

**SENATE FINANCE AND PUBLIC ADMINISTRATION
REFERENCES COMMITTEE**

**Inquiry into the administration and expenditure of funding under the Urban
Congestion Fund (UCF)**

Submission from Emeritus Professor Richard Mulgan

This submission is addressed to term of reference a (the allocation of funding under the National Commuter Car Park Fund) together with term of reference b (whether the administration of the UCF meets the highest standards of governance etc). It is in two sections

(i) Neglect of process in the commuter car-park fund allocations

This looks at procedural issues in the car-park funding decisions

(ii) Community grants and other allocations to local projects

This looks at the wider issue of how such local projects should be funded, especially the role of ministers and departmental officials.

1. Neglect of process in the commuter car-park fund allocations

The allocation of funding was exhaustively investigated by the Auditor General in his report (Auditor-General 2021, especially pp38-80). The finding that has received the most widespread critical reaction was that allocations were skewed in favour of Coalition electorates. However, equally if not more important were the major failures of administrative process in the Department (the Department of Infrastructure, Transport, Regional Development and Communications) that led up to this outcome. Administration of the program exhibits a breath-taking disregard for the standard government procedures expected when handling public funds. It represents a serious breach of the public service's role as guardian of due process, which is required by the APS values and the Public Service Act.

The main failures in process follow from the lack of consideration given to the five principles underpinning the Urban Congestion Fund, of which commuter car-park funding was a part (Auditor-General 2021, 23): focused investment on high value works; smaller scale and co-funded; driven by evidence; encourage innovation; support wider urban development. According to the Auditor-General, adherence to these principles entails a number of administrative arrangements, including development of a clear implementation

plan, performance indicators and evaluation plan specific to the program, as well as record-keeping that is fit for purpose. In relation to advice on funding decisions, assessment procedures are required to establish that candidates for funding are eligible while relevant benchmarks are needed to assess whether a proposal represents value for money and is appropriate for approval.

All these arrangements follow standard public service protocols yet none of them was adhered to fully and most were largely ignored. In effect, ministers, with the connivance of the Department, treated the funds as their own electoral war-chest to be spent as they saw fit for the government's own political benefit, without any concern for the public interest or public accountability.

This failure of administrative process, it should be noted, is distinct from the partisan bias revealed in the proposals approved. Even if ministers had distributed funds more equally between government and opposition electorates but had followed the same contempt for process, the failure in public administration would still have been extremely serious. If all public expenditure were administered on a similar basis, the legal foundations of parliamentary government would be fatally undermined.

Blame for this corruption of administrative process must be shared between departmental officials and their ministers (including ministers' personal staff). It was the responsibility of the department to develop the type of administrative framework for the program outlined by the Auditor-General and to seek the approval of ministers to follow the procedures. If ministers (or their staff) ignored or overrode the procedures, it was the duty of the secretary to formally object. Conversely, it was the responsibility of the ministers and their staff to give their officials sufficient time, resources and support to administer the framework as they processed ministerial recommendations.

Both the Department and ministers were clearly negligent in their attention to process. Yet no one in government has publicly accepted responsibility for any wrongdoing. Some implicit acknowledgment could be read into the Department's having agreed to all the recommendations from the Auditor-General. But this was undermined by the secretary's argument that such expenditure was authorised by being an electoral commitment. That claim is largely spurious. Most of the proposals were approved before the election with no suggestion that their approval was dependent on the outcome of the election. Moreover, as should be well-known in government circles, 'election commitments' are a specific type of post-election approval process with their own instructions promulgated by the Department of Finance (Department of Finance 2020, Part 4). The instructions state that, in implementing

government election commitments, departments should keep within existing programs as far as possible and should always act 'in accordance with the relevant statutory and policy requirements', including advising the minister whether the proposal 'make[s] proper use of relevant money'. There is no suggestion that an election commitment allows ministers, either before or after an election, to override all rules and processes in the interests of seeking electoral advantage.

The Minister of Finance, Simon Birmingham, adopted a similar blanket excuse, arguing that the government's electoral victory retroactively authorised all the car-park decisions made before the election. The apparent lack of concern for administrative process from the minister overseeing financial probity is regrettable. So too is the silence from leaders of the public service, including the Public Service Commissioner and the Secretary of Prime Minister and Cabinet. Do they all think that the administrative neglect exposed by the Auditor-General is satisfactory? If not, what steps will they take to tighten up procedures in order to adhere to accepted public service standards. At the very least, as another election approaches, public servants will need some guidance. Is it to be open slather for ministers' offices once again or are some procedural constraints to be insisted on?

2. Community grants and other allocations to local projects

The current approach to allocating community grants and other local funds rests on an unspoken agreement that allows ministers, as elected politicians, to be the final judges of the community need and the public interest, but subjects them to certain constraints, such as the obligation to take advice from departmental officials, to follow due process and to be publicly accountable. That ministers will seek to win votes is acknowledged - it is after all the driving principle of electoral democracy - but they are to be checked by the normal democratic assumption that they will follow agreed rules and regulations and answer to the public for their decisions.

This hard-won compromise underpins the current framework for community grants, enshrined in the Commonwealth Grants Rules and Guidelines (CGRG). But the balance has recently been allowed to shift too far in the favour of ministers and away from administrative constraints. For example, the two most controversial recent programs, community sports infrastructure and car parks, were administered outside the CGRG framework. Moreover, even within the CGRG framework, ministers have not been held properly accountable for their decisions. They have been allowed to close down discussion by simply asserting their

right to decide when they should have been pressed to show that their decisions are fair and in the public interest. After all, their right to decide is conditional on their obligation to be publicly accountable. Too often, parliamentary and media debate has concentrated on side issues, such as the role of the Prime Minister's Office, letting ministers off the hook..

What is to be done? Some argue that ministers are obliged by their code of conduct to pursue the public interest regardless of partisan advantage and should therefore always follow the advice of their officials. This is unrealistic. Officials give advice but ministers make final decisions applying their own interpretation of the public interest, subject always to accountability and procedural constraints. Ministerial decisions will always be influenced, not necessarily improperly, by calculations of political advantage. Conversely, departmental officials should always defer to political direction, but subject to the proviso that they adhere to rules and regulations.

If partisan influence is to be altogether avoided in community funding, then decisions would need to be made by fully independent officers or bodies, neither ministers or public servants. Indeed, unless ministers, their advisers and departmental officials can curb their present contempt for process such a solution is the only sure method of preserving administrative integrity while retaining local grants programs. If political parties wish to continue the practice of allocating funds to local projects, they must openly embrace the procedural constraints that such a power entails in a rule-based democracy. Given current failures of governance and the depths of public cynicism, such an embrace requires explicit acknowledgment by both political and bureaucratic leaders that standards have slipped and need to be reasserted.

References

Auditor-General (2021), *Administration of Commuter Car Park Projects within the Urban Congestion Fund* Report 27, 2020-21 <https://www.anao.gov.au/work/performance-audit/administration-commuter-car-park-projects-within-the-urban-congestion-fund>.

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