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Committee Secretary
Senate Finance and Public Administration Committees
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TI AUSTRALIA SUBMISSION TO THE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE'S INQUIRY INTO THE ADMINISTRATION AND EXPENDITURE OF FUNDING UNDER THE URBAN CONGESTION FUND

Dear Secretary,

Transparency International Australia is pleased to submit some brief comments to the Committee's inquiry on the administration and expenditure of funding under the Urban Congestion Fund (UCF).

We are pleased to see that this inquiry has been called and a review is being undertaken of this expenditure, as it is imperative that there is integrity and accountability in public spending.

Australia's grants administration system needs reform to ensure that taxpayer funds are protected from governmental abuse.

TIA has long stated that a decline in public trust in government is arguably the biggest impediment to national integrity in Australia. Australians expect that our government is open, transparent, free from corruption and makes decisions that are in the national interest and not unduly influenced by a political agenda, including 'vote buying'.

The department's approach to identifying and selecting commuter car park projects for funding was not appropriate. It was not designed to be open or transparent. It was not implemented to ensure public funds were allocated to areas most in need of congestion relief. The distribution of the selected projects reflected the geographic and political profile of those identifying candidates for funding consideration. In short, it is our view that public funds were misappropriated and misused for political purposes.



We welcome this consultation process to encourage reform, that will deliver the changes Australia requires to ensure a strong system of public integrity and accountability in grant administration. Sound decision making and clear accountability is dependent on transparency – in project appraisals, in investment decisions, and in how ministers report and justify decisions. Reform is essential to meet the public's expectations of trustworthy, moral and effective governance.

SUMMARY TI AUSTRALIA POSITION

When examining the administration and expenditure of the UCF the following needs to be considered:

- The department's approach to identifying and selecting commuter car park projects for funding was not appropriate or transparent;
- The use of public money for political party gain is not acceptable and is a recognised form of corruption;
- A coordinated national integrity framework is needed to achieve a stronger approach to control corruption, including that associated with expenditure of public funds;
- All agencies with major integrity functions need to be adequately resourced and given broad scope and mandate to operate effectively;
- Loopholes in the grants administration system need to be closed;
- Ministers and their advisors must demonstrate their understanding of the importance of rule of law and procedural fairness;
- Australia needs a parliamentary code of conduct to ensure all elected representatives uphold a high standard of conduct; and
- Australia needs to establish a National Integrity Commission (NIC) that is fit for purpose, with investigative powers and enforcement mechanisms to ensure the government is held to account to act in the public interest.

TRANSPARENCY INTERNATIONAL AUSTRALIA

TI Australia (TIA) is part of a global coalition to fight corruption and promote transparency, integrity and accountability at all levels and across all sectors of society, including in government. TIA was launched in March 1995 to raise awareness of corruption in Australia and to initiate moves to combat it. TIA believes that corruption is one of the greatest challenges of the contemporary world. Corruption undermines good government, distorts public policy, leads to the misallocation of resources, harms private and public sector development and particularly hurts the poor. It drives economic inequality



and is a major barrier in poverty eradication. Tackling corruption is only possible with the cooperation of a wide range of stakeholders. We engage with the private sector, government and civil society to build *coalitions against corruption*. Coalitions against corruption will help shape a world in which government, politics, business, civil society and the daily lives of people are free of corruption.

TI Australia is the national chapter of [Transparency International \(TI\)](#), the global coalition against corruption, with a presence in over 100 countries.

TI Australia, is registered with the Australian Charities and Not-for-Profits Commission (ACNC).

TI AUSTRALIA POSITION

THE ALLOCATION OF FUNDING UNDER THE NATIONAL COMMUTER CAR PARK FUND

The Australian National Audit Office (ANAO) concluded that the “department’s approach to identifying and selecting commuter car park projects for funding commitment was not appropriate. It was not designed to be open or transparent.”¹ They also found that departmental advice did not align with investment principles or policy objectives, and that projects were not selected on merit.² A majority of funding was directed to Liberal-National Party held federal seats, and the funding was not directed towards the area’s most in need. The misuse of public money for political gain, which arguably equates to theft, is now a common occurrence in Australia. A 2018 analysis of data collected from the Australian Electoral Commission and the Federal Department of Infrastructure, revealed marginal electorates receive funding at a rate more than three times higher than that of ‘safe seats’.³ The research examined seven years of funding decisions and found both the Liberal-National Coalition and Labor governments engaged in this behaviour. In light of the pervasive and repeated rorts scandals that have plagued Australian politics, we call for reform and for politicians to be held to account.

¹ Administration of Commuter Car Park Projects within the Urban Congestion Fund;
<https://www.anao.gov.au/work/performance-audit/administration-commuter-car-park-projects-within-the-urban-congestion-fund>

² Ibid.

³ LSJ, Pork barrelling: past its use-by date?; <https://lsj.com.au/articles/pork-barrelling-past-its-use-by-date/>



WHETHER THE ADMINISTRATION OF THE UCF MEETS THE HIGHEST STANDARDS OF GOVERNMENT, PERFORMANCE AND ACCOUNTABILITY IN THE EXPENDITURE OF PUBLIC FUNDS

Political integrity is understood as exercising political power consistently in the public interest, independent from private interests, and not using power to maintain one's own wealth and position.⁴

Transparency International defines corruption as the abuse of entrusted power for private and political gain. The use of public money for political party gain is not acceptable and fits the definition of corruption. What has occurred with the administration of the UCF therefore has not only failed to meet the required standards of governance and accountability but can be described as corrupt conduct.

The Statement of Ministerial Standards make clear that the Australian people deserve a government that will act with integrity and in the best interests of the people they serve. All Ministers and Assistant Ministers are expected to conduct themselves in line with standards established in the Statement to maintain the trust of the Australian people. Inherent in this is respect for the rule of law and compliance with the Constitution.⁵ This needs to occur even when it is not likely they will be brought to account before a court. However, the Statement of Ministerial Standards appear to be rarely enforced, have no independent oversight mechanism, and no consequences for breach of the Standards. This was clearly demonstrated regarding the 'sports rorts' scandal, and other matters such as separation of employment (the revolving door from parliament to industry), in the case of Christopher Pyne. Currently, instances of integrity failings, misconduct, and misuse of public funds are subject only to the scrutiny of the ANAO and often progress no further than receiving bad press coverage. We therefore commend the committee for considering this case and encourage the inquiry to be bold and lay the ground for reform.

It is a widely accepted principle that a government has an obligation to govern for the whole country, not only those that voted for it. Public interest must always prevail over political interests. Despite frequent assertions from politicians that exercising discretion in funding decisions is entirely legal, many experts dispute this.⁶ Spending public money for political gain will often breach administrative law requirements that govern the actions of decision-makers, and will also sometimes breach the Constitution, statutory limits on ministerial power, finance laws, anti-corruption laws and codes of conduct for Ministers and Members of Parliament (MPs). At a federal level, the Public Governance,

⁴ Transparency International, Political Integrity; <https://www.transparency.org/en/our-priorities/political-integrity>

⁵ Department of Prime Minister and Cabinet, Statement of Ministerial Standards; <https://pmc.gov.au/resource-centre/government/statement-ministerial-standards>

⁶ Law Society Journal Online, Pork barrelling: past its use-by date?; <https://lsj.com.au/articles/pork-barrelling-past-its-use-by-date/>



Performance and Accountability Act 2013 (Cth) stipulates that a Minister must not approve the expenditure of public money unless they are satisfied the expenditure would be efficient, effective, economical and ethical.⁷ Despite this, the approach taken often seems to be risk-based, with decisions made based on whether it is likely anyone will challenge their decisions. The answer is often no. There is also no penalty for breaching the Commonwealth Grants Rules in the financial management legislation.⁸ Ministers and government officials can therefore break the rules with impunity, without any legal repercussions.⁹

We call for the Commonwealth Grants Rules to be broadened to include situations where the Federal government distributes grants through an independent statutory corporation or through the states.¹⁰ Currently political interest is trumping accountability and community interests. This is leading to diminishing levels of public trust and confidence in government and is eroding our democracy.

Research conducted by TIA and Griffith University, shows the number of Australians that view corruption as either a ‘very big’ or ‘quite big’ problem has risen 5 percentage points over the past two years – from 61% in 2018 to 66% in October 2020.¹¹ The proportion of people who think the federal government is handling corruption issues “very badly” has also risen from 15% to 19.4% over the same time period.¹²

The Museum of Australian Democracy has also found that Australians have “grown more distrustful of politicians, sceptical about democratic institutions and disillusioned with democratic processes. Satisfaction with democracy in Australia is now at its lowest level since 1996.”¹³ These are concerning figures. Their research also suggests that if current trends continue, by 2025 fewer than 10% of Australians will trust their politicians and political institutions.¹⁴ Weakening trust erodes political authority and engagement, reduces support for evidence-based public policies and offers

⁷ Federal Register of Legislation, Public Governance, Performance and Accountability Act 2013; <https://www.legislation.gov.au/Details/C2013A00123>

⁸ Department of Finance, Commonwealth Grants Rules and Guidelines;

<https://www.finance.gov.au/government/commonwealth-grants/commonwealth-grants-rules-and-guidelines>

⁹ Australia Public Law, The “Car Park Rorts” Affair and Grants Regulation in Australia: How can We Fix the System?; <https://auspublaw.org/2021/08/the-car-park-rorts-affair-and-grants-regulation-in-australia-how-can-we-fix-the-system/>

¹⁰ Ibid.

¹¹ Transparency International Australia, Global Corruption Barometer Results;

<https://transparency.org.au/while-trust-in-government-is-up-australians-continue-to-see-corruption-as-a-major-problem/>

¹² Ibid.

¹³ Democracy 2025, Democracy is in trouble; <https://www.democracy2025.gov.au/about.html>

¹⁴ Mark Evans, ‘Trust in politicians and government is at an all-time low. The next government must work to fix that’, *The Conversation*, 25th February 2019; <https://theconversation.com/trust-in-politicians-and-government-is-at-an-all-time-low-the-next-government-must-work-to-fix-that-110886>



nourishment to conspiracy theories, and engenders civil unrest. The public's suspicion of the political process is heightened by the regular, and seemingly increasing number of rort scandals, such as the funding for the commuter car park fund. It is imperative our grants administration system is reformed to ensure that public funds are protected from governmental abuse. If the ministerial discretion available in grants processes continues to be improperly used, the process corrupted, this will continue to give rise to a lack of accountability and escalating corrupt conduct, resulting in a further decline in trust. Over time this will result in an ineffective and illegitimate government, impacting on social and economic well-being.¹⁵ Without trust, our country will have diminished capacity to meet complex, long-term challenges, which is particularly important during a global pandemic.

Transparency, respect for, and compliance with, due process and procedures, and proper assessment based on merit by the public service is required to ensure the public interest is served, public funds used appropriately, and to prevent the type of misconduct seen in the allocation of the UCF, among numerous others.

Ministers and their advisors need to demonstrate a greater understanding of the importance of rule of law and procedural fairness. Nationally, many core integrity agencies remain unsupported and lack the legal and financial independence they need to guarantee their roles.¹⁶ This is why we also need broader reform of our national integrity systems, including a national Integrity commission and a parliamentary code of conduct, as the majority of MPs are not bound by any standard of behaviour.¹⁷ Australia's federal MPs, and WA's upper house, are currently the only public officials without any code of conduct.¹⁸ Additionally, the ministerial standards are, as stated above, weak, not enforced and there are no penalties for breaking the rules.¹⁹ These Standards reside within the Department of Prime Minister and Cabinet, leaving the Prime Minister to monitor and enforce compliance within their own cabinet. Our ministerial code of conduct should be strengthened to include a commitment to spend public money in the public interest and adhere to merit-based procurement and granting processes. Both parliamentary and ministerial codes must include explicit penalties for breaches and be enforced by an independent and well-resourced parliamentary integrity commissioner.

More could be done by the ANAO to ensure ministers are held to account. In order to do this, it needs to be adequately resourced and given the appropriate mandate. It is promising to see the increase in

¹⁵ OECD, Trust in Government; <https://www.oecd.org/gov/trust-in-government.htm>

¹⁶ Transparency International Australia, National Integrity System, Focus Area A; <https://transparency.org.au/a-connected-national-integrity-plan/>

¹⁷ Transparency International Australia, National Integrity System, Focus Area C; https://transparency.org.au/wp-content/uploads/2020/11/NIS_05_Focus_Area_C_Web.pdf

¹⁸ Ibid.

¹⁹ Ibid.



the 2021 budget for the ANAO, particularly given the large amount of spending that will occur as part of the recovery from the pandemic.²⁰ Since 2013 its funding has been cut by \$6.3 million or nearly 22 per cent, meaning it has had to slash the number of performance audits from the historical average of 48 down to 36. All agencies with major integrity functions need to be adequately resourced and have broad scope and mandate to operate as part of a coherent national approach. They need to work together as a unified and effective “system” – from auditors-general and ombudsmen to information commissioners and the courts. There also needs to be legal enforcement of the Commonwealth Grants Rules. This may lead to more effective legal challenges of partisan grant decisions in the courts.²¹ Establishing a legal branch in the ANAO could assist with this, enabling them to play a role in assessing how constitutional acts are. Another safeguard that could be implemented, is the use of independent expert agencies, as they aren’t influenced by political considerations when weighing up the merits of the different candidates for funding. With no legal repercussions for breaches, politicians will continue to flout the rules. Public trust will therefore continue to be eroded if politicians who engage in misconduct are not faced with any real retribution.

Another critical step that needs to be taken is to establish a NIC that is fit for purpose and has teeth. We need a commission with investigative powers and enforcement mechanisms to ensure the government is held to account to act in the public interest – to hold public hearings, question witnesses and uncover complex webs of corruption and misconduct. The former Attorney General, Christian Porter’s proposed two division model for a Commonwealth Integrity Commission (CIC) would not cover rorts and the misuse of grants. Hence, this is one of the many reasons why TIA is calling for a revision of the CIC model, emphasising it does not meet the necessary criteria to render it effective and credible. To learn more see our [submission](#) for the CIC consultation draft submitted in February 2021. For an NIC to be effective it must be an independent, well-resourced statutory agency, with a broad jurisdiction, strong investigative powers with scope to cover all types of corruption, a broad referral process including from the public, the ability to hold public hearings, and a corruption prevention mandate. Learn more on our position [here](#).

²⁰ Katina Curtis, ‘Audit Office funding boost will return scrutiny to government’, *The Sydney Morning Herald*, 13th May 2021; <https://www.smh.com.au/politics/federal/audit-office-funding-boost-will-return-scrutiny-to-government-20210512-p57rbr.html>

²¹ Australia Public Law, The “Car Park Rorts” Affair and Grants Regulation in Australia: How can We Fix the System?; <https://auspublaw.org/2021/08/the-car-park-rorts-affair-and-grants-regulation-in-australia-how-can-we-fix-the-system/>



CONCLUSION

In summary, what has occurred with the administration of the UCF has not only failed to meet the required standards of governance and accountability, but can be described as corrupt conduct. It is imperative our grants administration system is reformed to ensure that public funds are protected from governmental abuse. If the ministerial discretion available in grants processes is improperly used, this can give rise to corrupt conduct resulting in a continued decline in the public's trust.

When examining the administration and expenditure of the UCF the following needs to be considered:

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- Australia needs to establish a National Integrity Commission (NIC) that is fit for purpose, with investigative powers and enforcement mechanisms to ensure the government is held to account to act in the public interest.

This is a critical opportunity to examine the lack of integrity and accountability in public spending, and the misuse of public funds for political gain. This inquiry has the potential to help prevent future rorts and scandals, and could go some way to restoring integrity in government.

We hope that this submission will prove to be of benefit to the important work of your committee.

Serena Lillywhite



URBAN CONGESTION FUND

CEO, Transparency International Australia