

Statement by the Hon Peter Hall KC on pork barrelling

17th March 2023

Speaking at a time when the Joint Committee of Public Accounts and Audit holds its inquiry hearings into Commonwealth grants administration, the Hon Peter Hall KC makes the following statement:

Consideration should be given to the introduction of a legislative model at the Commonwealth level that will ensure that the exercise of public powers in the making of grants serve the public interest, and are not exercised in a biased or partial manner that favours the interests of a political party.

Whilst the existing Commonwealth legal model for the regulation of grant funding is a good one, expert analysis has established that there is a need for its improvement: NSW ICAC Report on Investigation into Pork Barrelling in NSW, August 2022, Appendix 2, paper presented by Professor Anne Twomey (p.33).

The reports of Auditors- General (Commonwealth and NSW) have exposed serious deficiencies in a number of grant funding cases. The very existence of such cases evidences the fact that existing legal mechanisms that are intended to protect the public interest have failed to prevent the occurrence of pork barrelling activity. This suggests that they have not had sufficient deterrence value. The lessons in Auditor-General reports and those of parliamentary inquiries have clearly not been learned or heeded as the same or similar conduct keeps being repeated despite their condemnations.

Given that public power is substantially derived from public office held, public office-holders (including Ministers of the Crown) may only exercise such power to achieve its proper public purpose. The community is entitled to the protection of a legislative scheme that will ensure accountability in that regard and thereby maintain the public trust.

The enactment of such a scheme could, of course, only serve to enhance the integrity credentials of the present Federal Government, its Ministers and the Executive Government.

There is legal authority to support the contention that the improper expenditure of public money by public officials for a party-political benefit, and one that benefits party donors can constitute the common law criminal offence of misconduct in public office (or in some jurisdictions its statutory equivalent).

Appropriate reforms, carefully drafted, in and in Ministerial Codes of Conduct, provides for a capacity to discern between the legitimate exercise of public power even where political advantage may be a foreseeable consequence (commonly referred to as "mixed motive" cases) and cases involving the deliberate and dishonest misuse of public power for political or electoral advantage. Given the deleterious impact upon the democratic process the latter should be amenable to the jurisdiction of the NACC, and made so by express inclusion in the definition corrupt conduct in the NACC Act.