



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEES

BUDGET ESTIMATES 2021-2022

Questions on Notice

Portfolio Committee No. 7 – Planning and Environment

LOCAL GOVERNMENT

Hearing: Tuesday 8 March 2022

Answers due by: 4 April 2022

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LOCAL GOVERNMENT

Questions from the Hon Mark Buttigieg MLC *(on behalf of the Opposition)*

1. DEVELOPERS ON COUNCILS - Question taken on notice:

The Hon. MARK BUTTIGIEG: Minister, you would be well aware there is a bill sitting in the LA now, the Local Government Amendment (Disqualification from Civic Office) Bill 2020, which got through the upper House. You made comments in the second reading debate where you stated:

The kindest thing that I can say about this bill is that it is an improvement on the previous one, but only because of the work the Government has already done to improve the integrity of our electoral system.

Could you specifically identify what work has been done to improve the integrity of the electoral system?

Mrs WENDY TUCKERMAN: There were amendments made in regard to tightening up those disclosure laws with the Electoral Commission. That is what I was talking about.

The Hon. MARK BUTTIGIEG: In what manner?

Mrs WENDY TUCKERMAN: Sorry?

The Hon. MARK BUTTIGIEG: When you say "tightening up"—

Mrs WENDY TUCKERMAN: In regard to detail, I would probably have to take that on notice, but I am happy to ask the deputy secretary to expand on what those measures were.

MELANIE HAWYES: Thanks, Minister, if that is helpful. There were requirements for candidates to disclose whether they are a property developer or a close associate on their candidate information sheet and there were also provisions to enhance deterrence to councillors misusing their office for personal gain. The secretary now has the ability to apply to the Supreme Court for an order requiring a councillor to repay any financial gain they make if it is proven that they have breached their obligations.

The Hon. MARK BUTTIGIEG: Secretary, of those provisions, which ones are the additional ones, the tightening up, because my understanding was that there was a pre-existing requirement for a candidate information sheet. I may be wrong. Is it the recourse of the Supreme Court that has been added in?

MICHAEL CASSEL: I would need to take that on notice.

Answer:

I am advised:

The Government has made significant reforms to the regulation of political donations and electoral expenditure at State and local government elections by legislating the Electoral Funding Act 2018.

Among other things, that legislation introduced a tighter definition of “property developer” than the one contained in the previous Election Funding, Expenditure and Disclosures Act 1981.

2. DEVELOPERS ON COUNCILS - Question taken on notice:

The Hon. MARK BUTTIGIEG: In your second reading debate contribution, you said:

A total prohibition of classes of persons from standing for elected office at any level of government is likely to require very significant levels of justification to withstand challenge.

Minister, have you got any legal background on which to base that assessment, that the bill would be subject to challenge?

Mrs WENDY TUCKERMAN: I am advised so. I obviously have been in a legal framework in regard to investigations with the Australian Federal Police but, no, I am not a solicitor or a legal—

The Hon. MARK BUTTIGIEG: This is one of the Government's arguments against the bill. Has the Government sought formal legal advice to that effect?

Mrs WENDY TUCKERMAN: I would have to take that on notice.

Answer:

I am advised:

Yes.

3. DEVELOPERS ON COUNCILS - Question taken on notice:

The Hon. MARK BUTTIGIEG: Minister, are you aware of the legal precedent that has occurred here regarding Mr McCloy? It was upheld that in fact that argument does not hold water because, on balance, the conflict presented by someone in that situation outweighs the interest in freedom of association and running for public office, in summary? Mr Shoebridge might want to elaborate on that ruling, but that was the effect of it. So, in fact, there is no legal basis for what you are arguing.

Mrs WENDY TUCKERMAN: As I said, Mr Buttigieg, I will have to take that on notice.

Answer:

I am advised:

The Government is aware of the High Court's decision in the matter of McCloy v NSW. That decision informs the Government's position on the Opposition's Bill.

Questions from Mr David Shoebridge MLC

4. DEVELOPERS ON COUNCILS - Sutherland Council – Question taken on notice:

Mr DAVID SHOEBRIDGE: While we are on property developers and councillors, has your department undertaken an investigation of Hassan Awada? He was recently elected to Sutherland council and declared he was not a property developer, despite the fact that his partner was involved—indeed, had an application for a development for some 52 apartments on land that she owned and some adjoining property—and despite the fact that he benefitted substantially from previous rezonings for his property portfolio from Sutherland council. He said he was not a property developer. Have you done anything about it?

Mrs WENDY TUCKERMAN: I am not aware of the matter, but I am happy to ask the deputy secretary to respond.

MELANIE HAWYES: This one I will take on notice if there is a live investigation underway.

Mr DAVID SHOEBRIDGE: Is there a live investigation?

MELANIE HAWYES: I am not aware at this point. I will take it on notice.

Mr DAVID SHOEBRIDGE: It was notorious. It was the subject of articles in *The Sydney Morning Herald* in the run-up to the local government election. You are telling us that the disclosure regime protects everybody, and no-one has even looked. Is that the evidence: no-one has even looked?

Mrs WENDY TUCKERMAN: No.

MELANIE HAWYES: No, that is not the evidence. We will take it on notice.

Answer:

I am advised:

Questions relating to the declaration of, or association with a property developer as part of the candidacy for the Local Government election should be directed to the NSW Electoral Commission.

The Commission is responsible for enforcing the offence provisions of the *Local Government (General) Regulation 2021* relating to council elections including those relating to the making of false statements in papers relating to an election.

The OLG does not comment on specific allegations or confirm whether an investigation is currently taking place in relation to an identifiable individual.

5. DEVELOPERS ON COUNCILS - Hawkesbury Council – Question taken on notice:

Mr DAVID SHOEBRIDGE: I am going to ask directly: Is there an investigation into Councillor Sarah Richards for the failure to disclose the connection with property development?

Mrs WENDY TUCKERMAN: Sorry, I am not aware of any because obviously I do not have any oversight on individual matters.

Mr DAVID SHOEBRIDGE: Minister, I am going to ask it of either the secretary or the deputy secretary.

MICHAEL CASSEL: I am happy to take that on notice. I am not aware of any investigation at this point in time. If you believe you have some information that you can share with us, I am happy to look at that as well.

Mr DAVID SHOEBRIDGE: It was not hiding under a rock, secretary. It was published in *The Sydney Morning Herald*. Even the most basic level of due diligence in the Office of Local Government could have found this. You could have brought to it the office on the morning.

MICHAEL CASSEL: Without being cheeky, Mr Shoebridge, not everything that gets reported in the paper is fact.

Mr DAVID SHOEBRIDGE: Well, I have had a look at the—

MICHAEL CASSEL: And I am not aware that we have moved forward with an investigation. I will take that on notice.

Mr DAVID SHOEBRIDGE: You will be pleased to know I have checked the website for BCM Property and real estate development, or I did at the time, and what was reported about the disclosure of their business was true.

MICHAEL CASSEL: Thank you.

Mr DAVID SHOEBRIDGE: But you needed to look, did not you, secretary? You needed to actually look. Somebody needed to be proactive and look, and nobody in the Office of Local Government was. Do you accept that?

MICHAEL CASSEL: No, I do not accept that. As I said to you, I will take it on notice. For all I know, there could be moves afoot. So I do not want to mislead the committee and I want to take it on notice.

Answer:

As per (4) above.

6. DEVELOPERS ON COUNCILS - Lake Macquarie Council – Question taken on notice:

Mr DAVID SHOEBRIDGE: What about Councillor Luke Cubis of Lake Macquarie who, at the time he got elected, had an outstanding application to Newcastle council to subdivide some 24 residential lots and a long history of property development? Did that trigger even the slightest alarm bell in the Office of Local Government, because he said he was not a property developer or associated with being a property developer?

MICHAEL CASSEL: I am not aware of that matter either. I am happy to take that one on notice.

Mr DAVID SHOEBRIDGE: The disclosure regime does not work, does it, Minister? You could drive a truck through it, or you could put a 24 lot subdivision through it, could you not? That is the truth, is it not, Minister?

Mrs WENDY TUCKERMAN: No. Well, I am not sure what you are referring to in regards to the individual matters, and that has obviously been taken on notice. We will address those issues as they arise. But also, Mr Shoebridge, you know it is really important that if you have any information to also forward it on for looking at.

Answer:

As per (4) above.

7. DEVELOPERS ON COUNCILS - Various – Question taken on notice:

Mr DAVID SHOEBRIDGE: Do you know if any of the councillors Awada, Richards or Cubis have made a disclosure about being covered by the property development provisions of the Act at any time since they have been elected, including when they have dealt with planning matters?

ALLY DENCH: I am not aware of that, but I will take it on notice.

Answer:

I am advised:

The property development provisions are contained under Schedule 1; Clause 19 and 20 of the Model Code of Conduct. Clause 4.21 requires councillors to submit a disclosure of interest written return within 3 months of becoming a councillor, or upon becoming aware of an interest that they are required to disclose, that has not been previously disclosed. Such disclosures are a matter for the relevant council and are made publicly available by that Council.

8. COUNCILLORS ON MULTIPLE COUNCILS – Question taken on notice:

Mr DAVID SHOEBRIDGE: Minister, Councillor Cubis is an interesting creature because he was the first person that I am aware of who sought to get elected to two councils at the same time. Were you aware of that?

Mrs WENDY TUCKERMAN: Yes, I am aware, yes.

Mr DAVID SHOEBRIDGE: One because he said he lived somewhere, and one because he owned some property somewhere. I think it was MidCoast and Lake Macquarie. Does that ring a bell?

Mrs WENDY TUCKERMAN: Yes, yes.

Mr DAVID SHOEBRIDGE: Will you bring some legislation urgently to prevent that ever happening again?

Mrs WENDY TUCKERMAN: I will take that on notice, Mr Shoebridge.

Answer:

I am advised:

The Government will consider this matter further in consultation with the NSW Electoral Commission.

9. COUNCILLOR SUPERANNUATION – Question taken on notice:

Mr DAVID SHOEBRIDGE: Would Local Government NSW endorse and support it—councillor superannuation? In fact it endorsed and supported compulsory councillor superannuation. The sector is on board. Where is the circular and the information and the support going to councils and councillors to encourage them, to give them the information so that between now and 1 July as many councils as possible can resolve to have superannuation paid?

MELANIE HAWYES: A range of circulars go out, and I will take on notice what has already gone in the past, if that is of interest to the Committee, and there will be future circulars and suggestions about this matter, as you would expect.

Answer:

I am advised:

Councils were informed of the amendments to the *Local Government Act 1993* allowing councils to make superannuation contributions for councillors in circular 21-07 issued on 27 May 2021.

Information about the availability of superannuation for councillors was also provided in the OLG's guide for candidates at the 2021 local government elections and in its online training tool for candidates.

Information about the availability of superannuation for councillors has also been provided in the Councillor Handbook issued following the local government elections.

Detailed guidance on the payment of superannuation for councillors has been provided to councils in circular 22-04 issued on 15 March 2022.

10. DEVELOPERS ON COUNCILS – Question taken on notice:

Mr DAVID SHOEBRIDGE: Minister, do you know how many declared property developers got elected to council?

Mrs WENDY TUCKERMAN: No, I am not aware.

Mr DAVID SHOEBRIDGE: Does anybody keep a record of that?

MELANIE HAWYES: The Electoral Commission would have records of disclosure.

Mr DAVID SHOEBRIDGE: Given the additional obligations on property developers to disclose when there is a conflict of interest going forward, do you not think it would be sensible for there to be a register or record held by the office that is responsible for enforcing the code of conduct?

Mrs WENDY TUCKERMAN: I am not aware that there is a register, but I am happy to defer to get advice from the Office of Local Government.

ALLY DENCH: The register is the Electoral Commissioner's responsibility in the lead-up and people making disclosures in that regard.

Mr DAVID SHOEBRIDGE: But there is no register there. There is a bunch of PDFs that you have to search one after the other to find out. There is no register there. There is no register anywhere. Are you comfortable with that, Minister?

Mrs WENDY TUCKERMAN: I am happy to take that on notice and give it some consideration.

Answer:

I am advised:

As per (4) above.

11. INVESTIGATIONS – Question taken on notice:

Mr DAVID SHOEBRIDGE: Minister, do you know how long the longest outstanding code of conduct complaint is at the moment?

Mrs WENDY TUCKERMAN: Just give me a minute to check. That would probably be something that I would ask the Office of Local Government to give some advice on.

Mr DAVID SHOEBRIDGE: Ms Hawyes?

MELANIE HAWYES: So coming into the role, one of the first things I am doing is getting a sense of the investigation load underway, including the age of matters. I will take that on notice so that I can get an accurate response. The information is being brought to me for the very reason of really having a look at the function of that team and understanding where there are areas that we may be able to improve things going forward.

Mr DAVID SHOEBRIDGE: Ms Hawyes, I know you have only been in the job for five weeks. No-one can blame you for the mess that you have inherited. I want to make that clear for the record: No-one is blaming you for the mess you have inherited. But I want to get an understanding of the scale of the mess. Surely you would have some information about the longest outstanding code of conduct complaint?

MELANIE HAWYES: I will not respond to your comment about the organisation. My observation is that it is packed full of people who are trying to do a good job. What I would say is that I will again take on notice the matter of how many investigations are underway and their relative age.

Answer:

I am advised:

As at 4 April 2022, there were 8 investigations underway. Of these, the longest ongoing investigation has been running for three years and two months from the date the complaint was received by the OLG.

12. INVESTIGATIONS – Question taken on notice:

Mr DAVID SHOEBRIDGE: It probably helps if you wait until the end of the question. Former Mayor Brady of Cobar, who made an extraordinary contribution to local government, died in February of last year, having waited two years for her code of conduct complaint to be resolved by the Office of Local Government. It was not resolved at the time she died. Has it been resolved?

MELANIE HAWYES: I will take that one. That is an unacceptable length of time. I will take on notice whether it has been resolved or not, but it would not be going forward given that that person is deceased.

Answer:

I am advised:

This matter was finalised on the 14 April 2021.

Questions from the Hon Rose Jackson MLC *(on behalf of the Opposition)*

13. INVESTIGATIONS – Question taken on notice:

The Hon. ROSE JACKSON: I might briefly ask a follow-up question on that. Most of the matters that my colleagues have raised, Mr Buttigieg and Mr Shoebridge, have been publicly reported in the newspaper. Is there any system in which the Office of Local Government has some kind of alert when something is publicly reported in the newspaper that might trigger or automatically triggers an internal note or investigation?

Mrs WENDY TUCKERMAN: I will ask the deputy secretary to speak to that.

MELANIE HAWYES: Of course, we would look at what is reported in the news. That does not necessarily automatically mean there has been misconduct. There needs to be an appropriate process and all fair due process afforded to the person against whom an allegation is made. We would look at reports. We have relationships with LGNSW, with councillors, and members of the public can also contact us. We have a misconduct framework and people working on misconduct matters. It is distinct from disclosure. If you have evidence of potential misconduct, we will look into this and/or speak with the Electoral Commission about the matters that have been discussed today.

The Hon. ROSE JACKSON: I am not necessarily referring to the individual cases that have been raised. They are examples. Hypothetically, a media report that a councillor has misused a mobile phone, has failed a declaration, has done the wrong thing—that appears in the media. Obviously, I accept that is not a *fait accompli* to guilt, but what is the office's response to that when that happens? If they pick up the newspaper in the morning and they read it, what happens next?

MELANIE HAWYES: As you would expect, you look at it and you have a look at how serious it is and ask contacts around the sector whether they are aware of any issues and look into it further, if that is appropriate. At times that might even be about speaking with the person who made the report and/or people mentioned in the report. That would be a normal part of practice, as you would expect.

The Hon. ROSE JACKSON: Who makes the decision about whether it is serious or not or whether follow-up action is required or not?

MELANIE HAWYES: We have a team that work on investigations. They have a manager. It is escalated—as you would expect, again—to myself, if it is serious. We have a team that works on that.

Answer:

I am advised:

Decisions on whether an allegation, whether raised in the media or via the formal complaints line, are subject to detailed review and assessment, independent of public discourse.

The Framework for Managing Councillor Misconduct Allegations is publicly available and can be accessed here: <https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/councillor-misconduct/>

14. INVESTIGATIONS – Question taken on notice:

The Hon. ROSE JACKSON: How many current investigations are afoot?

MELANIE HAWYES: I undertook to take that on notice when it was raised earlier. My understanding is 13, but I do not want to provide information that is not 100 per cent accurate. In the break I will verify that.

The Hon. ROSE JACKSON: Are you able to provide information as to how many reports were received either through the media or members of the public or members of Parliament or anyone where an investigation was decided not to proceed or where they have read it and thought, "No, this is not serious. We will just leave that one"?

Mr DAVID SHOEBRIDGE: Con Hindi, for example.

The Hon. ROSE JACKSON: How many of those are there?

MELANIE HAWYES: I mean, people can ring the OLG at any point in time and there are thousands of calls made that span a range of matters. That is quite a complicated question to answer on the spot. They can range from a complaint that somebody does not like someone through to something that is a more serious allegation of misconduct. So that is a little bit of an open-ended question to answer on the spot.

The Hon. ROSE JACKSON: But can you see why that is useful information for the public to know? Say, for example, there are 13, but in fact thousands and thousands of complaints have been made. Obviously, that seems like it is not a large number. Whereas if it is a smaller number of serious allegations that have been made then 13 might seem reasonable. It is useful for us to know the scale of the problem of complaints to know whether the number of investigations occurring—

MELANIE HAWYES: Yes, I understand. But it goes to the category. What are people complaining about and how is it then triaged into a formal investigation? I understand the question. I am just not able to answer it on the spot.

Answer:

I am advised:

As at 4 April 2022, there were eight misconduct investigations under way and two Section 430 investigations into council operations.

Questions from the Hon Mark Pearson MLC

15. INVESTIGATIONS – Question taken on notice:

The Hon. MARK PEARSON: If a councillor is under investigation and they have not stepped down and they have participated, let's say, for a three- to six-month period while the inquiry or investigation is occurring, if they have voted on a development or an issue and it was shown that they did have a conflict or that the allegations were correct and that could have influenced that vote, is there a process where we retrospectively go back and look at that vote again if it is discovered that the councillor was potentially influenced in taking a vote and that vote could have reflected an interest which was not declared?

MELANIE HAWYES: There are sanctions and the secretary has the power to compel someone to repay any financial benefits they have gained, if it is determined that they gained them in an unfair manner. The range of sanctions that we have available are under review at the moment. It is an opportunity to think about areas of improvement.

The Hon. MARK PEARSON: What about if a development was approved that would not have been approved if the knowledge was there that that councillor should not have voted? Can we go back and vote again?

MELANIE HAWYES: I think I will take that on notice. It is a process about how councils vote and that is not something that I am probably best qualified to speak on. If I can take it on notice as to what the generic process might be—bearing in mind that councils are autonomous.

Answer:

I am advised:

Under section 374 of the *Local Government Act 1993*, proceedings at a meeting of a council or a council committee are not invalidated because of a failure of a councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with the council's code of conduct.

However, where a councillor has failed to disclose a pecuniary interest, the departmental chief executive of the OLG may apply to the Supreme Court under section 490C of the Act, for the councillor to pay to their council, the amount of any monetary benefit they received as a result of their breach.

Questions from Mr David Shoebridge MLC

16. DEVELOPERS ON COUNCILS (DISCLOSURES) – Question taken on notice:

Mr DAVID SHOEBRIDGE: As I understand it, your position is if there is any problem—if there are any false or untrue claims made in that—it is not your business but the NSW Electoral Commission's business. Is that your position?

Mrs WENDY TUCKERMAN: These are a matter for the Electoral Commission, yes, that is correct. If there are any signs of misconduct or false declarations, obviously that is a matter for the Electoral Commission, and any misconduct matters will be a matter for the Office of Local Government.

Mr DAVID SHOEBRIDGE: Do you say that on advice? Have you got advice to that effect?

Mrs WENDY TUCKERMAN: No, I do not.

Mr DAVID SHOEBRIDGE: Why do you say it the Electoral Commission's job?

Mrs WENDY TUCKERMAN: Because they are in charge of the declaration.

Mr DAVID SHOEBRIDGE: Maybe I will assist by reading onto the record from the current *Candidate handbook*, published by the NSW Electoral Commission, in relation to those sheets. It states: The candidate information sheet may contain other information, such as date of birth, occupation, qualifications, statements of policy or beliefs and any other relevant information. The Local Government Act contains provisions which make it an offence to provide false or misleading information. However, neither the Returning Officer nor the NSW Electoral Commission has a role to play in determining whether or not any claims or statements made in a candidate information sheet are factual. Minister, the NSW Electoral Commission fundamentally disagrees with you, does it not?

Mrs WENDY TUCKERMAN: Clearly, if that is the case, I am happy to take that on notice.

Mr DAVID SHOEBRIDGE: So we have "not your job, not their job, not anybody's job". It is basically lawless?

Mrs WENDY TUCKERMAN: No, that is not correct. If there is an issue around misconduct, it is our job.

Mr DAVID SHOEBRIDGE: But that is 180 degrees contrary to what you have been saying for the last 40 minutes. I am happy for the somersault and the backflip and for you to do something, but you cannot say white is black and black is white without acknowledging that there is a problem here.

MELANIE HAWYES: That is not the case. The Electoral Commission administers disclosures. If there is evidence that someone has made an incorrect disclosure and it goes to misconduct, that would come to us and there are provisions to investigate and respond to that.

Mr DAVID SHOEBRIDGE: Ms Hawyes, that is a courageous cover for what has happened. But all of the witnesses here who have had a chance to say have said that any false or misleading statement in the candidate sheet in relation to being a property developer is a matter for the Electoral Commission. I have now put to you in black and white that the Electoral Commission fundamentally disagrees. We are in a situation, Ms Hawyes—you can agree or disagree with this—where it is effectively lawless. They can say whatever they like and get elected however they like with whatever statements; it is not your job, it is not the Electoral Commission's job. We have got a problem, have we not?

MICHAEL CASSEL: Mr Shoebridge, I might take that one. I do not agree with the way that has been put forward. We have said if we are made aware that something has been done untoward, we will investigate. We have been made aware today. Documents have been tabled. We need to go through due process on those. We are not saying that the Electoral Commission has to do the investigation. We are saying that when we are made aware of it, we will do the investigation. Thank you for making us aware of it.

The Hon. ROSE JACKSON: This is publicly reported.

MICHAEL CASSEL: I understand that.

Mr DAVID SHOEBRIDGE: Mr Cassel, can you get some understanding of the frustration?

MICHAEL CASSEL: Yes, I can.

Mr DAVID SHOEBRIDGE: When these matters have been in the paper—they are notorious. The Electoral Commission says they are not investigating, you are not investigating, we get the run-around and, at the end of the day, the public get misled by electing councillors who are falsely declared about not being a property developer. Your office does nothing; no-one does anything. Do you understand the frustration?

MICHAEL CASSEL: I understand your frustration, but I just want to clarify one thing there. I think I said thank you for making us aware. I will take on notice whether there is any live investigations into these matters. I did not say we were not investigating. I asked to take it on notice so I could be factual.

Mr DAVID SHOEBRIDGE: I bet London to a brick there is no investigation, given the Minister's position and attitude. I bet London to a brick that is not the case. But anyhow, surprise me.

The CHAIR: Order! Mr Shoebridge, do you have a question?

The Hon. CATHERINE CUSACK: I think it has been taken on notice.

Answer:

I am advised:

The NSW Electoral Commission is responsible for enforcing the offence provisions of the *Local Government (General) Regulation 2021* relating to council elections.

The NSW Electoral Commission has advised that the extract of its *Candidate Handbook* referred to by Mr Shoebridge is in a section of the Handbook that provides advice about the nomination process. Prospective candidates are advised that they cannot rely on the Returning Officer or the Commission more generally to determine whether they are a “property developer” at the time of nomination. This does not mean the Commission has no role in investigating allegations of false statements made in a candidate information sheet. The Commission does have that function, as noted above.

The Commission’s *Candidate Handbook* also sets out the Commission’s role in enforcing compliance with the electoral provisions of the Regulation (see pages 91 – 92). The Handbook states: “*The NSW Electoral Commission is responsible for investigating and enforcing electoral offences at local government elections.*” It goes on to say: “*If you consider a breach of the electoral laws has occurred you may, in the first instance, refer the breach in writing to the Returning Officer for the local government area. The Returning Officer will assess the allegation and endeavour to arrange for the breach to be remedied. If the breach has not been remedied with the assistance of the Returning Officer, the breach may be referred to the NSW Electoral Commission for a further review and possible investigation. Alternatively, the breach may be referred directly to the NSW Electoral Commission.*”

The Commission's Handbook gives an example of electoral breaches, "*making false or misleading statements or declarations in electoral forms, and improperly signing or witnessing forms*".

In relation to whether there is a live investigation into the issue, the OLG does not comment on specific allegations or confirm whether an investigation is currently taking place in relation to an identifiable individual.

17. NSW FLOODS – Question taken on notice:

Mr DAVID SHOEBRIDGE: No, let me finish my question. Minister, they are words, not funds, not support. Apart from the \$1 million that Lismore council, like 45 other councils, has received as being part of a disaster declared area, what other financial support have you provided to Lismore council so it can do its job and help its residents recover from this disaster?

Mrs WENDY TUCKERMAN: As discussed before—

Mr DAVID SHOEBRIDGE: For the council.

Mrs WENDY TUCKERMAN: —the recovery is being led by the Minister for Emergency Services, capably supported by Commissioner Fitzsimmons in regard to what is needed. There are constant assessments being made in regard to what funding is needed to assist in that recovery. It is an ongoing crisis that is being managed by the Premier and the crisis cabinet. All Ministers have been touched in some way in their portfolio and all Ministers are working around the clock to ensure that those adequate funds and provisions are made to assist councils. I cannot put a dollar figure on it because it is an evolving situation and it constantly is. Mr Shoebridge, if you want to make an issue out of this, I think you are doing a certain disjustice to the communities up there. We are very aware of the impact that this has had across the State and we are working extremely hard to ensure that we are supporting those communities.

The Hon. MARK PEARSON: If a councillor is under investigation and they have not stepped down and they have participated, let's say, for a three- to six-month period while the inquiry or investigation is occurring, if they have voted on a development or an issue and it was shown that they did have a conflict or that the allegations were correct and that could have influenced that vote, is there a process where we retrospectively go back and look at that vote again if it is discovered that the councillor was potentially influenced in taking a vote and that vote could have reflected an interest which was not declared?

MELANIE HAWYES: There are sanctions and the secretary has the power to compel someone to repay any financial benefits they have gained, if it is determined that they gained them in an unfair manner. The range of sanctions that we have available are under review at the moment. It is an opportunity to think about areas of improvement.

The Hon. MARK PEARSON: What about if a development was approved that would not have been approved if the knowledge was there that that councillor should not have voted? Can we go back and vote again?

MELANIE HAWYES: I think I will take that on notice. It is a process about how councils vote and that is not something that I am probably best qualified to speak on. If I can take it on notice as to what the generic process might be—bearing in mind that councils are autonomous.

Mr DAVID SHOEBRIDGE: Minister, the first formal State Government office opened in Lismore just yesterday, days and days and days after this disaster struck the town. Today you can only identify \$1 million that has gone to the council, despite the extraordinary demands that have been on that

council at the moment. I am not really interested in your adjectives; I am interested in why you have not given Lismore council more than \$1 million, and I am giving you the opportunity to explain that.

Mrs WENDY TUCKERMAN: I am just saying to you, Mr Shoebridge, that that \$1 million has been identified for the councils. But there is so much other support being given to the communities and to the council in regard to the recovery.

Mr DAVID SHOEBRIDGE: Tell me the other financial support given to the council, Minister.

Mrs WENDY TUCKERMAN: I cannot put a dollar figure on it, but I am happy to take that on notice so that you are aware of each dollar that has been spent.

Answer:

I am advised:

It is not possible to quantify the dollar value of the support at this time as response and recovery activity is ongoing.

However, the Government has actively supported all councils affected by the February-March 2022 floods, including:

- \$120 million support package for disaster-affected NSW councils, focused on those that have been highly impacted, such as Lismore City Council;
- \$145 million for repairing and restoring water and sewer infrastructure for the Northern Rivers councils, including Lismore City Council; and,
- \$46 million in emergency funding to fast-track urgent road repairs to councils hardest hit by the North Coast floods, including Lismore City Council.

18. WASTE LEVY – Question taken on notice:

The Hon. ROSE JACKSON: No, that is fine. I do not need an explanation of what the waste levy is. I am familiar with what it is. Councils pay it. That is why I am asking you, as the Minister for Local Government. You would be aware, would you not, of the Audit Office report which found that in 2020, of the \$750 million collected from councils, from local government, only one-third of that was actually spent on best practice waste and environmental programs that you articulated the purpose to be. Are you aware of that report?

Mrs WENDY TUCKERMAN: I will take that on notice. I have not read the report.

Answer:

I am advised:

This question should be referred to the Treasurer, the Hon. Matt Kean MP.

Questions from the Hon Mark Pearson MLC

19. GREYHOUNDS – Question taken on notice:

The Hon. MARK PEARSON: I have one question before I hand over to my colleague David Shoebridge. I am not sure if you are aware, Minister—because I have had this conversation with the former Minister—but in the review of the greyhound racing legislation there was a requirement that a greyhound must have all-of-life tracking if it enters into the greyhound industry. Then legislation was changed pertaining to that greyhound regulation where, if a greyhound was given or sold to a person who is not involved in the greyhound industry, then it is covered legislatively under the Companion Animals Act. My question to the former Minister and my question now is about the concern of the all-of-life tracking. Has there been an amendment to the Companion Animals Act, which requires a person who adopts or has a greyhound to continue the all-of-life tracking, so that at any point in time we know where a greyhound is that has come into and out of the industry, and that a person cannot just have the greyhound killed, which we are allowed to do with other companion animals? Do you understand my question? Is the continuance of the all-of-life tracking still in place even though the greyhound is no longer captured by the greyhound racing regulation for tracking?

Mrs WENDY TUCKERMAN: Obviously I am happy for the CE to provide some information around the greyhound welfare issue and life tracking.

ALLY DENCH: There are tools available to continue to monitor retired greyhounds that are rehomed outside the industry. The Greyhound Welfare Integrity Commission has access to the Companion Animals Register, enabling them to include the details of retired greyhounds that are adopted outside the industry to enable the tracking of these animals for the whole of their lives.

MELANIE HAWYES: I would also note that some of these questions may be directed to Minister Anderson tomorrow in his portfolio.

The Hon. MARK PEARSON: Yes, I will be, but still the trigger here is when a greyhound is with a person who is not involved in the industry, that condition of knowing where the animal has gone. A person could actually go and have the greyhound put down or shoot it through the head, straight after that greyhound has been given to a person who is not in the industry. The protection that was in the regulation is no longer in place for that animal. That is what the question is about.

Mrs WENDY TUCKERMAN: I am happy to take that on notice, Mr Pearson.

Answer:

I am advised:

NSW's legislative framework is supported by systems that provide the mechanisms to meet the objective of whole-of-life tracking of greyhounds, as well as safe and ethical breeding practices. Since 2020, the Greyhound Welfare and Integrity Commission (GWIC) has had access to the Companion Animals Register (Register), enabling GWIC to include the details of retired greyhounds adopted outside the greyhound racing industry, to enable the tracking of these animals for the whole of their lives.

Retired greyhounds retained by their registered owner, trainer or as a pet or breeding greyhound remain on GWIC's Register and are covered by the NSW Greyhound Welfare Code of Practice. Under the Code of Practice, it is an offence for an industry participant to transfer a greyhound in circumstances where the participant knows, or ought to know, or has reason to believe, that the greyhound may be euthanised. GWIC has the tools available to continue to monitor retired greyhounds rehomed outside the industry if it so chooses, thereby removing any potential "blackspot" that could obscure the fate of greyhounds.

Questions from Mr David Shoebridge MLC

20. IPART – Question taken on notice:

Mr DAVID SHOEBRIDGE: No, we will come to that. I am asking if anybody knows what the IPART rate peg was for last year and what the inflation rate was for last year—a critical issue about financial sustainability and core-base data. We have the five most senior people in Local Government here and I am asking for the most basic facts.

The Hon. TAYLOR MARTIN: You are getting an answer and you are interrupting.

MELANIE HAWYES: I was in the middle of an answer.

Mr DAVID SHOEBRIDGE: Does anybody know those two figures?

MICHAEL CASSEL: Yes, Mr Shoebridge. You are right, inflation was higher than the rate peg.

Mr DAVID SHOEBRIDGE: By what?

MICHAEL CASSEL: The rate peg varied because some people got variations. But, based on your figures, 1.5 per cent.

Mr DAVID SHOEBRIDGE: The rate peg does not vary; the rate peg is set across and then councils can get special variations.

MICHAEL CASSEL: Yes, and some did, is my understanding.

Mr DAVID SHOEBRIDGE: Do you know how much councils went backwards collectively last financial year?

MICHAEL CASSEL: The collective number? No.

Mr DAVID SHOEBRIDGE: Can you take it on notice and provide to us what the gap was?

MICHAEL CASSEL: I can.

Answer:

I am advised:

In 2021-22 the Consumer Price Index rose 3.5%. In 2021-22 the rate peg was 2.0%.

21. IPART – Question taken on notice:

Mr DAVID SHOEBRIDGE: What is the predicted inflation for the next financial year? What is
Local Government

the Reserve Bank of Australia saying—

The Hon. TAYLOR MARTIN: This is not *The Price is Right*. It is 3¼ per cent. Move on.

The Hon. MARK PEARSON: If you wish to make a point of order, Mr Martin, do so.

Mr DAVID SHOEBRIDGE: —will be the inflation for the next financial year?

Mrs WENDY TUCKERMAN: I would have to take that on notice, Mr Shoebridge. I have got a lot of information in my head at the moment. Obviously, taking on the role and getting across every issue, I am doing my best. I will take that on notice.

Mr DAVID SHOEBRIDGE: Minister, I am assuming you went and spoke to IPART because you had, I am hoping, concerns about the financial sustainability of the sector?

Mrs WENDY TUCKERMAN: Yes, I just said that, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I assume that, to have an intelligent conversation with IPART, you would have to know the gap between what the IPART rate peg is for the next financial year and what the expected inflation will be for next year. They are the basic fundamentals for that conversation with IPART, aren't they?

Mrs WENDY TUCKERMAN: Indeed.

Mr DAVID SHOEBRIDGE: So I am asking you what is the gap between the IPART rate peg and the inflation for next year, which you have agreed must have been the fundamentals of your discussion with IPART.

Mrs WENDY TUCKERMAN: The IPART rate peg varies between councils because, obviously, they—

Mr DAVID SHOEBRIDGE: No, it does not.

Mrs WENDY TUCKERMAN: Some councils have received population additions to the rate peg, so there is obviously a lot of variance in that.

Mr DAVID SHOEBRIDGE: Some councils get things in addition to the rate peg, but the rate peg itself is set across the State. There are variations sometimes for populations and variations sometimes for special applications that are made, but the rate peg that we start with is the same across the State. Do you know that, Minister? What is it for the next financial year?

Mrs WENDY TUCKERMAN: It is 0.7 per cent.

Mr DAVID SHOEBRIDGE: I am asking you now again, what is the anticipated inflation for next year?

Mrs WENDY TUCKERMAN: I do not have that number. I have just told you that I will take that on notice.

Answer:

I am advised:

The predicted Consumer Price Index for mid-2022 is 3.75%. The rate peg for 2022-23 is set at between 0.7% and 5%, depending on the application of a population growth factor.

22. IPART – Question taken on notice:

Mr DAVID SHOEBRIDGE: Given how grossly unsustainable that rate peg is, the Government has the capacity, if it chooses, to put forward a legislative increase over and above what IPART delivered. Will you do that in order to stop local councils effectively going insolvent?

Mrs WENDY TUCKERMAN: As a part of that review, I have also had conversations with the chair as to what can be done in the here and now. I am waiting for her response in regards to that.

ALLY DENCH: If I could, Mr Shoebridge, answer that.

Mr DAVID SHOEBRIDGE: Yes, Ms Dench.

ALLY DENCH: We have had discussions with IPART. We have also sent out a circular to councils in regards to the here and now in regards to the 0.7 per cent. There is a provision in the guidelines to apply for a special variation. We are working with councils with some guidelines around applying for what they have budgeted for in relation to their long-term financial plans in this coming year to be able to apply for a special variation to match that. IPART is looking at extending their application process, and we are working together with IPART on how we can streamline that so councils can put in a special variation for the here and now this year.

Mr DAVID SHOEBRIDGE: Ms Dench, that cannot be the answer, to have the local government sector make 128 special variation applications, with the countless hours of staff time—

ALLY DENCH: We are working—

Mr DAVID SHOEBRIDGE: No, let me finish. The hundreds of thousands of dollars of resources that councils have to put into a discretionary special variation—that cannot be your answer, can it?

ALLY DENCH: We are working closely with IPART to make a streamlined application process for those councils that are in need of between that 0.7 per cent and what they were budgeting for. We are putting in place a streamlined process to assist councils. Guidelines have gone out and a circular has gone out to councils to assist them in that particular process.

Mr DAVID SHOEBRIDGE: I ask you to table the circular, if you could, and the guidelines.

Answer:

I am advised:

Circular 22-03 Guidelines for Additional Special Variation (ASV) Process for 2022-23 was released by the OLG on 7 March 2022.

It is publicly available and can be accessed here: <https://www.olg.nsw.gov.au/council-circulars/22-03-guidelines-for-additional-special-variation-asv-process-for-2022-23/>

Questions from the Hon Mark Buttigieg (on behalf of the Opposition)

23. COUNCIL AMALGAMATIONS – Question taken on notice:

The Hon. MARK BUTTIGIEG: On that question of the grants as part of the assistance—and the integrity of the grants is obviously an important matter, in how they are handed out—has there been any thought or conversations with Treasury about appropriation of funds to assist those merged councils that are drowning?

MICHAEL CASSEL: I have not had any discussions with Treasury on that fact, if that question was for me.

The Hon. MARK BUTTIGIEG: Minister?

Mrs WENDY TUCKERMAN: No, I have not had that discussion with the Treasurer as yet.

The Hon. MARK BUTTIGIEG: Again, another stat for you: All up there are 13 merged councils that recorded negative operating performance ratios in 2019-20. I want to press you on this again, Minister: Do you think, given those statistics, that this policy has been a failure?

Mrs WENDY TUCKERMAN: No, because—

The Hon. MARK BUTTIGIEG: Was it not meant to save money for councils? If you have got negative operating performance ratios it is actually costing them money.

Mrs WENDY TUCKERMAN: In fact, I think there are another 10 that actually have saved money for their communities, Mr Buttigieg. I take on notice your issues around the ones that have not performed. As the new Minister, I will be doing what I can to support them to get on the right track and ensure that they will meet the expectations of their community.

Answer:

I am advised:

The *Local Government Act 1993* clearly sets out the expectation that local councils are primarily responsible to their community for their financial performance.

The OLG continues to monitor and support the performance of all 128 local councils in NSW.

The oversight of NSW councils is detailed by the Improvement and Intervention Framework in relation to NSW Councils. The Framework is publicly available and can be accessed here:

<https://www.olg.nsw.gov.au/wp-content/uploads/Improvement-and-Intervention-Framework-2017.pdf>

24. COUNCIL AMALGAMATIONS – Question taken on notice:

The Hon. MARK BUTTIGIEG: Minister, I imagine you would have heard from several councils since you have had your feet under the chair as the new Minister regarding some of the financial distress of these merged councils. Would that be correct? Have you had any dialogue with those councils?

Mrs WENDY TUCKERMAN: Obviously I have had dialogue with a number of councils that have been merged and heard some of the issues they are facing. As a government, we are there to support them to get through those issues and we will continue to do so.

The Hon. MARK BUTTIGIEG: Okay, let us go through some of those eight of the top 20. These are the OPRs, right, and these are all 2019-20 statistics: Hilltops, negative 21.4 per cent; Cootamundra Gundagai, negative 19.5 per cent; Central Coast, negative 15.9 per cent; Murray River, negative 14.2 per cent; Snowy Valleys, negative 11.1 per cent, Federation, negative 10.4 per cent; Murrumbidgee, negative 9.1 per cent; and Georges River, negative 8.2 per cent. When you say you have put in place measures to ameliorate that financial stress, can you outline some of those measures with respect to those eight councils?

Mrs WENDY TUCKERMAN: Obviously, having just become the Minister, I am aware that there was financial support given to every merged council to assist them in that merger process. Obviously it has been a significant time since that progress began and there have been varying reasons why some councils have not performed or transitioned as liked. Those issues are being addressed by the Office of Local Government. We are supporting councils as best we can. Obviously their own decisions have to be made on how they realise the metrics that they need to, but rest assured that we are supporting them in the best way we can going forward.

The Hon. MARK BUTTIGIEG: But what is the tangible manifestation of that support? I am hearing that you are supporting them, but how?

Mrs WENDY TUCKERMAN: I am happy to pass over to the Office of Local Government, who will deal directly with councils in regard to the support that they are supplying.

ALLY DENCH: Thanks, Minister. I think you are talking about financial performance primarily and the sustainability of councils. The Minister previously outlined a very proactive undertaking in terms of engaging with IPART about the long-term way that the rate peg is set, which is a primary tool to ensure that councils are sustainable. There is a plethora of other grants funding and programs that support councils. With a new leadership team here, we are all very willing and keen to sit down with LGNSW and councils to hear from them what would be the most effective way of supporting them going forward.

Answer:

No question taken on notice.

Questions from Ms Abigail Boyd MLC

25. POUNDS – Question taken on notice:

Ms ABIGAIL BOYD: When would we be looking then at seeing an exposure draft of that new code of practice for pounds?

ALLY DENCH: I need to take that on notice.

Answer:

I am advised:

This question should be directed to the Minister for Agriculture, the Hon. Dugald Saunders MP.

Questions from the Hon Mark Pearson MLC

26. POUNDS – Question taken on notice:

The Hon. MARK PEARSON: Have any animals in pounds perished during these floods, do we know?

Mrs WENDY TUCKERMAN: I am not absolutely certain. That is obviously a question that I can take on notice and ask Minister Saunders of any updates in regard to that. Clearly it is devastating what has happened. We are trying to do all we can to ensure that animal welfare is a priority.

Answer:

I am advised:

The OLG is not aware of any animals in pounds perishing during the floods. The OLG is engaging with affected councils to ensure minimal disruption to the operation of animal pounds in flood-affected areas.

Questions from Mr David Shoebridge

27. DEMERGERS – Question taken on notice:

Mr DAVID SHOEBRIDGE: Minister, when your predecessor rejected the demerger proposal for Gundagai-Cootamundra—first of all, you recall when the previous Minister rejected the demerger proposal?

Mrs WENDY TUCKERMAN: Correct.

Mr DAVID SHOEBRIDGE: The Minister then referred a review of the entire amalgamation process to the Boundaries Commission for a review. Can you give me an update on the review?

Mrs WENDY TUCKERMAN: I am happy to ask the dep sec to report on that review.

MELANIE HAWYES: Yes, happy to, Minister. There was a review previously committed to, as you know, and the Minister recently appointed Dr Juliet Lucy, who is a practising barrister, to conduct the review. We are expecting an initial draft report in mid to late 2022.

Mr DAVID SHOEBRIDGE: Sorry. The announcement of the review was in July of 2021.

MELANIE HAWYES: Yes.

Mr DAVID SHOEBRIDGE: When was Ms Lucy referred the review?

MELANIE HAWYES: The Minister made that decision coming in. I cannot speak to the past. We have been through a Cabinet reshuffle, changes of leadership, and one of the Minister's first actions was to appoint Judith—Juliette Lucy. Sorry.

The Hon. TAYLOR MARTIN: Not Judith Lucy.

MELANIE HAWYES: Although it would make for a great review!

Mr DAVID SHOEBRIDGE: No, no. Not Judith Lucy. I would support a co-team, if that is what you are thinking, Minister—get them both on the job, and I would love to read the report.

The Hon. TAYLOR MARTIN: Hilarious.

Mr DAVID SHOEBRIDGE: No, but when did you appoint Ms Lucy?

Mrs WENDY TUCKERMAN: It was last—

ALLY DENCH: Very recently.

Mrs WENDY TUCKERMAN: It was very recently.

MELANIE HAWYES: Two weeks.

Mrs WENDY TUCKERMAN: I cannot give you the exact date, Mr Shoebridge.

ALLY DENCH: End of February.

Mrs WENDY TUCKERMAN: End of February, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: End of February. Well done, Minister: I am glad to see that happening. Was it at all explained to you why the announcement was made in July but nothing has been done for seven months?

Mrs WENDY TUCKERMAN: Certainly. I asked the question as to the purpose of the review and I was given the terms of reference in regard to that. I did not get a succinct answer but I am happy to ask the chief executive now why it was being delayed.

ALLY DENCH: I only came on board in October last year, Mr Shoebridge, and it was one of the first things I was tasked to look at—getting somebody on board—and definitely with the change in the leadership we have done it as quickly as we possibly can to find an appropriate barrister to assist with that particular review.

Mr DAVID SHOEBRIDGE: It cannot seriously have taken five months to find a barrister. They are just down the road. There is a whole bunch of them. They are just over the road. There are 1,700 of them.

ALLY DENCH: Mr Shoebridge, there were a couple of false starts with a couple of barristers that we were talking to in relation to the review and we have now found Juliet Lucy, who is quite well versed in this area, and she was engaged in February. The terms of reference were reviewed by the department and it has been put in place.

Mr DAVID SHOEBRIDGE: Can you table the terms of reference?

ALLY DENCH: Yes, we can. I will certainly take them on notice.

Answer:

Tabled in Session.

Questions from the Hon Rose Jackson MLC *(on behalf of the Opposition)*

28. POUNDS – Question taken on notice:

The Hon. ROSE JACKSON: In relation to the amendments that were recently passed in relation to council pounds and euthanising animals—a recent legislative process—other States provide funding to groups other than the RSPCA and the Animal Welfare League to assist with rehoming. Is that something that has been considered in New South Wales?

ALLY DENCH: I will need to take that on notice.

Answer:

I am advised:

No.

29. POUNDS – Question taken on notice:

The Hon. ROSE JACKSON: Are you aware of any funding that has been made available to councils to improve or upgrade pounds? Is that something that has been made available in the past?

MELANIE HAWYES: As I mentioned, the pet registry funding cycles back to councils and we can provide the details of the amounts. This review is an excellent opportunity to look at all options to enhance not only the way that pounds are managed but also rehoming practice.

The Hon. ROSE JACKSON: You may need to take this element on notice as well. I am also interested in any funding that has been made available for desexing programs. Are you able to provide that now?

MELANIE HAWYES: Yes, we will take it on notice.

The Hon. ROSE JACKSON: I appreciate the review is occurring but I am obviously interested in what programs are available now to support councils to pursue initiatives other than euthanising the animals.

MELANIE HAWYES: We can take that on notice but incentives are in place to encourage pet owners to have their animals desexed. But we will take on notice the question about whether there is specific funding for programs.

Answer:

I am advised:

Councils currently receive 80 per cent of registration fees taken each quarter and have discretion on how they spend these funds.

In the last five (5) financial years, \$40.1 million was collected for registration fees, with \$32.1 million returned to Councils to fund Companion Animal programs and services such as expenditure on pounds and desexing services.

30. NSW FLOODS - PREPARATION OF COASTAL AREAS – Question taken on notice:

The Hon. ROSE JACKSON: Thank you, that is useful. I have a couple more questions about what we touched on this morning, the impact of the floods. We had information about \$1 million that has been made available specifically more recently for 45 councils. Has there been any support available to councils for flood mitigation work prior to an emergency situation? For a number of these local government areas, Lismore specifically, this is not the first time it has had a major flooding event. In fact, there was one quite recently. I am interested in what support has been made available outside of a natural disaster to help them prepare for this sort of thing.

MELANIE HAWYES: I think both Sharon and I can make some comments on this.

SHARON MOLLOY: Yes, I can talk a little bit about the Floodplain Management Program, which is primarily under the portfolio of Minister Griffin. I can certainly get you more details on that, but there is roughly between \$10 million and \$11 million per annum given to councils to assist with flood mitigation works, flood planning and flood risk planning.

The Hon. ROSE JACKSON: And presumably that is not per council.

SHARON MOLLOY: No, it is not; it is statewide.

The Hon. ROSE JACKSON: What do councils need to do if they are interested in accessing some of that funding?

SHARON MOLLOY: It is an annual grants program. It is probably going to be announced—I will double-check this, but I think it might be sort of mid-year that it is usually announced. Councils apply and we have got regional staff for each of the calls to branches, and my team will assist councils in providing technical advice around those grants. But it is Minister Griffin's portfolio, not Minister Tuckerman's.

The Hon. ROSE JACKSON: You may need to take this on notice. In last year's grant round, for example, do you have information about how many councils submitted applications?

SHARON MOLLOY: Not with me because, as I said, it is part of Minister Griffin's portfolio. I probably would have had that information with me last Tuesday, but I can certainly—

The Hon. ROSE JACKSON: Apologies, it is hard for us because we look at grants programs for local government and we think it is a local government matter. It is not deliberate on our part.

SHARON MOLLOY: Yes, that is perfectly fine, and I can certainly get that information for you. Just a correction, thanks to my colleague behind me: The grant round is currently open now and closes on 7 April.

Answer:

I am advised:

This question should be referred to the Minister for Environment and Heritage, the Hon. James Griffin MP.

Questions from Mr David Shoebridge

31. STRONGER COMMUNITIES - AUDIT REPORT – Question taken on notice:

Mr DAVID SHOEBRIDGE: Have you ever seen a government state in black and white that they would administer grant funding only on the basis of such a proposition like that? I will quote from the then Premier, "We propose not to compensate councils that were subject to a merger proposal and then sued us." Have you ever seen that kind of vindictive political position being the basis for any grant funding by a State government?

MICHAEL CASSEL: We administer the grants after the decisions are taken. In regard to that question, I have seen a lot of things written down over my 35-year career and I think that is a very specific statement that you have made.

Mr DAVID SHOEBRIDGE: It was the Premier's statement.

MICHAEL CASSEL: That you have recited back to us. I will just let that rest at that.

Mr DAVID SHOEBRIDGE: Do you think there is sufficient strength in your department to push back if you see such a direction like that being put to your department from the Premier or your Minister?

MICHAEL CASSEL: Under my leadership there is the approval to provide frank and fearless advice and push back when we think things are not right. Ultimately, sometimes we are not the final decision-makers and we go about implementing the government of the day's directions.

Mr DAVID SHOEBRIDGE: Surely we are not going to return to Mr Hurst's evidence, are we, when he denied—

MICHAEL CASSEL: I am not.

Mr DAVID SHOEBRIDGE: —that he was the decision-maker and then the Premier denied they were the decision-maker and we could not find out who was the decision-maker for the Stronger Communities Fund? Are you saying that the Office of Local Government was not the decision-maker?

MICHAEL CASSEL: I cannot comment on those components. All I can say to you is that I answered the question you asked me in that the leadership team is empowered to provide frank and fearless advice and push back on decisions that they feel are not appropriate.

Mr DAVID SHOEBRIDGE: I am happy for you to take this on notice because none of you were there at the time. Did anybody push back against the Premier at the time when that direction was given?

MICHAEL CASSEL: I will take it on notice.

Answer:

I am advised:

The NSW Auditor General has provided a detailed report into the allocations of the Stronger Communities Grant, titled Integrity of Grant Program Administration, which was tabled in the NSW Parliament on 8 February 2022.

32. STRONGER COMMUNITIES - AUDIT REPORT – Question taken on notice:

Mr DAVID SHOEBRIDGE: Ms Dench, you say that a number of recommendations have already been implemented. As I understand, that is your evidence. Is that right?

ALLY DENCH: Yes, correct.

Mr DAVID SHOEBRIDGE: Why do we not go through them then. The first recommendation is to "develop a model for grant administration that must be used for all grant programs administered in New South Wales that has the following features"—I will ask you which of them have been implemented under SmartyGrants. The first states:
... is based on ethical principles outlined in the *Government Sector Employee Act (2013)* such as impartiality, equity and transparency.
Are those principles mandatory under your new SmartyGrants system?

ALLY DENCH: They certainly will be implemented under that system, yes.

Mr DAVID SHOEBRIDGE: No, you said that they have been implemented already. I am not asking about the future; I am testing your evidence about those that have been implemented to date. That sounds to me like that has not been implemented.

ALLY DENCH: It has been implemented.

Mr DAVID SHOEBRIDGE: Can you tell me where in policy or otherwise that has been implemented as a mandatory provision under your new SmartyGrants proposal?

ALLY DENCH: We are looking at the way in which our grants are being administered through the SmartyGrants program, which actually enables a transparent and case-based approach to the grant management system. Transparency is part of that particular system. In any implementation of grants that we are implementing now, that certainly will be in place.

Mr DAVID SHOEBRIDGE: You see, Ms Dench, you said "looking at". Your evidence was that they have been implemented.

ALLY DENCH: We are implementing them at the moment with any grants that we will be disseminating out.

Mr DAVID SHOEBRIDGE: Can you table for me the policy direction, the memorandum and whatever it is that has made that mandatory for grants inside your department?

ALLY DENCH: I will take that on notice.

Mr DAVID SHOEBRIDGE: Is there one?

ALLY DENCH: I will take that on notice.

Mr DAVID SHOEBRIDGE: Mr Cassel, is there one?

MICHAEL CASSEL: I believe in July 2022, from a cluster perspective, the whole of DPIE will operate under a governance framework. I understand the Office of Local Government has implemented SmartyGrants. I do not believe there is a policy in place at this point in time for OLG, but I will take that on notice.

Answer:

I am advised:

The OLG is implementing a new system, which will operate in conjunction with the DPE governance framework to be introduced by July 2022 and will be designed in line with the Government Sector Employee Act 2013.

33. STRONGER COMMUNITIES - AUDIT REPORT – Question taken on notice:

Mr DAVID SHOEBRIDGE: Is there a prohibition on the Minister directly communicating with the delegated officers who are making decisions? Is there a prohibition on the Minister's staff communicating with delegated officers making decisions to prevent or limit politically biased outcomes? Is any of that implemented?

MICHAEL CASSEL: I am not aware of the prohibition but I will take that on notice.

Mr DAVID SHOEBRIDGE: It is because there isn't one, Mr Cassel.

MICHAEL CASSEL: Okay. Thank you.

Mr DAVID SHOEBRIDGE: It is your department, right?

MICHAEL CASSEL: I understand that.

Mr DAVID SHOEBRIDGE: And Ms Dench has said that these have been implemented in part. Ms Dench, there is no such prohibition, is there, and there is nothing to limit politically biased outcomes?

MICHAEL CASSEL: As I said, I will take that on notice.

Mr DAVID SHOEBRIDGE: All right. "Not implemented," I will write down here. "Not implemented." The next recommendation, Ms Dench: You said that these have been implemented in part. What about having measures so that all grants programs ensure accountability for decisions and actions of all those who are involved in the program, including public servants, elected representatives and political staff? Has that been implemented? Does SmartyGrants capture all the communications and all the actions of public servants, elected representatives and political staff in relation to the grants?

ALLY DENCH: I will need to take that on notice in regards to the SmartyGrants platform itself. But I do know that that platform provides greater transparency.

Mr DAVID SHOEBRIDGE: If not SmartyGrants, does any part of the grants system in your department implement that recommendation?

ALLY DENCH: Yes.

Mr DAVID SHOEBRIDGE: Which?

ALLY DENCH: My performance and program area.

Mr DAVID SHOEBRIDGE: Sorry, that ensures accountability for decisions and actions of elected representatives and political staff? Is that what you are telling me?

MELANIE HAWYES: I think here the whole of the grants program review that is underway is going to answer a lot of your questions, and we will implement all of the Audit Office recommendations across the department.

Mr DAVID SHOEBRIDGE: I am asking these questions because one of the most frustrating outcomes when there is a report like this with a series of recommendations is the statement often made by Ministers and senior officials that, "Oh, by the time they've come out we've already implemented them in part"—and indeed that was your evidence, Ms Dench, which I am testing. I am now asking you whether that been implemented in part or at all. I am asking for some evidence of it and I am giving you a further opportunity to actually back in your assertion. Ms Dench?

MICHAEL CASSEL: I might take that question. I think where we have got ourselves to is that the SmartyGrants program has been implemented and that, in part, starts to try to resolve some of these issues. We have not implemented the policy yet, which will not be ready until July 2022. Picking apart the system when we have already explained we have not fully implemented things seems to be leading us back to the same question, which I have said we will take on notice.

Answer:

I am advised:

There are protocols in place regarding communications between the Minister and the Department. The OLG will comply with the Governance Framework of DPE in its management and administration of grants.

34. STRONGER COMMUNITIES - AUDIT REPORT – Question taken on notice:

Mr DAVID SHOEBRIDGE: What, if any, engagement have you had with the Productivity Commission and Treasury on their review of grants?

MELANIE HAWYES: I can take that. I was recently interviewed by Mr Achterstraat about the review that he is undertaking. I would note the Audit Office report only came through in February, so Ms Dench is talking to steps the department has taken to improve things without the benefit of the Audit Office's findings. Now we have that, and I have also been interviewed by Mr Achterstraat I think about two weeks ago.

Mr DAVID SHOEBRIDGE: Ms Cassel, can you at least give us the comfort that there are mandatory systems in place so that records are kept of who approves grants in the Office of Local Government and, if the Office of Local Government is implementing approvals from an external agency, that records of those are kept? Has there been a memorandum go out since 8 February to state, "This is mandatory. You have to record these things at a minimum and we want to see the records"?

MICHAEL CASSEL: There is legislation in place that requires us to keep records of all those material matters. My response to you is, yes, there is a requirement to keep records. Have I sent a memorandum out since 8 February? No, I have not.

Mr DAVID SHOEBRIDGE: Are you referencing the State Records Act 1998?

MICHAEL CASSEL: Yes, I am.

Mr DAVID SHOEBRIDGE: Mr Cassel, I recommend you read the report in full, not the executive summary. I strongly recommend you read it in full and not the executive summary. The State Records Act would not have fixed what happened in the Office of Local Government. I am surprised, given the nature of the conclusions, that you have not read it because it would prevent those kinds of answers being given to these questions, Mr Cassel.

MICHAEL CASSEL: We are required to keep every document that has a material impact or relevance, yes? And we do that.

Mr DAVID SHOEBRIDGE: Will you refer these papers, then, to the New South Wales State records to consider whether or not a prosecution is appropriate?

MICHAEL CASSEL: I will take that on notice.

Mr DAVID SHOEBRIDGE: Is there a clear, written mandatory obligation in the grants administration procedures or manuals or any part of the grants administration framework within your department that expressly says in black and white, "There must be a record of who the decision-maker is and why the decision was reached on a grant"?

MICHAEL CASSEL: I will take that on notice.

Answer:

I am advised:

All departmental staff are professional public servants guided by the Government Sector Employment Act, Government Sector Finance Act and other relevant legislation. Departmental staff are required to conduct their duties in accordance with the Department of Planning & Environment (DPE) Code of Ethics and Conduct. This Code requires departmental staff to make ethical decisions, these decisions are required to be documented in line with all departmental Record Management policies.

DPE has existing processes and guidance governing the administration and management of Grants programs, which are designed around the nature of the individual grants program. The nature of grants vary across the cluster for example - infrastructure grants require technical assessment, others like Pensioner rebates require simple assessment based on pre-determined criteria.

In November 2021, the Premier announced a review of grants administration across the sector, led by the NSW Productivity Commissioner.

DPE will implement a whole of cluster framework from 1 July, this framework will address all external recommendations including those of Audit Office NSW, ICAC and NSW Productivity Commissioners report.

35. STRONGER COMMUNITIES - AUDIT REPORT – Question taken on notice:

The Hon. ROSE JACKSON: That is excellent. The follow-on, though, is there are often scenarios where a number of projects tick the boxes and follow the rules. You have a set pot of money and you get far too many applications because you are running a great grants program and people want to be a part of it—happy days. Decisions do have to be made amongst a number of equally eligible projects. It is not necessarily about pulling a swiftie and getting one in that did not qualify—that has happened in the past but I do not expect you to answer for that. It is about saying, "Wow. We have 20 projects here that are all great. They all tick all the boxes. We can only fund 10." The phone call comes in, or the conversation happens, "Gee, the Minister really likes these ones" or "That one looks good, does it not?" or "So and so called me about that one". What assurances can you give the Committee that the department has proper processes in place so that those decisions are not being influenced by the politics of the government of the day and are being made impartially, transparently by officials who just want to spend public money well?

MICHAEL CASSEL: All I can really say is, we do have that standard of behaviour and ethical standard. We do follow a process. I am always available to all staff to have a discussion around any of those situations where they believe they may be pressured.

The Hon. MARK BUTTIGIEG: Mr Cassel, if I were to—

MICHAEL CASSEL: Did you want me to finish?

The Hon. MARK BUTTIGIEG: No. If I were a member of the public hearing this, in the aftermath of what happened, I would be thinking it is one thing for the leader of that department to inculcate a culture by talking to staff and saying, "This is what we have got to do," but it is a qualitatively different thing to document a procedure whereby if those sort of things are done in conversations, it needs to be documented so that there is full transparency. Can you see what my colleague is getting at?

MICHAEL CASSEL: I can see we developed another hypothetical where all of a sudden we have a large number that pass all the criteria. All of a sudden we need to choose between, say, 10 out of the 20 that are on the table. I can hear the implied assumption that people are going to act dishonestly rather than honestly. I can hear all of that in the question, and what I am saying to you is, under my leadership, I do everything I can to make sure the right decisions are made. I cannot guarantee you that in the future somebody does not act within that realm.

The Hon. MARK BUTTIGIEG: Will that include a process whereby the bureaucrat making the decision documents the conversations that were had if they think anything was untoward?

MICHAEL CASSEL: Again, I am not beside everybody every day and I cannot make that guarantee. Do I encourage that behaviour? Yes. Do I insist on that type of behaviour? Yes.

The Hon. MARK BUTTIGIEG: Again, will you encourage it in a formal policy or process, or will it just be verbal conversations in the office?

MICHAEL CASSEL: I want to go back and actually have a look at what our policies are in that regard. This is a very specific thing that you have raised here through a bunch of hypotheticals, all on the basis of something that occurred under previous leadership. I want to go back and have a look, so I will take that on notice.

Answer:

As per (34) above.

36. CENTRAL DARLING SHIRE COUNCIL – Question taken on notice:

The Hon. ROSE JACKSON: Thank you. Central Darling Shire Council is still in administration. It has been in administration since 2014. Is there any update on when it may be able to move back to a democratically elected local government? Is there any update on where the conversations about the issues that they may need to resolve are up to?

MELANIE HAWYES: I can provide an overview. You are absolutely right; it is under administration, and there are reasons for that. But over the past five years, certainly, their financial position has improved to a break-even position. That is a great sign of strength in terms of being able to move forward in this particular area. We are currently working with the Central Darling community and intend to consult with them about how to move forward. As I say, there are signs of improvement, and we will be working to look at how to continue that progress.

The Hon. ROSE JACKSON: Obviously, it is good news that their financial position has improved. Can you give me a sense of any of the other outstanding issues that they may be required to address before they could take a significant step towards exiting administration?

MELANIE HAWYES: I might take that on notice to get you the full range. But, obviously, a key metric is how they are going financially, given how they ended up in administration.

Answer:

I am advised:

The administration period will expire in September 2024.

The OLG will continue to engage with and support the Administrator throughout this time.

The OLG reviews Council's quarterly budget review statements as well as its Financial Statements when received.

Support and assistance is provided to Council to allow Council to appropriately support ratepayers and their communities.

BALRANALD SHIRE COUNCIL – Question taken on notice:

The Hon. ROSE JACKSON: That is good. What about Balranald Shire Council? Is there any sense of when they might anticipate moving out of administration?

MELANIE HAWYES: I need to take that one on notice, if that is okay.

Answer:

I am advised:

In accordance with the 29 January 2020 proclamation of the Honourable Margaret Beazley AC QC, Governor of NSW, Mr Michael Colreav, is appointed as Administrator of Balranald Shire Council until a fresh election is held on 14 September 2024.

Questions from the Hon Mark Buttigieg MLC (on behalf of the Opposition)

37. BALRANALD SHIRE COUNCIL – Question taken on notice:

The Hon. MARK BUTTIGIEG: I appreciate the frankness of the answer. In terms of the Councillor Robinson investigation, can you tell us where that is up to?

ALLY DENCH: With all due respect, to ensure that all parties involved are really accorded due process and they are afforded procedural fairness, it is really not the practice to comment on matters that are under investigation.

The Hon. MARK BUTTIGIEG: No, Ms Dench, let us be clear. I am not asking about the detail of the investigation or the wrongs or rights or culpability. I am simply asking about the time line of the investigation and where it is up to and whether we are likely to see any light at the end of the tunnel. It has been 1,000 days.

ALLY DENCH: As I said, I am not going to comment on individual investigations. It is a complex process, as Ms Hawyes has just said. Certainly, particularly in certain issues, we do not comment on current investigations, including time lines.

The Hon. MARK BUTTIGIEG: So, Ms Dench, your evidence to the Committee here today is that you are refusing to tell the Committee what sort of time line, if any, there is on this investigation.

ALLY DENCH: No, that is not my evidence.

MELANIE HAWYES: No, that is not our evidence today. We have given evidence that we are looking to—

The Hon. MARK BUTTIGIEG: Surely you must have a time line for this.

MELANIE HAWYES: You cannot always set a time frame on when something will finish. We can take on notice what is appropriate to communicate in terms of where it is up to, but we cannot comment on specific investigations because it is not fair on the parties under investigation.

Answer:

I am advised:

It is not appropriate for the OLG to comment on specific allegations or investigations in relation to an identifiable individual.

38. PROCUREMENT OF WASTE COLLECTION – Question taken on notice:

The Hon. MARK BUTTIGIEG: Minister Hancock raised concerns about waste collection workers potentially losing pay and conditions or losing their jobs altogether when a council contracts out its waste collection services or changes from one contract to another. This is when you get this situation where
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the insourced permanent workforce for waste collection is outsourced to a private company and then you have this two-tiered system set-up. The Minister was very strong on her response, saying she was very concerned about setting up that two-tiered, undercutting system and was keen to do something about it. Have you had any briefings on that or any future direction on where the OLG might go with this sort of problem?

MELANIE HAWYES: I have not had a briefing on this matter and it has not been raised with me directly. That does not mean to say that it will not be, and if it is then I will obviously look into it. But it has not been raised directly with me from a council or LGNSW at this point.

The Hon. MARK BUTTIGIEG: There are two unions that have coverage in that area. There is the United Services Union, which largely covers the internal workforce, and then there is the Transport Workers' Union, which covers the outsourced, contracted work. Have any discussions been had with either of those unions by the Minister to date?

ALLY DENCH: Not that I am aware of.

MICHAEL CASSEL: Can I just clarify, are you talking about the contracts that councils enter into to have the waste removed? We cannot comment on that. That is a matter for individual councils. They operate as individual—

The Hon. MARK BUTTIGIEG: Well, the Minister certainly commented. If you go through the transcript of the October budget estimates, Minister Hancock was very vocal about it and said she would meet with the unions and try to do something about it.

MICHAEL CASSEL: I am saying that we cannot comment on it. I cannot comment on what the previous Minister said. But they are arms-length contracts from OLG. They are contracts that are entered into by the individual councils, if I am understanding you correctly.

The Hon. MARK BUTTIGIEG: The OLG has no oversight of those contractual arrangements, or a template approach as to how those are structured, or guidelines or anything like that?

MICHAEL CASSEL: I do not believe so but I will take that on notice. Again, as we talked about earlier today, councils operate as individual businesses. How they choose to collect their waste—

ALLY DENCH: We have guidelines on procurement.

MICHAEL CASSEL: But we do have guidelines on procurement, as Ally has just said.

The Hon. MARK BUTTIGIEG: But some of those—

MICHAEL CASSEL: But that does not preclude insourcing versus outsourcing.

The Hon. MARK BUTTIGIEG: No, but it is not inconceivable that they could include them, given some of those procurement guidelines have local content, for example. Is that correct?

MICHAEL CASSEL: I would rather take that on notice to have a look at what we actually do have in place. But I do not think we would get to that level of detail because councils operate as individual entities.

The Hon. MARK BUTTIGIEG: It is not within the OLG's remit to develop an umbrella guideline policy on those sorts of things?

MICHAEL CASSEL: For work to be insourced or outsourced? Is that the question?

The Hon. MARK BUTTIGIEG: For example, my recollection is that when I was on Sutherland council there were various weighting factors that the council would apply when administering or letting out contracts. Council would have a degree of discretion within to work with depending on things like, for example, local contact versus bottom-line costs and all that sort of thing. My question is, would the OLG get involved in an overarching template approach to those sorts of things given the concern I have raised? For example, I give you Eurobodalla council. They issued a contract to Cleanaway. As a result of that decision, the workers face a pay cut of more than 16 per cent, which is about \$220 a week, not including overtime. These are people collecting the same bins on the same streets they have worked for over a decade. They are moved from one employer to another and their conditions and rates of pay freefall overnight.

MICHAEL CASSEL: I cannot comment on why they made that decision. Obviously, as I have talked about, we have procurement guidelines in place. How the councils wish to do their weightings I think is a decision for the individual councils on whether they insource or outsource, but I am happy to take the question on notice and come back and provide you with a copy of that guidance.

Answer:

I am advised:

The *Local Government (General) Regulation 2021* contains provisions requiring councils to consider the impact of contracting decisions on employees of waste management service providers.

Section 170(1A) of the Regulation provides that where a council is proposing to enter into a contract for waste management services that are currently being performed under an existing contract, the tender documents issued by the council must require tenderers to provide information about the continuity of the employment of workers employed or engaged by the existing contractor to perform the services.

Information that must be submitted includes:

- a statement as to whether the proposed contractor intends to offer the existing workers employment or engagement with the contractor if the tender is accepted, and
- if employment or engagement is offered—relevant details of the terms and conditions of employment or engagement that will be offered, including:
 - details of remuneration,
 - preservation of accrued or accruing leave and other entitlements,
 - hours of work,
 - working conditions and rights to negotiate working conditions under the *Industrial Relations Act 1996*,
 - the conduct of training with respect to industrial rights and occupational health and safety,
 - duration of the employment or engagement, and
 - rights with respect to trade union membership.

While councils may consider employment impacts when determining tenders for waste management services contracts, neither councils nor the NSW Government have any role in regulating the conditions of employment of workers employed by private sector waste management service providers.

The rules governing tendering by councils are not an appropriate vehicle for regulating the conditions of employment of workers in the waste management industry. Ultimately, councils' obligations are to the communities they represent and to achieve value for money through fair and open competition in tendering. Employment conditions of workers employed by private sector waste management service providers are regulated elsewhere under the national industrial system

Questions from the Hon Rose Jackson MLC *(on behalf of the Opposition)*

39. OLG STAFF – Question taken on notice:

The Hon. ROSE JACKSON: Roughly, seven of those people are working on the complaints issues that we discussed. What are the other primary groups of staff within the office?

ALLY DENCH: We have a sector performance area that does the analysis of all the financial statements, the annual reports, the CAPEX issues. We also have the pet registry and the pet helpline also. A significant amount of officers are working in that section. We have our policy area that looks at all the development around regulations, legislation. We also have our community engagement managers in our engagement section.

The Hon. ROSE JACKSON: How many people are in that group, Ms Dench?

ALLY DENCH: I do not have those exact figures in front of me. I can get that for you. I will take that on notice. We are working on the disaster recovery and emergency relief area, which I have staff working in that particular area as well.

The Hon. ROSE JACKSON: Perhaps you might need take it on notice but it would be useful to know how many staff work in that area as well.

ALLY DENCH: Yes, definitely.

Answer:

I am advised:

In relation to engagement, the OLG team consists of one manager, six council engagement managers and one principal project officer.

The OLG has a Director, Emergency Recovery who co-ordinates an internal working group and works across relevant State Government agencies to ensure local councils issues are addressed by the response and recovery activity arising from natural disasters.

This role also oversees related funding and support packages administered by the OLG.

40. OLG STAFF – Question taken on notice:

The Hon. ROSE JACKSON: I appreciate that, of course; it is the same with us. How many of the 55-head count are based in Nowra and go into the office in Nowra? If they are going into the office, they are going into the Nowra office?

MELANIE HAWYES: It would be the majority.

ALLY DENCH: Yes, majority.

MELANIE HAWYES: It is their office. It has been for some time.

The Hon. ROSE JACKSON: It would be useful to know how many people are employed who do not live in Nowra.

ALLY DENCH: I do not know everyone's addresses, I am sorry.

MELANIE HAWYES: There are two right here. We can provide that on notice. There is an office in Nowra and staff have been accustomed in the past to working there. It was their base. COVID has changed things. Going back, I guess everyone will evolve to the new context and for some people there will be ongoing hybrid arrangements when they do not go into their office every single day.

MICHAEL CASSEL: Can we be clear on that. You want to know how many people have Nowra as their base?

The Hon. ROSE JACKSON: Yes, that is right.

The Hon. CATHERINE CUSACK: Not as their address.

The Hon. ROSE JACKSON: Sorry, that is right. They might live in Jervis Bay. It is not about where people live.

MELANIE HAWYES: It would be the majority and we can get you a more specific count.

Answer:

I am advised:

Of the OLG's 53 staff, 47 (88.68 per cent) are based at its Nowra office.

41. COASTAL AND ESTUARY GRANTS PROGRAM – Question taken on notice:

The Hon. ROSE JACKSON: That is useful to know. I refer to the Coastal and Estuary Grants Program. I understand it was an \$83.6 million program. How much of the fund has now been spent?

SHARON MOLLOY: I can answer that. That would \$83.6 million that was announced in 2016. I can probably work backwards—I just might need a calculator. There is 17.7 left in that bucket; the rest has been expended or committed. What I mean by that is there may be projects that were funded last year that might have a three-year life span, so they may run from last year to next year and the year after.

The Hon. ROSE JACKSON: You may need to take on notice how much has been expended and how much is committed but has not been expended? Do you have that figure?

SHARON MOLLOY: Not on me at the moment because that would quite a lot of detail. Since 2016, about 247 grants have been approved and are currently either fully expended or underway to being expended. I can certainly get you that information, but I do not have all that specific detail here with me currently.

Answer:

I am advised:

\$31.7 million has been expended and an additional \$34.62 million is committed under the Coastal and Estuary Grants Program.

42. INVESTIGATIONS - STRATHFIELD – Question taken on notice:

The Hon. MARK BUTTIGIEG: Okay. I want to touch on some of the governance around the OLG. The former Minister said in a series of budget estimates questions around the Doueihi incident that she had the power to intervene in code of conduct complaints. Is that correct? We did touch on that earlier, and the perception we had was that if there is a code of conduct complaint being investigated by the council and the OLG then the Minister had no power to actually intervene in that investigation. Is that correct?

MELANIE HAWYES: There is a separation of powers, which is fairly self-explanatory in many respects. The Minister holds a political office, so it is not appropriate for her to intervene in matters involving investigations of others in political office. Matters of individual council conduct are determined by the department, but the Minister has accountability for the performance of councils.

The Hon. MARK BUTTIGIEG: Okay, so the OLG is a vehicle by which that accountability function can be achieved, but what legislative provision prevents the Minister intervening in investigations or having oversight?

MELANIE HAWYES: It is more the delegations of function, so matters about individual council conduct are referred to the department for investigation. Of course, we would make the Minister aware of matters as they came to a close, but we conduct the investigations. The Minister does not have a direct role in that.

The Hon. MARK BUTTIGIEG: But in the examples of Doueihi and this Robinson fellow and things that appear to be out of control, to use a colloquial term, the Minister has no power to intervene. If that is the case, what legislative provision prevents the Minister doing that? Is it actually written down anywhere, or is it just a policy of the OLG?

MELANIE HAWYES: We can send you the provisions of the legislation and regulation. My evidence here is that, for good reason, the department conducts matters relating to individual council conduct. Also, NCAT clearly has a role, but the department conducts the investigative functions. The Minister does not have a direct role in investigating allegations of councillor misconduct.

The Hon. MARK BUTTIGIEG: No, I understand that is the practical manifestation of it, but does the legislation prevent the Minister from being involved?

MICHAEL CASSEL: Can we take that one on notice, because I do not want to mislead the Committee. We are not legal experts, and in those cases we would probably get legal involved. I want to be really detailed in that response.

The Hon. MARK BUTTIGIEG: Yes, I would be interested to know because it goes to the nub of who is ultimately accountable under a ministerial system of Government. Those questions were raised in previous rounds regarding the emblematic cases that we have discussed at length today, so it is an important answer to get on the record.

Answer:

I am advised:

Section 440H of the *Local Government Act 1993* (Act), provides that it is the Departmental Chief Executive who may authorise an investigation or report into councillor misconduct.

Section 440I of the Act also provides that it is the Departmental Chief Executive who may take disciplinary action against a councillor if they are satisfied that the councillor has engaged in misconduct, and that disciplinary action is warranted.

Questions from the Hon Rose Jackson MLC (on behalf of the Opposition)

43. COASTAL AND ESTUARY GRANTS PROGRAM – Question taken on notice:

The Hon. ROSE JACKSON: To finish up, I have a couple of questions on the Coastal and Estuary Grant Program. I understand Claudine Lyons Consulting was tasked with doing a report on the program in 2019.

SHARON MOLLOY: I will have to take that on notice. It might have been just before I started in this role. I am not aware of it, but I can certainly find out for you.

The Hon. ROSE JACKSON: Based on the figures that you have provided, Ms Molloy, it looks like it has done so. There were 38 recommendations in that report, and it would be useful to know what happened with those—where they went and whether they were implemented.

SHARON MOLLOY: I have just got a note from my colleague here. That was the grants review. Was that Claudine Lyons?

The Hon. ROSE JACKSON: Yes, as I understand.

SHARON MOLLOY: The agency response is on the website, apparently.

The Hon. ROSE JACKSON: Okay, I will have a look at that.

SHARON MOLLOY: My apologies, I was not across the detail there. If there is not enough detail on the web on how those actions are being implemented, we can certainly get back to you and give you some more information.

Answer:

I am advised:

To date, 18 recommendations have been completely implemented, 10 are ongoing actions that will be continually implemented/enhanced, six are still in progress, three actions were deemed unsuitable for implementation after further investigation, and one was not supported.

44. INVESTIGATIONS - STRATHFIELD – Question taken on notice:

The Hon. ROSE JACKSON: Just to be clear, you do not think it will be realistic to have all of the 50 outstanding plans done by the end of the year. Is that a goal that you are working towards?

SHARON MOLLOY: I would say it is unrealistic to have all 50, but they have got two years to get there. We would be hoping for and supporting councils to try to get as many of them done over the next two years as possible. In the transitional period they have coastal zone management plans, but they need to transition to these programs. A lot have existing plans there; they should be able to fast-track through the process to develop those programs. We are encouraging them. It is obviously councils' responsibility to complete those programs, but we are supporting them as best we can.

The Hon. ROSE JACKSON: How many people are in that team working with the councils to do that work?

SHARON MOLLOY: I might need to get back to you with an exact figure, but we have four coastal branches and then there is a central marine coast, estuary and flood team. I am not going to give you a guess. There are probably teams of five or six in each of those branches and then maybe 10 to 12 in that central team, but I will get you a more accurate figure. I can take that bit on notice.

Answer:

I am advised:

At present, approximately 22 staff are assisting councils.

45. IPART DOMESTIC WASTE CHARGES REVIEW – Question taken on notice:

The Hon. ROSE JACKSON: Yes. My understanding is that the review commenced in November 2019 and, as you know, it is still ongoing. So, obviously, timeliness is one concern. Another concern is, I think, in the draft report the proposal is to peg the increase in charges at 1.1 per cent and the actual cost increase that councils have reported is closer to 4½ per cent every year. So, obviously, we are back to that issue of a little bit of discrepancy between what councils are reporting their cost increases are and what IPART, in a draft report, has suggested the increase might be. Again, is that something that you might engage with IPART on, on behalf of local governments, to try to work through to get back to a better landing from the councils' point of view?

ALLY DENCH: We have been raising those concerns with IPART. Certainly they have been listening. We will continue to raise their concerns.

The Hon. ROSE JACKSON: What form does that take? Do you meet with IPART?

ALLY DENCH: Yes.

The Hon. ROSE JACKSON: Have you, for example, written to IPART about that? As I said, is there a formal letter or submission that you have made? Or have you just met with them?

ALLY DENCH: I have not, as executive director, but I know my team members have. I can take that on notice and find out.

The Hon. ROSE JACKSON: It would also be useful to find out—you said you had not raised the time frames, but maybe just checking if that had been raised and any update that you can provide in relation to that would be useful.

ALLY DENCH: Definitely.

Answer:

I am advised:

In October 2020, the OLG made a submission to the Independent Pricing and Regulatory Tribunal's (IPART) Domestic Waste Management (DWM) Charges Discussion Paper.

The OLG is also contributing to the Department of Planning and Environment's response to IPART's Review of Domestic Waste Management Charges Draft Report. Submissions close on 29 April 2022. The content of this report is not yet finalised.

Questions from the Hon Mark Buttigieg MLC *(on behalf of the Opposition)*

46. INVESTIGATIONS – Question taken on notice:

The Hon. MARK BUTTIGIEG: What about recourse? Timeliness is one thing; but, once someone is found to have breached the code of conduct, are we going to look at what punitive actions can be implemented as a result?

ALLY DENCH: Certainly the review will be looking at robust investigations, fair process, timeliness and effective action to be taken in circumstances of substantiated misconduct. That is what the reviewers will be looking at.

The Hon. MARK BUTTIGIEG: Are you able to give us a feel for the volume of complaints of the ineffectiveness of the current system, the current model?

ALLY DENCH: At this stage I am going to wait for the report. I do not have those figures of who has submitted—

The Hon. MARK BUTTIGIEG: Will you take that on notice?

ALLY DENCH: Yes, I will.

Answer:

I am advised:

The OLG publishes data about complaints received by the Office. These data are publicly available and can be accessed here: <https://www.olg.nsw.gov.au/public-inquiries>.

47. INVESTIGATIONS – Question taken on notice:

The Hon. MARK BUTTIGIEG: Were the terms of reference for the code of conduct review largely a creature of the OLG or were they based on consultation with stakeholders like councils?

MICHAEL CASSEL: We would have to take that on notice. Sorry, that is just a bit of detail that we do not have. And the recourse question that you raised, I think, depends on what the misconduct was to where that recourse would go. An abuse of public position, obviously, can have potential to be an ICAC or a criminal matter, all the way down to, potentially, a criminal matter for deliberately filling out a statutory declaration incorrectly. So it just depends on where or what the misconduct is to where that will head, if it is proven.

The Hon. MARK BUTTIGIEG: If the answer is that, depending on the severity of the breach, then we could look at the jurisdiction that it could be enforced in, I guess, yes. An incorrect completion of a statutory declaration is a pretty serious thing, I would have thought, and flicking it off to NCAT did not really do much.

MICHAEL CASSEL: I cannot respond to what NCAT should or should not have done in that

situation.

ALLY DENCH: I can assure you that the review will make recommendations for any legislative, policy and operational changes that may be required to ensure that we have a robust system.

The Hon. MARK BUTTIGIEG: In terms of that consultation, we do not know how the terms of reference were developed.

ALLY DENCH: We said we would take that on notice and get you that information.

The Hon. MARK BUTTIGIEG: I just want to walk through some of the actual terms of reference. Paragraph 1.a. states:

The standards of conduct set out in the Model Code of Conduct and the way these are applied.

That is one of the terms of reference. Has the OLG encountered issues with the way that standards of conduct are actually applied?

ALLY DENCH: Is there a particular case that you are referring to?

The Hon. MARK BUTTIGIEG: If it is a term of reference for the review, presumably the OLG has some intelligence on those standards not being applied properly.

MICHAEL CASSEL: We cannot be sure about how those terms of reference were brought about. So that we do not mislead the Committee, I would rather take that question on notice and come back with that first answer on where the terms of reference were drafted.

Answer:

I am advised:

The terms of reference have been framed sufficiently broadly to allow the independent reviewer to consider any and all concerns councils and others may have about the efficacy of the current framework.

48. INVESTIGATIONS – Question taken on notice:

The Hon. MARK BUTTIGIEG: In terms of the volume of investigators historically, have they increased in the 10-year period from 2011 to 2021?

ALLY DENCH: I do not have the figures in front of me. I only have the figures from June last year to December. They have stayed the same for that period of time. I do not have the last 10 years' figures. I can take that on notice.

The Hon. MARK BUTTIGIEG: If you could. Is anyone able to explain to me the trigger process for when the OLG investigates a breach and then refers it to NCAT? What is the escalation process there? Once the OLG thinks that a council has breached the code, do they then refer it to NCAT or do they not necessarily have to refer it to NCAT?

MICHAEL CASSEL: I am not sure of the exact steps, to be honest. I might just take that one on notice; I would hate to slip up.

Answer:

I am advised:

In relation to staff dedicated to investigations, the OLG team consists of one manager, five investigators and one legal officer. This has remained unchanged since the OLG restructure in 2012.

In relation to referrals, Section 440J(2)(b) of the Local Government Act provides that the Departmental Chief Executive (DCE) may refer a matter to the NSW Civil and Administrative Tribunal (NCAT) instead of taking disciplinary action.

When considering whether to refer a matter the DCE takes into account the extended range of sanctions available to NCAT, including the power to disqualify a councillor for a period of up to five years.

Questions from the Hon Rose Jackson MLC *(on behalf of the Opposition)*

49. PARK N PAY – Question taken on notice:

The Hon. ROSE JACKSON: I have one last question. In relation to the adoption of smart parking meters and Park'nPay technology, did the Office of Local Government have any role promoting that to councils or engaging with councils on that, or was that done exclusively by the Department of Customer Service?

MELANIE HAWYES: I might take that on notice unless Ally has some more specific information. Obviously, it is the Department of Customer Service that developed the app. We do know councils that are using it, and some of those councils report that they are very happy with the app. I do not know with any depth of detail here today how much of a role we had in promoting the app when it first became available, but we can take that on notice.

The Hon. ROSE JACKSON: Yes, and that is what I am interested in. I know which councils are using it, and I am aware that feedback is generally positive. Ms Dench, do you have any knowledge about what process was undertaken to engage with councils, promote its use to them and encourage them to get on board? Do you have any information here about what that looked like?

ALLY DENCH: No more than what Ms Hawyes has just said.

The Hon. ROSE JACKSON: Okay, so you will take that on notice?

MELANIE HAWYES: We can take that on notice, yes.

Answer:

I am advised:

The OLG did not have a role in promoting the Department of Customer Service's Park'nPay app.