

Executive Summary

Introduction

This inquiry into the administration of the Regional Partnerships Program (RPP) and Sustainable Regions Program (SRP) has been extensive, lengthy and important. It was established on 2 December 2004 following allegations raised in parliament and the media about the misuse of the programs in the lead up to the 2004 federal election. Concerns raised included allegations of serious impropriety in the approval and announcement of certain grants, and the discovery that certain procedures governing the administration of the programs had been concealed from public view. Allegations were also made by a member of the House of Representatives that political conditions were placed on several grants made under the Regional Partnerships Program.

These allegations emerged against a background of concerns about the expenditure of public money through these programs and their predecessors, including an inquiry by this Committee into a funding matter under the Dairy Regional Assistance Program (Dairy RAP), one of RPP's predecessor programs.¹

Between 2 February and 15 September 2005, the Committee conducted nineteen public hearings across the length and breadth of Australia. The Committee also conducted four site inspections of projects approved under RPP. The Committee took evidence from 99 witnesses at these hearings, and received 56 submissions and seven supplementary submissions.

Obstacles to the conduct of the inquiry

DOTARS/ACCs/SRACs

The Committee's examination of the matters referred to it by the Senate was hindered by a lack of cooperation from the Department of Transport and Regional Services (DOTARS), the department responsible for the administration of the RP and SR programs. On a number of occasions, DOTARS failed to provide the Committee with timely and accurate information. DOTARS also refused to provide access to departmental witnesses with specific knowledge of the matters examined.

The Committee decided during the inquiry process to seek access to copies of RPP and SRP applications and Area Consultative Committee (ACC) and Sustainable Region Advisory Committee (SRAC) recommendations on these applications. This information was of central importance to the Committee's examination of the assessment and decision making process for both programs, as well as addressing term of reference (b) regarding recommendations from area consultative bodies. DOTARS refused this request, despite disclosing such information to the Committee's earlier

1 Senate Finance and Public Administration References Committee Report, *A funding matter under the Dairy Regional Assistance Program*, June 2003.

inquiry into Dairy RAP. This led to a cost in terms of time and effort as the Committee was forced to seek this information directly from ACCs and SRACs. All ACCs and SRACs eventually provided the information, although some only complied after the Committee ordered them to provide the documents.

Of grave concern, however, were the further attempts of DOTARS to obstruct the inquiry by providing misleading information on two occasions to ACCs and SRACs regarding the powers of Senate committees, the obligations on those bodies to comply with the Committee's request and the privileges afforded witnesses providing evidence to committees. This required the Committee Chair to write to DOTARS warning that the dissemination of incorrect advice about committee powers and procedures constitutes interference in the process of the inquiry and may be considered a contempt of the Senate.

Further, at the time of finalising the report the Committee was still awaiting answers to a substantial number of questions taken on notice by the department. The Committee understands that the answers had been compiled by the department and provided to the minister's office some time ago. The delays and failure to respond by both the department and the minister are unacceptable as they had had many months to provide the information requested.

Misleading evidence

The Committee received evidence in answers to questions on notice which contradicted evidence given by Wyong Shire Mayor, Cr Brenton Pavier, at a public hearing on 24 February 2005. The Committee considered that the answers to questions on notice provided a *prima facie* case that the Mayor's oral evidence was deliberately false and misleading and therefore may have constituted a contempt of the Senate. The Committee resolved to raise a matter of privilege under standing order 81, and wrote to the President of the Senate asking that he give precedence to a motion to refer the matter to the Committee of Privileges, in accordance with that standing order.

On 5 September 2005 the President made a determination giving precedence to the motion that the matter be referred to the Senate Committee of Privileges. The motion was put to a vote in the Senate on 7 September 2005 and negatived. This was a highly unusual development. Normally, following a determination by the President such motions are passed without debate. The Committee records its dismay that on this occasion the Senate departed from longstanding practice.

Failure to provide evidence

Mr Greg Maguire, a witness central to the allegations made by Mr Tony Windsor MP that he was offered an inducement not to stand for the seat of New England at the 2004 federal election, failed to provide evidence to the Committee that he had previously undertaken to provide on notice. The information the Committee sought concerned Mr Maguire's claims that his companies had made contributions to Mr Windsor's state and federal election campaigns. His refusal to provide the information made it difficult to not only corroborate his evidence before the inquiry but also to

verify whether Mr Maguire had disclosed these election contributions to the Australian Electoral Commission (AEC). Mr Windsor and his former campaign manager, Mr Stephen Hall, denied that Mr Maguire had made any contributions to Mr Windsor's election campaigns. Given the obligation on both donors and recipients to disclose both cash and in-kind contributions to election campaigns, the Committee is concerned that Mr Maguire may be in breach of the Electoral Act. The Committee therefore intends to refer this matter to the AEC for examination.

Regional Partnerships Program administration

Chapter 2 provides an overview of administrative aspects of RPP, including the program guidelines, assessment and approval procedures, funds approved, and evaluations and reviews of the program. A number of concerns with the accountability of aspects of the program are raised, providing context for the case studies presented later in the report. Areas of particular concern include the use of the Strategic Opportunities Notional Allocation (SONA) procedures to approve projects that do not meet the published RPP eligibility criteria, political bias in the levels of funding approved across electorates and the striking increase in funding approvals prior to the 2004 federal election. Analysis of grants approved from the commencement of the program through to 31 December 2004 shows that over half of the total funding approved in this period was approved in the three months preceding the election announcement.

Area Consultative Committees (ACCs)

ACCs fulfil two key roles in relation to the RP program: providing information and assisting proponents in developing applications, and providing comments and recommendations to the department on applications made from their region. ACCs also have primary responsibility for promoting the program. The Committee received generally favourable evidence regarding the competence and effectiveness of the ACCs in performing these roles, and the dedication of ACC members and staff to the progress of their regions.

The Committee considers that the involvement of ACCs in RPP application development is an important safeguard for ensuring that applications are of a high standard and meet the program guidelines. The Committee also considers that the ACCs' comments on applications provide an important source of advice and means of assessing the local priority given to projects.

According to administrative procedures for RPP, applications should be automatically referred to the relevant ACC, and ten working days allowed for the ACC to provide comments and recommendations. However, the Committee became aware of applications that were not forwarded to ACCs for comment, or where the ACCs were given insufficient time to consider and rate the applications. The Committee considers that in bypassing the ACC review process, the department sidestepped an integral part of the assessment process.

Case studies

The Committee examined in detail the circumstances surrounding the application, assessment, approval and announcement of RPP grants for the following six projects:

- The Beaudesert Rail heritage railway;
- Dredging at Tumbi Creek;
- Primary Energy Pty Ltd's grains to ethanol plant proposal;
- A2 Dairy Marketers' milk processing plant proposal;
- The Australian Equine and Livestock Centre; and
- The University Of New England National Centre of Science, Information and Communication Technology, and Mathematics Education for Rural and Regional Australia.

These case studies point to serious deficiencies in the transparency and accountability of processes by which projects are brought forward, considered and approved for funding under RPP. In some cases, evidence points to undue political pressure to expedite grant approval and announcement at the detriment of sound application development and assessment. While the Committee recognises that many beneficial projects have been funded under the program, the case studies involving grants totalling in excess of \$15.5 million show that there is significant scope for improving the administration, accountability and transparency of RPP.

Beaudesert Rail

The Beaudesert Rail (BR) was the recipient of four Commonwealth Government grants totalling \$5.7 million. These comprised a grant of \$75,000 plus GST to produce a business and marketing plan; \$5 million from the Centenary of Federation fund to develop and operate a heritage railway; \$10,000 plus GST for a report on BR's financial position and suggestions for a way forward; and a \$600,000 grant under the RP program.

The Committee concluded that the \$600,000 RPP grant to BR approved in November 2003 was made for political purposes. Documents provided in evidence to the Committee reveal that in the final days leading up to the decision to provide BR with an RPP grant rather than a loan, the then Deputy Prime Minister, The Hon John Anderson MP, who was also the portfolio minister for RPP, was involved in discussions with the Prime Minister's office about the matter of government assistance for Beaudesert Rail. It appears that this was when the proposed form of assistance changed from a loan to an RPP grant. DOTARS was still unaware of this change the day before the grant was approved and was continuing to work on the basis that any funding would be in the form of a loan.

This project completely bypassed the program's normal assessment procedures. Besides DOTARS being cut out of the process, BR was not required to make an application for RPP funding and the relevant ACC was not given an opportunity to

comment on the project. Evidence also shows that the department was not satisfied that the project was financially viable and was still seeking evidence of the project's prospects of solvency just days before the grant was approved.

The Committee considers that the BR grant serves as a warning of the effects of expediting projects without undertaking adequate due diligence checks. Beaudesert Rail's financial viability was marginal at best (it was under administration at the time of the RP grant) and it ceased operation in August 2004. Creditors took possession of its assets in February 2005.

The manner in which the government resorted to using program funds for the BR grant reveals the disregard on the part of its most senior ministers for the RPP guidelines. It is one of several examples the Committee found of the virtually unfettered discretion in the hands of ministers under this program. The other striking aspect of the BR case is that program funds were used to achieve a political outcome in a government-held electorate following direct intervention from the Prime Minister.

Tumbi Creek

Two grants totalling \$1.496 million to Wyong Shire Council for dredging work at the mouth of Tumbi Creek were approved by Parliamentary Secretary Kelly in mid 2004. The Committee was concerned about the allocation of such a large grant to a project with limited beneficiaries which provided a short-term rather than a long-term solution, particularly given that sustainability is an important feature of the RPP project viability criteria.

The Tumbi Creek dredging grant applications were assessed and approved within remarkably short time frames when compared with many other RPP grants. Departmental witnesses advised the Committee that the Parliamentary Secretary's office had requested that the department give the project priority.

The Committee is particularly concerned that the haste with which these grants were approved meant that normal application development and assessment processes were circumvented. On the advice of a ministerial staffer the Council submitted its applications directly to DOTARS, rather than preparing the applications in consultation with the relevant ACC. The Committee received evidence that the relevant ACC had a number of concerns about the project, yet the ACC's comments on the first application were not forwarded to the Parliamentary Secretary before the funding decision was made and the ACC was not provided with a copy of the second application.

A high degree of political collaboration involving ministerial advisers, the federal member's office and members or officials of the Council was evident in relation to this particular RPP project. In one instance, involving a ministerial adviser countermanding departmental advice, the Committee considers that the communication was entirely inappropriate and is evidence of wider concerns about the unchecked growth in the power of ministerial staffers.

The lack of necessary state licences, required before the dredging work could proceed, is another example of the haste with which this grant was approved and announced. The latitude in the RPP guidelines meant that while the dredging project remained effectively ineligible to actually receive funding until the relevant approvals and licences were obtained, the grant announcement could still be made. RPP funding for the dredging work was announced by the Prime Minister in a marginal electorate just days before the 2004 federal election was announced. Yet, as at mid-August 2005, a funding agreement for the project still had not been entered into.

The A2 Dairy Marketers project

The Committee examined a \$1.27 million RPP grant approved by the Hon De-Anne Kelly MP, then Parliamentary Secretary to the Minister for Transport and Regional Services, on 29 August 2004. The grant was for A2 Dairy Marketers Pty Ltd (A2DM) to establish a milk processing plant on the Atherton Tablelands, Qld. The approval, which was announced during the federal election period, was rescinded before funds were committed because A2DM went into voluntary administration less than one month after the grant was announced.

The case of A2DM raises serious concerns about the administration of the Regional Partnerships Program. In particular, it exposes the risks inherent with fast-tracking applications and failing to heed an area consultative committee's warning that a project application required more investigation and development.

The Committee is concerned that due to political pressures to process the application within a short timeframe, a proper due diligence process was not undertaken by the department. The 'due diligence' assessment carried out prior to the department making its recommendation to the minister appears to have only been a compliance check. The Committee found that DOTARS was unaware of information fundamental to the viability of the project, including A2DM's tenuous financial situation and the legal action pending against it by a Queensland government department.

This 'after the fact' due diligence, by making funding subject to conditions to be met after grants are approved, allows applications to be expedited so that the political benefits of announcements can be achieved. In this case, this practice had damaging effects not only on the proponent, but also on project partners, the local industry and community. The announcement of the grant with its implication of government support for the project instilled confidence in local farmers that the project was viable and would go ahead, and encouraged a number of farmers to adjust their businesses towards producing A2 milk.

The Committee believes that the government must accept responsibility for expressing support for projects that are ultimately doomed to fail, and the consequences that reach beyond the proponent throughout the local community and industry—even in cases where no public funding was expended.

Primary Energy

The Committee's examination of the Primary Energy case highlights concerns about the administration of applications made under one program but funded under another, the way the Strategic Opportunities Notional Allocation (SONA) procedures are employed to circumvent eligibility restrictions and the latitude for intervention at the ministerial level under discretionary programs such as RP.

The application was made under a predecessor program to RPP but, on the cessation of that program, assessed and funded under RPP. While DOTARS categorised the project as relatively 'high risk' compared to others funded under RPP, like the cases of Tumbi Creek and A2DM, the assessment of this project was fast-tracked at a minister's request and resulted in a \$1.2 million grant.

The reason for the haste attached to the Primary Energy application was not adequately explained but the evidence raised serious concerns. Due diligence testing appeared to be short-circuited, despite the project being considered 'high risk'. The evidence also revealed confusion between the department and the ACC about who was responsible for due diligence and risk assessment, symptomatic of the general level of confusion about this key check under the RP guidelines.

The area of gravest concern about the Primary Energy project relates to the ministerial involvement in the department's assessment of the application. The direction from one minister to the department to expedite the application to allow funding to be provided within two weeks seemed to pre-empt any rigorous assessment of the project. The Committee found that the original departmental advice to the minister on the application was altered following the intervention of Mr Anderson's chief of staff at senior levels in the department. Although departmental officers gave conflicting evidence on the chain of events leading to the change of advice, evidence from the former acting secretary of the department at the time reveals that the revised advice differed markedly from the department's original advice.

This was not only another example of the high degree to which ministerial offices intervened in certain projects but also a case which transgressed the department's practice of quarantining ministers from decisions related to applications from their own electorates. Because the application concerned a project in Minister Anderson's electorate, neither the minister nor any of his staff should have been involved in any way with the decision making on the project.

Another parallel with other case studies was the use of the SONA guidelines to bypass the eligibility criteria of the RP program. DOTARS admitted that the Primary Energy application fell outside the RP guidelines, claiming that it conformed with the guidelines of the defunct program under which the application had been made. Ministerial pressure to expedite the processing of the application appears to have prevented the department from requesting a fresh application from Primary Energy under the RP guidelines, with the department opting instead to assess the project under the SONA guidelines. The Committee found that in a case like Primary Energy the

use of the SONA guidelines leaves the way open for cutting corners in relation to due diligence testing and circumventing proper rigorous assessment of 'high risk' projects.

RPP grants in the electoral division of New England

The electoral division of New England featured prominently in the inquiry due to the proliferation of issues that emerged about the operation of the Regional Partnerships Program in that electorate. The Committee examined allegations that the Independent member for New England, Mr Tony Windsor MP was offered an inducement not to stand for the seat of New England at the 2004 federal election. The issues also included his claims that political conditions were put on grants made to three projects in the New England electorate.

Mr Windsor claimed that the grant to the Australian Equine and Livestock Centre, which was announced in September 2004 as a \$6 million election commitment to be funded from RPP, was made conditional on his removal from the equine centre working group. He claimed that this condition had been imposed to prevent him taking credit for the project. The Committee found that there was at least a perception among some people involved in seeking an RP grant for the project that Mr Windsor's involvement would not be helpful in obtaining funding. However, the evidence was not conclusive that any such condition had been imposed on the grant.

Allegations of electoral bribery were investigated by the Committee in the context of Mr Windsor's claims regarding the equine centre grant. This matter was also the subject of an investigation by the Australian Federal Police, which had found that no further action was necessary. Mr Windsor alleged that an intermediary, Mr Greg Maguire (the chair of the equine centre working group), had offered him an inducement on behalf of the then Deputy Prime Minister, the Hon John Anderson MP, and Senator Sandy Macdonald. The Committee received conflicting evidence. Without compelling and incontrovertible evidence, a committee of the Senate cannot make an adverse finding against a Senator or Member who has denied the allegations made against him. In the case of the alleged inducement, the evidence is not sufficient for this Committee to depart from that principle.

Mr Windsor also alleged that staff members of the University of New England had received a \$4.95 million RPP grant for the National Centre of Science, Information and Communication Technology, and Mathematics Education for Rural and Regional Australia (SiMERR) in return for favourable comment in a local newspaper about the National Party. The Committee found that the National Party sought to obtain political advantage from the grant by way of advertisements carried in the local newspapers at the time of the centre's official opening, and the university did not act appropriately in having its SiMERR advertisement appear with a party political advertisement. But the Committee found there was no evidence to prove Mr Windsor's allegation about 'cash for comment'.

In the case of the allegations about the opening of the Grace Munro Centre, which was not the subject of an RPP grant, the Committee believes that Senator Macdonald's attempt to exclude Mr Windsor from the opening was inappropriate. There is no

evidence, however, that the Senator attempted to coerce or threaten the council, even when it became apparent that the council intended to proceed to invite Mr Windsor to participate in the opening.

The Sustainable Regions Program

The Committee examined a second regional development program – the Sustainable Regions Program (SRP), which aimed to assist ten regions facing major economic, social or environmental change. The Committee's examination of the Sustainable Regions Program raised questions about the basis on which the participant regions were selected and how members of the Sustainable Region Advisory Committees (SRACs) were chosen. DOTARS declined to provide the Committee with evidence on these matters on the grounds that they were ministerial decisions.

The Committee noted that the due diligence process for Sustainable Regions applications is more rigorous than the Regional Partnerships requirements. It is of particular interest that due diligence checks are conducted *prior* to the SRAC recommendation and the department's advice being presented to the minister, in contrast to the practice found in some cases with RPP where due diligence checks only occurred *after* funding had been announced. Had this process existed under RPP, several of the failed projects investigated by the Committee may have been avoided.

The Atherton Tablelands Sustainable Region Advisory Committee

The Atherton Tablelands Sustainable Region Advisory Committee (ATSRAC) was the subject of a large amount of evidence to the inquiry. The evidence from members of the Atherton Tablelands community was overwhelmingly negative, and focused on perceptions of conflict of interest arising from the presence of four local mayors on ATSRAC, concerns about the inconsistent application of SRP guidelines, the lack of transparency of the application process and allegations of misplaced regional priorities. The Committee found that ATSRAC has little credibility with members of the community because of the number of projects that had failed or been viewed as unworthy.

The Committee notes that ultimately, responsibility for the composition and functionality of the ATSRAC board rests with the minister who appointed it. The Committee also recognises the difficult position of the mayors, who were elected to represent their shire but required, as members of ATSRAC, to subsume the interests of the shire under a strategic view of regional benefit. However, these tensions may not have been problematic had ATSRAC been appointed with a more balanced membership.

The three projects discussed in detail, JAM Custom Kitchens, the Atherton Hotel and Kalamunda Ecostay, raised concerns relating to competitive neutrality, conflict of interest and the lack of transparency of the application process. These projects highlight the inherent difficulties in providing government grants to the private sector, namely that while a grant may have a particular purpose, it frees up capital for other purposes (for example, in the case of the Atherton Hotel, the purchase of poker

machines), raises due diligence and competitive neutrality questions and can create fractures in small and already fragile communities. This particularly applies if the grant process is not seen as transparent, rigorous and equitably accessible.

Findings and recommendations

In general terms, the Committee's inquiry found that the main processes by which projects are proposed, considered and approved for funding under the Regional Partnerships Program are reasonably sound, although there is scope for strengthening these processes and building more rigour and transparency into the governance framework. The Committee makes a series of recommendations that would make it mandatory for all applications to be developed in consultation with ACCs and for ACCs to have a minimum of ten working days to consider all relevant applications. The Committee considers that involvement of the ACCs in the application development process is an important safeguard for the RP program. Multi-region funding applications would also have to be referred to all relevant ACCs under the improved assessment procedures that the Committee recommends DOTARS develops.

To assist ACCs to perform this enhanced role, the Committee recommends a review of the resourcing of ACCs and enhanced training of committee members and staff, as well as the adoption of three-year operational funding contracts to support strategic planning. It also recommends the Government conducts a review of the role of ACCs to ensure their contribution to regional development is maximised.

The Committee considers that greater transparency around the RP program is required to allow the Parliament to monitor this significant area of expenditure and as a check on arbitrariness and politicisation. It recommends that a biannual statement be tabled in the Senate that lists information basic to providing an adequate level of scrutiny of the program, including all RP grants approved in the preceding six months, the department's and ACC's recommendations for each grant and a statement of reasons for decisions which are inconsistent with departmental and/or ACC recommendations. The Committee also recommends that ACC recommendations be disclosed to funding applicants on request.

In the Committee's view, the SONA procedures represent a fundamental accountability black hole and need to be removed. They expand the scope for departmental and ministerial discretion to unacceptable limits, providing a default to fund projects without reference to the program criteria/guidelines. The Committee recommends that the SONA guidelines be abolished.

The Committee also concluded that the processes and procedures of the Sustainable Regions Program appear to be broadly sound, but its examination of SR projects in the Atherton Tablelands region highlighted problems arising from an insufficiently representative SRAC structure, opaque processes for appointing SRAC members and a lack of transparency around application processes. It makes recommendations to address those deficiencies.

To strengthen the governance framework for both programs, the Committee recommends that projects must have obtained relevant approvals or licences to be eligible for RP or SR funding. Similarly, it recommends that no program funding be approved for projects that fail to meet either program's guidelines and other tests including proper due diligence. It also calls for due diligence processes and competitive neutrality procedures to be strengthened.

One of the major areas of concern to emerge from the inquiry surrounds the role of ministers and their staff. The Committee found that current arrangements are not adequate to mitigate the risk of conflicts of interest. It is also deeply concerned by the intervention by ministerial offices in the department's assessment processes which the Committee considers was inappropriate and antithetical to the principle of the public service providing frank and impartial advice to ministers. While the Committee, on balance, supports the retention of ministerial discretion for each program, it recommends that ministers, parliamentary secretaries and their staff should be prevented from intervening in the assessment of grants. It also recommends strengthening existing measures to keep ministers at arm's length from applications that originate from their own electorates.

The finding that over half of grants approvals occurred in the three months leading to the federal election announcement in 2004 is another critical area of concern. This can only feed allegations of 'pork barrelling' with these programs and increase perceptions of bias, particularly in the context of election campaigns. The Committee recommends improved procedures to enhance the accountability of ministers during the sensitive period leading up to federal election campaigns.

