

Appendix 6

Correspondence relating to the Committee's request to ACCs and SRACs

1. DOTARS weekly email, dated 7 February 2005.
2. DOTARS email to all ACC and SRAC Chairs, dated 17 February 2005.
3. Letter from the Chair of the Finance and Public Administration Committee
Senator Michael Forshaw to Ms Leslie Riggs, dated 22 March 2005.

1. DOTARS weekly email, dated 7 February 2005

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Tabled 10 Feb 2005

Riggs Leslie

From: Palmer Suzie
Sent: Monday, 7 February 2005 6:00 PM
Cc: Jenkins Judy
Subject: WEEKLY EMAIL 7 FEBRUARY 2005
Importance: High



Dear Chairs and Executive Officers

Welcome to the DOTARS weekly email. All messages contained in this email are prioritised: For Action, Optional to Action or For Information. Urgent requests only will be sent to you as one off e-mails, for example where the Minister requests your advice within three days.

If you experience any difficulties with these emails or fail to receive attachments where these are indicated, please send an email to Suzie.Palmer@dotars.gov.au

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* Indicates there is an attachment to this item.

1. ACC MATTERS

1.1* SENATE INQUIRY – COMMITTEE’S REQUEST TO ACCs and SRACs - For Appropriate Action

As part of its Inquiry into the Regional Partnerships and Sustainable Regions Programmes, the Senate Finance and Public Administration Committee (the Committee), has sent a letter to all Area Consultative Committees (ACCs) and Sustainable Regions Advisory Committees (SRACs) requesting that they provide the Committee with all minutes and recommendations concerning local Regional Partnerships and Sustainable Regions applications, including relevant documentary records.

DOTARS wishes to provide Committees with the following information to assist ACCs and SRACs decide if they should respond to this request from the Committee.

The Department is working to provide the Senate inquiry with as much of the information requested on project applications as possible to assist the Committee with its inquiries. The Department’s

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position with respect to applications that were not approved or have been withdrawn by applicants, is that these applications should not be subject to the same level of public scrutiny as projects that have received government funding. It is in the interests of these applicants that details of their applications not be made publicly available as this could prejudice their attempts to refine their applications, seek funding under other government programmes or through private sources.

In providing information to the Senate Committee on approved, not approved and withdraw projects, the Department used the following format which can be found at http://www.aph.gov.au/senate/committee/fapa_ctte/reg_partner_prog/submissions/sub14att1.pdf and http://www.aph.gov.au/senate/committee/fapa_ctte/reg_partner_prog/submissions/sub14att2.pdf

Under established conventions accepted by successive Governments, departments are not required to disclose the nature of their advice to Ministers and the Department has taken the view that recommendations (and relevant preparatory work such as assessments and minutes of meetings) made by ACCs and SRACs are an important part of this advice that is not being disclosed. SRACs have a different role to ACCs in that they are established primarily to provide advice to Ministers. Under established conventions, accepted by successive Governments, advice to Ministers is not normally disclosed to Senate Inquiries.

Ultimately, the question of whether an ACC or SRAC provides the requested information to the Senate Committee is one for individual Committees to decide.

In determining if or how they wish to respond to this request for information, each ACC or SRAC should maintain an awareness of their responsibilities and obligations under relevant Commonwealth legislation including the:

Privacy Act (1988) as it relates to the handling of personal information collected by ACCs and SRACs in the performance of their activities, and
Criminal Code Act (1995) and its provisions dealing with fraudulent conduct and false or misleading statements and information.

In addition, ACCs should also have regard to their Constitution, Rules of Incorporation and relevant State or Territory incorporations legislation. This will not apply to SRACs as they are not incorporated bodies.

Where ACCs and SRACs elect to provide information to the Committee, it would be appropriate to seek the consent of individual applicants to disclose details of their applications before publicly releasing this information. This is consistent with the requirement for Australian Government decision makers to consult with third parties about information relevant to them when assessing requests under the Freedom of Information Act (1982), to obtain their comments on whether documents should be released or withheld.

ACCs also have obligations under the ACC Charter, the ACC Handbook and their Operational Funding Contracts with the Commonwealth.

In particular, DOTARS would alert ACCs to clauses in the funding contract relating to record keeping, disclosure of information, protection of personal information and compliance with laws and Commonwealth policies and how these will impact upon each Committee's decision whether to provide information.

DOTARS would also like to remind ACCs of their apolitical status and section 4.4.5 of the Handbook regarding public comment on political and social issues.

The attached extracts of the ACC Handbook and funding contracts are provided to SRACs for their information.

In making a decision on whether to disclose particular information, ACCs and SRACs should also consider and balance the implications providing this information could have on applicants and the

Committee (including its members and staff) within their community.

ACCs and SRACs that elect to provide the Committee with information on funding applications might consider that providing summary information to the Committee would be more useful than meeting records.

Contact: Judy Jenkins on (02) 62747343 or Email: judy.jenkins@dotars.gov.au

1.2* Australia Day honours for Ron Yuryevich - For Information

Congratulations to Ron Yuryevich , Chair of the Goldfields Esperance ACC and Mayor of Kalgoorlie - Boulder on being awarded the Member of the Order of Australia (AM) in the Australia Day honours .

For further details please see Attachment 1.2*

1.3 CRG - Follow up Action - For Information

At the November 2004 CRG Teleconference, an issue was raised re the Rising Incidence of Suicide. We were asked to circulate a copy of the Dept. of Health & Aging's "National Suicide Prevention Strategy". Listed below is the link to that strategy for information:

<http://www.health.gov.au/internet/wcms/publishing.nsf/Content/mentalhealth-sp-nspis-index.htm>

Contact: Kathy Mayes on (02) 62747046 or Email kathy.mayes@dotars.gov.au

2 OTHER INFORMATION

2.1* Cultural Diversity Case Study

This case study outlines a local government project designed to help recently arrived migrants learn about and care for their local environment. Hume City Council entered this project in the *Strength in Diversity* category of the 2004 National Awards for Local Government.

For further information please refer to the Attachment 3.1

Contact: Simone Gauci on (03) 92952208 or Email: simoneg@hume.vic.gov.au

2.2 Updating Contact Lists - For Action

In 2003, Vicki Dickman moved to a different area within the Department. She is now Assistant Secretary for Regional Freight and Security. Could you please remove Vicki from your mailing lists if the matter is an ACC one. The DOTARS' contact for ACCs is now Judy Jenkins or myself.

Contact: Judy Jenkins on (02) 62747343 or Email: judy.jenkins@dotars.gov.au

2.3* SEGRA 2004 - Conference Proceedings Order Form - For Information

Management Solutions (the organisers of the September 2004 Sustainable Economic Growth for Regional Australia (SEGRA) Conference) now have available a CD containing all the presentations from the conference. Please refer attached flyer and order form in Attachment 2.3*.

Contact: Kathy Mayes on (02) 62747046 or Email:kathy.mayes@dotars.gov.au

Regards

Suzie Palmer on behalf of

Gary Dolman
Assistant Secretary
Regional Communities

8/02/2005

Extracts from ACC Operational Funding Contract

9. Records

- 9.1 The ACC shall cause to be kept full and accurate Records of the conduct of ACC Activities including, without limitation, progress against the ACC Business Plan and budget, the receipt and use of Operational Funding and Other Funding (if any), the acquisition of Assets and the creation of Intellectual Property Rights in Activity Material.
- 9.2. The ACC shall implement a records management system that:
- (a) clearly marks and securely stores Commercial-in-Confidence *Regional Partnerships* applications and other confidential material and files;
 - (b) manages the distribution and retrieval of RP applications to ACC Board members (particularly where these are Commercial-in-Confidence);
 - (a) maintains accurate, up-to-date files of all operational documents;
 - (b) maintains secure, separate files for ACC personnel (that contain employment contracts, performance reports and other appropriate material); and
 - (c) appropriately disposes of records when the records have ceased to be of current value.
- 9.3. The ACC shall maintain records of vehicle usage consistent with the requirements of the Australian Taxation Office (ATO).
- 9.4. The ACC shall ensure all electronic records are secure and appropriate back up and archival processes are established and maintained for such records.
- 9.5. Records maintained under the preceding subclause shall be retained by the ACC for a period of no less than seven (7) years after the end of the Funding Period.
- 9.6. The operation of this Clause survives the expiration or earlier termination of this Contract.

15. Disclosure of Information

- 15.1 The ACC acknowledges that the Commonwealth may be required to provide information in relation to Operational Funding or this, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly it can give no undertakings to treat any of the ACC's information or this Contract as confidential information.
- 15.2 The ACC shall not, without the prior written approval of the Commonwealth, disclose to any person other than the Commonwealth, any Confidential Information contained in Commonwealth Material or Contract Material. In giving written approval the Commonwealth may impose such terms and conditions as it deems fit.
- 15.3 The ACC shall give the Commonwealth written notice within three days if the ACC receives a request for access to or copies of information or documents forming part of the Confidential Information, Contract Material or Commonwealth Material.
- 15.4 The Commonwealth may at any time require the ACC to give and to arrange for its Members and ACC Personnel engaged in the performance of the ACC's Activities to give written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of such Confidential Information. The ACC shall promptly arrange for all such undertakings to be given.

- 15.5 The obligation on the ACC under this Clause shall not be taken to have been breached where the information referred to is legally required to be disclosed.
- 15.6 This Clause survives the expiration or termination of this Contract.

16. Protection of Personal Information

16.1 The ACC agrees to:

- (a) use Personal Information held or controlled by it for the purposes of this Contract only for the purposes for which it is collected and for fulfilling its obligations under this Contract;
- (b) take all reasonable measures to ensure that Personal Information in the ACC's possession or control in connection with this Contract is protected against loss and unauthorised access, use, modification, or disclosure;
- (c) comply, and ensure that any subcontractors also comply, with the Information Privacy Principles (IPPs) contained in section 14 of the *Privacy Act 1988* and National Privacy Principles (NPPs) 7, 8, and 10 to the extent that the content of those principles apply to the types of activities the ACC and any subcontractors, are undertaking under this Contract, as if the ACC, and any subcontractors, were (in respect to the IPPs) an "agency", or (in respect to NPPs 7, 8 and 10) an "organisation" as defined in the *Privacy Act*;
- (d) notify the Commonwealth in writing of any breach of the IPPs by the ACC or any of its subcontractors;
- (e) cooperate with any reasonable demands or inquiries made by the Commonwealth on the basis of the exercise of the functions of the Privacy Commissioner under the *Privacy Act* including a request from the Commonwealth to comply with a guideline concerning the handling of Personal Information;
- (f) ensure that any person who has an access level which would enable them to obtain access to any Personal Information is made aware of, and undertakes in writing, to observe the IPPs and other obligations referred to in this Clause;
- (g) comply, as far as practicable, with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information;
- (h) comply with any direction by the Commonwealth to observe any recommendation of the Privacy Commissioner relating to any of the ACC's acts or practices that the Privacy Commissioner considers to be in breach of the obligations in this Clause;
- (i) not transfer Personal Information held in connection with this Contract outside Australia, or allow parties outside Australia to have access to it, without the Commonwealth's prior written approval;
- (j) ensure that any record (as defined in the *Privacy Act*) containing Personal Information held in connection with this Contract is, at the expiration or earlier termination of this Contract, retained by the ACC and dealt with in accordance with the *Privacy Act*; and
- (k) indemnify the Commonwealth for:
 - (i) any loss, liability, or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of the ACC's obligations under this Clause; or
 - (ii) any misuse of Personal Information by the ACC; or

- (iii) any disclosure by the ACC in breach of an obligation of confidence whether arising under the *Privacy Act* or otherwise.
- 16.2 The ACC shall not use or disclose Personal Information collected under this Contract for direct marketing.
- 16.3 If a person asks either the ACC or the Commonwealth to be informed of the content of provisions of this Contract that are inconsistent with an approved privacy code binding on the ACC or with a NPP, the Party requested shall inform the person in writing of that content.
- 16.4 An act done or practice engaged in by the ACC or a subcontractor for the purposes of meeting (directly or indirectly) an obligation under this Contract:
 - (a) is authorised by this Clause even if the act or practice is inconsistent with a NPP or an approved privacy code that applies to the ACC or the subcontractor; and
 - (b) is subject to the other obligations in this Clause.
- 16.5 The operation of this Clause survives the expiration or earlier termination of this Contract.
- 16.6 For the avoidance of doubt, any reference to an ACC's subcontractor in this Clause is not intended to alter the meaning of "ACC" or "ACC Personnel" as defined in Clause 1.

27. Compliance with Laws and Commonwealth Policies

- 27.1 The ACC shall, in carrying out the obligations under this Contract, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority, including those listed in the Schedule. The ACC notes that giving false or misleading information is a serious offence under section 137.1 of the *Criminal Code Act 1995* (Cth).
- 27.2 The ACC shall, in carrying out the obligations under this Contract, comply with any Commonwealth policies as notified by the Commonwealth to the ACC in writing, including those listed in the Schedule.
- 27.3 The ACC shall, when using the Commonwealth's premises or facilities, comply with all reasonable directions and procedures relating to occupational health (including the Commonwealth's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

Extract from ACC Handbook

4.4.5. Public Comment on Political and Social Issues

The Government does not restrict ACC Chairs, members and employees making public comment. However, they must be aware that there is a tension between comments made in a personal capacity and in their capacity as a representative of an ACC. Therefore, ACC Chairs, members and employees should carefully consider the impact of any public comments they make. In particular, ACC Chairs, members and employees should not take any action or make any public comments in their role as a

representative of an ACC that might imply that the ACC prefers or supports the policies of a particular political party.

In this context public comment includes comments made on political and social issues as part of public speaking engagements, radio and television interviews, general correspondence, and in any other circumstances, where it is reasonably foreseeable that the comment will flow to the community at large.

2. DOTARS email to all ACC and SRAC Chairs, dated 17 February 2005

All ACC and SRAC Chairs

Some Area Consultative Committees and Sustainable Regions Advisory Committees have received a further letter from the Senate Finance and Public Administration References Committee concerning the information it has requested in relation to applications for funding under Regional Partnerships or the Sustainable Regions Advisory Committee.

Further to our email advice of 7 February, we would like to bring to your attention the following:

- It is the decision of your committee as to what information it intends to provide to the Senate Committee.
- You should be aware that Parliamentary Committees have broad powers to require the production of information or the appearance of witnesses. Committees have power to issue orders to this effect. At this stage the Committee has only requested that the information be provided. It has not ordered production of the material.
- If you do not intend to fully comply with the Committee's request, that position should be capable of being justified, and should be justified to the Committee, on grounds which the Committee may accept in order to avoid the matter escalating to the point where the Committee orders production.
- Sometimes Committees will accept that material which is advice to the Minister should not be disclosed if its disclosure would be contrary to the public interest. If you intend to rely on this ground, you must be able to explain why the disclosure of the material would be contrary to the public interest - for example, because it would disclose personal information contrary to the Privacy Act or it would breach an obligation of confidence or your duties as directors. You may be aware that some Senate Committee members do not accept the Department's view that ACC advice can be seen as advice to Ministers.
- If you do provide the information, the rules of parliamentary privilege mean that you will not be subject to any penalty or other detriment - for example, if your evidence were considered by a third party to have breached an obligation of confidence or other legal duty.
- As pointed out in the letter from the Committee, you can request that the material be taken 'in camera', that is treated as in-confidence. Again, it is wise to be able to support any such request with the 'public interest' considerations mentioned above.

The Department has also been advised that members of ACCs or SRACs may be asked to be witnesses at Committee hearings, particularly when they are held in regional areas. In considering this request, ACC and SRAC members need to be aware that the Senate Committee has the power to summon witnesses and those witnesses are required to appear and answer questions. However, those witnesses who attend voluntarily by invitation may not be required, at least in the first instance to answer questions.

We draw your attention to the Senate web site that provides the most inclusive information on the powers of a Senate Committee while undertaking an inquiry of this nature. These details are at the following web site address:

<http://www.aph.gov.au/Senate/pubs/odgers/chap16toc.htm>

Attached are further documents which provide guidance on appearance before senate committees and their powers.

Gary Dolman

Assistant Secretary

Regional Communities Branch

**3. Letter from the Chair of the Finance and Public Administration
Committee Senator Michael Forshaw to Ms Leslie Riggs, dated 22 March
2005**



AUSTRALIAN SENATE

FINANCE AND PUBLIC ADMINISTRATION

REFERENCES COMMITTEE

PARLIAMENT HOUSE
CANBERRA ACT 2600
Telephone: + 61 2 6277 3530
Facsimile: + 61 2 6277 5809
Email: fpa.sen@aph.gov.au

19 September 2005

Ms Leslie Riggs
A/g Deputy Secretary
Department of Transport and Regional Services
GPO Box 594
Canberra ACT 2601

cc: Dr Gary Dolman

Dear Ms Riggs

I am writing on the Committee's behalf to raise matters of serious concern in relation to action taken by the Department of Transport and Regional Services regarding the Committee's inquiry into the Regional Partnerships Program.

The Committee has received a copy of advice sent by the department to all ACC and SRAC Chairs on Thursday 17 February, under the signature block of Gary Dolman, Assistant Secretary, Regional Communities Branch (attached). The Committee has several serious objections to the nature and content of this letter which I have set out below.

First, it is extraordinary that the department has assumed the authority to provide guidance on Senate procedure and practice. It is completely inappropriate for the department to advise in this manner on matters beyond its role and function. The Senate, its committees and its own department are the authorities in these areas, and it is their role to provide such information and advice. The department should have been aware that any queries about the inquiry should have been referred to the Committee through the secretariat for a response.

Second, the department has determined to explicitly point out that the Committee has 'only requested that the information be provided', and has not ordered the production of documents. I am concerned that by inference the department has encouraged non-compliance with the Committee's request for information. Any such obstruction to the gathering of evidence for a Senate inquiry is unacceptable.

Third, the letter provides erroneous procedural interpretation. Dr Dolman's advice that ACCs and SRACs may wish to invoke public interest grounds for not disclosing documents to the Committee is misconceived. Under the procedures of the Senate, public interest immunity is not relevant in the case of incorporated bodies. Further, the examples cited, such as breaching the Privacy Act or duties as directors, are not grounds on which public interest claims before the Senate and its committees might rest. As the department well knows, the powers of the Senate and its committees are not affected by limitations in legislation such as the Privacy Act.

Fourth, the Committee is particularly aggravated that the letter purports to present the views of some Committee members. At point four of the letter, the department has made the claim that 'you may be aware that some members do not accept the Departments' view that ACC advice can be seen as advice to Ministers'. Neither the department nor any other body or person is entitled to speak for the Committee or its members. It is totally inappropriate for the department to presume to inform witnesses of the Committee's views on any matter.

I note that this is the second occasion on which the department has issued advice to ACC and SRAC bodies about this inquiry. You should be advised that disseminating incorrect advice about committee powers and procedures constitutes interference in the process of the Committee's inquiry and may be considered contempt of the Senate. I wish to clearly advise that the Committee will not countenance interference in its conduct of this inquiry.

The Committee will be providing a copy of this letter to all ACCs and SRACs.

Yours sincerely

Senator Michael Forshaw
Chair