7, n.8 the ANAO cites section 71 of the *Public Governance, Performance and Accountability Act 2013*, which stipulates that a Minister can approve the expenditure of relevant Commonwealth money. Conversely, the ANAO report also raises a legal question about Ministerial authority for the CSIG at paras 8 and 13, because this program was not subject to this act. The ANAO seeks to resolve this conjecture through Recommendation 4, which the Department of Finance has noted, and the Government has said it will adopt.

⁴⁶ See Palmer, K. 2020 (28 February): *Commonwealth of Australia Official Committee Hansard, Senate Select Committee on the Administration of Sport Grants*: p.18.

⁴⁷ *Griffiths v Minister for Lands, Planning and Environment* (2008) HCA 20 per Kirby, J. at (144).

Chair of Sport Australia stated, “*We don’t take a view in where things fall in particular electorates.*”⁴⁸ According to analysis by the Secretary of Prime Minister and Cabinet, Sport Australia’s recommendations would have had 30 electorates receiving zero grants. My Ministerial discretion reduced this to five electorates, of which three had no applications submitted.⁴⁹ This demonstrates why Ministerial discretion is so fundamentally important. Because we, as Ministers, are accountable to the people. Without my Ministerial discretion, those 30 electorates, which represent over three million Australians, would have been disenfranchised from the program and hence, unable to access the sporting facilities and infrastructure that the program built.

47. I maintain that Ministerial discretion is fundamental to our democratic system, and clearly it was embedded into the program Guidelines. However, I accept transparency is also important in a democracy.⁵⁰ Transparency gives confidence to applicants, especially in very popular and over-subscribed programs. Whilst my decisions were intended to ensure greater fairness, and indeed did so, unsuccessful but nevertheless worthy applicants would benefit from greater transparency for decisions taken. Recommendation 4 of the ANAO Report, providing a single framework where a Minister decides upon the award of funding, could ensure that shortcomings identified within this program will be avoided in the future. I am heartened by the Prime Minister’s statement that the Government will be adopting all recommendations of the ANAO Report, referring in particular to Recommendation 4 for the Department of Finance.⁵¹

RESIGNATION FOR BREACH OF MINISTERIAL STANDARDS

48. I would once again express my regret for my breach of the Prime Minister’s Ministerial Standards. I failed to declare an honorary membership to the Australia Clay Target Association from the Wangaratta Clay Target Club

⁴⁸ Wiley, J. 2020 (27 February): *Commonwealth of Australia Official Committee Hansard: Senate Select Committee on Administration of Sports Grants*: p.10.

⁴⁹ See *Submission 1*: Table 2.

⁵⁰ As pointed out in *Submission 1*: p.10.

⁵¹ See Morrison, S. 2020 (2 February). *Prime Minister’s Press Conference*, Canberra.

(WCTC) as well as my membership of Field and Game Australia, Bendigo branch. My memberships were not declared to the Prime Minister in a timely manner. As a result, I resigned my tenure as Agriculture Minister in the Second Morrison Ministry.

49. According to the records of the Australian Clay Target Association, I became a member of the Association through its affiliate club, the WCTC, on 29 January 2019. This followed my visit to the WCTC on 25 January 2019.

50. A conflict of interest is evidenced if there is financial or personal gain through a relationship. The decision to fund the club had been taken well in advance of my visit where an honorary membership was offered. I note for the record that the value of the WCTC membership was \$30.00. In effect, I was a member for approximately five days between visiting the club and signing off on the final approval of Round 2 grants, and I received no material or financial benefit then or subsequently. However, I agree that I breached the Prime Minister's Ministerial Standards in this aspect and so resigned my position.

51. The membership of the WCTC was not capable of generating any conflict of interest because my grant assessment decision had already been made before I became an honorary member. Even if this had not been the case, the WCTC membership **still** would not have generated any relevant conflict of interest as it provided no practical utility and was symbolic only.⁵² Any personal benefit to me by reason of the membership is non-existent, or *de minimis*, such that no reasonable person would suggest that such a benefit could influence an assessment of the WCTC project in any event.

52. My public support for shooting sports is well known. And yet, my funding decisions resulted in less shooting sports clubs being funded than recommended by Sport Australia. As opposed to a stakeholder interest, it is not the case that public support and advocacy for a particular sport gives

⁵² I would not attend and use the facilities of the club as a member and I never did. I attended the club once more, in February 2019, to announce a successful CSIG program grant for female and disabled toilet facilities and I have not returned.

rise to any relevant conflict of interest when dealing with that sport as Minister.⁵³ Nevertheless, to mitigate any perceptions with regard to conflict of interest I could have managed decisions on my membership of shooting sports clubs differently.

53. My support for the rights of sporting shooters in this country has not diminished – far from it. In much commentary, I have felt that there has been an implied criticism of the legitimacy of this sport and its lawful participants.

54. There are hundreds of thousands of members of sporting shooters clubs across Australia, participating in an incredibly accessible sport.⁵⁴ Some of our most successful Olympians have been in the shooting arenas. Attempts to delegitimise law abiding gun owners and sporting shooters in Australia treads a dangerous path suggesting that some sports are more equal than others.

CONCLUSION

55. I take responsibility for the decisions that were made within the CSIG program. I was extremely proud that we, as a government, managed to widen a program from \$29.7 million to over \$100 million, delivering 684 worthwhile projects across the nation. I would have liked to fund more applications, and I urge the Government to fund additional rounds of this program given the clear need and interest.

56. I maintain that the process for determining which applications were successful was not negatively politicised, no rules were broken and that my discretion saw grants distributed more fairly by state, region, sport, organisation type and funding stream. I exercised my legitimate authority in making the final arbitration, as was my responsibility as Minister for Sport.

⁵³ For example, no question of conflict of interest exists around my decisions to fund netball projects despite my long and public history as a local community club player and volunteer, nor my tenure as captain of the Parliamentary netball team.

⁵⁴ Shooting sports disciplines are accessible to a range of participants, including para-athletes, men and women, young and old.

57. This submission represents my honest and best recollection of the CSIG program and my decision-making process, bearing in mind constraints highlighted earlier regarding accessing documentation. I trust this submission is of assistance to the committee.