

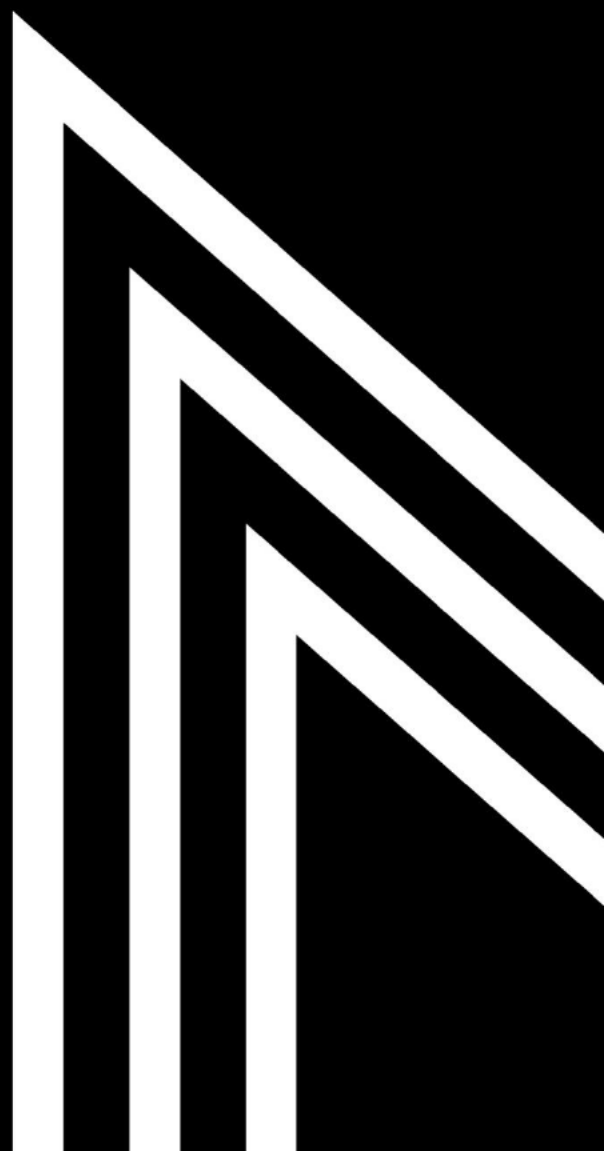
# Department of Education and Training – Review of claims made by Brindabella Christian College into ACT Block Grant Authority decisions

21 September 2018

**DRAFT**



McGrathNicol



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## 1 Glossary

### Glossary

Name	Description
AIS	The Association of Independent Schools of the ACT
ACT	Australian Capital Territory
ACT BGA	ACT Block Grant Authority
BCC	Brindabella Christian College
BGA	Block Grant Authority
CGP	Capital Grants Program for Non-government Schools
Department	Department of Education and Training
Objectives	The objectives of the CGP
Operating Manual	CGP Operating Manual 2016
Requirements	Requirements under the CGP Operating Manual 2016, Australian Education Act 2013 and Australian Education Regulation 2013

## 2 Disclaimer

### Restrictions on use

This report has been prepared for the Department of Education and Training ("the Department") under the instruction of the Capital Funding Team of the Schools Assurance Branch for the provision of ACT Block Grant Authorities.

This report should not be disclosed, be reproduced in whole or in part or supplied to any other party, without our consent in writing. It may not otherwise be reproduced in whole or in part supplied, without our consent in writing.

We have carried out a review of issues raised by Brindabella Christian College in accordance with the Official Order. McGrathNicol has not carried out an audit, nor have we verified any of the information given to us by the Department and the identified service provider, except where expressly stated. We have relied upon assurances from the identified service provider as to the accuracy of the information provided.

The scope of our work is different to that of an audit and it cannot be relied upon to provide the same level of assurance.

We highlight that our work, by necessity, has involved obtaining selected documentation, witness statements and selected reports rather than looking at all information that may exist. The report is limited to processes relating to the applications by Brindabella Christian College for grants under the 2018 and 2019 Capital Grants Program funding rounds, and does not re-examine the assessment or outcomes of those rounds. Accordingly, our findings and conclusions are based on the information reviewed.

### Limitations

In accordance with our firm's policy, we advise that neither the firm nor any member or employee of the firm undertakes responsibility arising in any way whatsoever to any person or organisation, other than the Department in respect of the information set out in this report, including any errors, omissions or negligence however caused.

## 3 Executive summary

### 3.1 Introduction

The Capital Grants Program ("CGP") for non-government schools is an Australian Government program, administered by the Department of Education and Training. In the ACT, the CGP program is administered by the ACT Block Grant Authority ("ACT BGA"). In relation to the 2018 and 2019 CGP funding rounds, a representative of Brindabella Christian College ("BCC"), made a series of claims in respect of the ACT BGA's administration of the CGP ("the claims"). The Department of Education and Training, on behalf of the Minister, engaged McGrathNicol to conduct a review of BCC's claims, including an examination of processes, decision-making and correspondence relating to the claims.

### 3.2 Findings

The BCC has made a number of claims regarding the BGA's processes (listed in section 6.2), and those claims were confirmed in interviews with BCC ( ) and the BGA (s 47F and s 47F ). The following is a list of key findings regarding the BGA's processes and administration:

- the existing structure of the Priorities Committee and Finance Sub-committee (in particular) lends itself to a risk that conflicts of interest are not managed appropriately, or the perception that they are not managed appropriately;
- there is potential for improvement to the structure of the Priorities Committee;
- the assessment process is potentially compromised through having applicant schools represented on the Priorities Committee and/or Finance Sub-committee;
- the BGA's Conflict of Interest Policy, in stating that where a Priorities Committee nominee is directly associated with a school making an application for funding, the nominee does not need to make a conflict of interest declaration, does not appear to meet good probity and transparency practice;
- the ability of BGA's to make forward funding commitments is not clear; and
- the financial assessment aspect of the CGP assessment process is not clearly defined, and minutes are not retained from the Finance Sub-committee's deliberations or meetings.

In regard to the claims by BCC, we found that there was no evidence to support a number of claims. Where this was the case, we have made no recommendations. However, the following claims appear to have some merit, or raised issues which we found were valid concerns, as detailed in the table below:

<i><b>Issue as raised by BCC</b></i>	<i><b>Recommendation</b></i>
<i><b>ACT BGA arrangements are corrupt, as is the joint Catholic/Independent arrangement.</b></i>	Recommendations 1-5 inclusive.
<i><b>ACT BGA is comprised of dominant sector players who use the CGP to obtain information on lesser schools' plans and finances. The appointments are tactical and unfair.</b></i>	Recommendations 1-5 inclusive.
<i><b>A Priorities/Finance Committee member was a financial controller for one of the successful schools in the 2018 Round (Burgmann).</b></i>	Recommendations 1-5 inclusive.
<i><b>The dominant players install their school staff members in years they are going for funds themselves.</b></i>	Recommendation 2.
<i><b>BCC wants the Minister to review the processes, structure and appointments to the BGA and committees.</b></i>	Recommendations 2 and 3.
<i><b>Applicants have no visibility over the assessment process. We have been asked for detailed financial information and we don't believe all applicants are asked for the same level of detail.</b></i>	Recommendations 6 and 7.

### 3.3 Recommendations

As set out at section 3.2, above, a number of claims raised by BCC appear to have some merit. The recommendations below are identified to address the issues identified during the review:

1. *The ACT BGA should maintain a register of relationships with applicant schools (or any other bodies) with which a potential conflict of interest exists.*
2. *The ACT BGA should revise its' Conflict of Interest Policy, particularly in terms of how conflicts of interest are raised and managed. We recommend that the ACT BGA aligns its policy with the ACT BGA Board Charter (particularly Section 7.7), and adopts a best practice approach.*
3. *The ACT BGA should consider changing its constitution, to allow for independent members of the Board and/or Priorities Committee and Sub-committees. In particular, it should consider reducing the number of appointees by the AIS and CECG, and appointing independent committee members with each of: probity; financial; and legal backgrounds. This would ensure that the ACT BGA is seen to be above reproach in its' decision-making.*
4. *The ACT BGA should provide each applicant school with a formal opportunity to present its case to a meeting of the full Priorities Committee, during the assessment period.*
5. *The ACT BGA should consider having the Finance Sub-committee function performed by an organisation which is independent of the school system.*
6. *The ACT BGA should document the procedure used to assess the financial need of each applicant school, specifically including how the proposed grant amount was determined, and the procedure should be published on the ACT BGA website.*
7. *The ACT BGA should provide comprehensive written feedback to each applicant school on the assessment of the application, including the financial assessment for that school, and consider advising the school's position in the rankings.*



## 4 Introduction

### 4.1 Introduction

The Capital Grants Program ("CGP") for non-government schools is an Australian Government program, administered by the Department of Education and Training. The CGP provides funding for non-government school communities to assist primary and secondary schools to improve capital infrastructure where they otherwise may not have access to sufficient capital resources. In the ACT, the CGP program is administered by the ACT Block Grant Authority ("ACT BGA" or "BGA").

In relation to the 2018 and 2019 CGP funding rounds (referred to hereunder as "2018 Round" and "2019 Round"), representative of Brindabella Christian College ("BCC" - an applicant in both Rounds), made a series of claims in respect of the ACT BGA's administration of the CGP ("the claims"). The claims were made in correspondence to the ACT BGA and the Minister for Education and Training. The Department of Education and Training, on behalf of the Minister, engaged McGrathNicol to conduct a review of BCC's claims, including an examination of processes, decision-making and correspondence relating to the claims.

### 4.2 Scope

A variation to Work Order Number AD16/000312 required McGrathNicol to undertake, on behalf of the Department: *"a review of issues raised by BCC (BCC Review) in respect of the ACT BGA's administration of the CGP...The Department requires a report that clarifies, categorises, analyses and investigates claims made by Brindabella Christian College (BCC) and provides evidence and an opinion on...questions on the claims made by BCC in respect of the ACT Block Grant Authority's (the ACT BGA) administration of the CGP"* (Attachment B of the Work Order Variation, signed 14 June 2018).

McGrathNicol has undertaken a review of the claims, including a review of relevant administrative procedures, documentation, assessment procedures and correspondence maintained by the ACT BGA. The review examined the BGA's compliance with key areas of its requirements under the CGP Guidelines, in relation to BCC's applications for the 2018 and 2019 Rounds, and the BGA's procedures for conducting fair and equitable assessments of applications.

In reviewing the administration of the 2018 and 2019 Funding Rounds, we have focused on:

- Procedural, policy and operational documentation held and used by the ACT BGA;
- Governance arrangements (in particular, management of conflicts of interest);
- Procedures undertaken during the 2018 Round, and the application procedure for the 2019 Round; and
- Communication with BCC during the 2018 and 2019 Funding Rounds.

### 4.3 Information relied on and consultations undertaken

The information contained in the report has been prepared on the basis of:

- the *Australian Education Act 2013*;
- the *Australian Education Regulation 2013*;
- the CGP Program Guidelines 2018;
- information provided by the Department, including electronic information;
- information provided by the BGA, including electronic and physical documentation;
- information available on the website of the BGA;
- meeting and discussion with representatives of Brindabella Christian College;
- meetings and discussions with representatives of the BGA; and
- meetings and discussions with representatives of the Department.

As discussed with the Department, the review was contained to the processes, issues, claims and complaints in relation to the 2018 and 2019 CGP funding rounds only. It is acknowledged that BCC has made other claims with respect to ACT BGA processes, which date back to at least 2011.

McGrathNicol conducted face-to-face interviews with:

- s 47F and s 47F on 22 August 2018 at the offices of the ACT BGA; and
- and on 30 August 2018 at the BCC Campus, Lyneham.

## 5 Background

### 5.1 Role of the ACT Block Grant Authority

The CGP provides funding for non-government school communities to assist primary and secondary schools to improve capital infrastructure where they otherwise may not have access to sufficient capital resources. The CGP grants to non-government schools are administered by BGAs who assess applications from schools and make recommendations for funding to the Minister. Schools apply on a competitive need basis to the BGA for initial assessment of proposed projects.

The ACT BGA is a non-profit association established by non-government school organisations in the ACT. The BGA administers the Australian Government's Capital Grants program and other major Government grants programs for non-government schools in the ACT.

The ACT BGA utilises a number of documents and reference materials to administer the CGP. Provided below is a summary of the key internal and external documents that shape the delivery of the CGP:

**Table 1: Documented policies, procedures and guidance materials**

Documented policies, procedures and guidance materials		
Category of documents	Title of document	
Legislation and regulations	<ul style="list-style-type: none"> <li>Australian Education Act 2013</li> <li>Australian Education Regulation 2013</li> </ul>	
Regulatory guidance material	<ul style="list-style-type: none"> <li>CGP Program Guidelines</li> </ul>	
ACT BGA policy documents	<ul style="list-style-type: none"> <li>ACT BGA Inc. participant agreement</li> </ul>	
ACT BGA guidance materials	<ul style="list-style-type: none"> <li>Independent Consultant Guidelines</li> <li>Project Implementation and Tendering Guidelines</li> <li>Guidelines for Construction Management</li> <li>Capital Grant Progressive Expenditure Statement Guidelines</li> <li>Information to Assist Applicants</li> </ul>	

### 5.2 Capital Grants Program funding in the ACT

By way of background information, we have listed below in Table 2, the funding made available to the ACT BGA; and the grants offered, in the 2016-2019 funding rounds:

**Table 2: Funding provided by Department to the ACT BGA for the 2016-2019 years**

Capital Grants Program funding provided to the ACT BGA		
Year	Funding provided	Funding offered
2016	\$3,046,824	\$3,208,000 <sup>1</sup>
2017	\$3,058,509	\$3,300,000 <sup>2</sup>

<sup>1</sup> "Grant recommendations from Finance Sub-committee", Priorities Committee meeting 4/2015 of 13 August (Auditor reference - BF2)

<sup>2</sup> "Grant recommendations from Finance Sub-committee", Priorities Committee meeting 4/2016 of 8 August (Auditor reference - BF3)

2018	\$3,232,098	\$3,000,000 <sup>3</sup>
2019	\$3,268,935	\$3,519,000
2020	\$not yet advised	\$1,130,443*

\*This amount has been forward-committed by the BGA in its' recommendations for the 2019 Round<sup>4</sup>. We note that the BGA also pre-committed funding from the 2018 (\$920,000) and 2019 (\$987,000) Rounds, in their 2017 and 2018 recommendations. The Department advised that: *"BGAs are able to commit up to 50% of their current allocation to projects (forward commit)....this provision is not intended to allow BGAs to supplement the current year's allocation from future year's allocations"*<sup>5</sup>. Table 2 indicates that the BGA is not using future year funds to 'top-up' current year allocations.

Table 3 below provides a list of funding grants offered in the ACT, starting with the 2016 Round and including the 2019 Round, which was decided during the course of the review:

**Table 3: List of CGP grants offered 2016-2019 Rounds**

Capital Grants Program grants offered by the ACT BGA		
Project ID	School name	Funding (\$)
2016/02910/1	Brindabella Christian College	725,000
2016/04422/1	Holy Family Parish Primary School	525,000
2016/02047/1	Holy Trinity Primary School	725,000
2016/02055/1	Sacred Heart Primary School	558,746
2017/02910/1	Brindabella Christian College	500,000
2017/02062/1	Canberra Christian School	600,000
2017/17130/1	Good Shepherd Primary School	800,000
2017/77575/1	Mother Teresa School	600,000
2017/05623/1	St Francis of Assisi Primary School	800,000
2018/16044/1	Burgmann Anglican School	1,000,000
2018/17130/1	Good Shepherd Primary School	1,000,000
2018/02053/1	St Joseph's Primary School	1,000,000
Not yet contracted	Taqwa School	1,000,000
Not yet contracted	Trinity Christian School	600,000
Not yet contracted	St Vincent's Primary School	693,000
Not yet contracted	St Anthony's Primary School	1,000,000

### 5.3 ACT BGA Governance

The claims investigated in this review relate to the assessment of applications in the ACT for funding under the CGP. The assessments are conducted by the ACT BGA, which is governed by a constitution, and conducts the assessments through a 'Priorities Committee' which is subject to certain policy and procedural requirements. A 'Finance Sub-committee' conducts a financial assessment of applicant schools and reports to the Priorities Committee.

<sup>3</sup> "Grant recommendations from Finance Sub-committee", Priorities Committee meeting 4/2017 of 9 August (Auditor reference – BF8)

<sup>4</sup> "Grant recommendations from Finance Sub-committee", Priorities Committee meeting 4/2018 of 15 August (Auditor reference – PF9)

<sup>5</sup> Email from s 22 to Auditor - 7 September 2018 (Auditor reference – DC1)



### 5.3.1 Membership of the BGA Board and committees

The ACT BGA Constitution determines membership of the BGA<sup>6</sup>; office bearers of the ACT BGA Committee<sup>7</sup>; and membership of the Priorities Committee<sup>8</sup>. Membership of the BGA consists of two nominees from each of the Association of Independent Schools ACT ("AIS") and the Catholic Education Archdiocese Canberra and Goulburn ("CECG"). Members of the Priorities Sub-committee are the ACT BGA Committee Chair, plus four nominees from each of AIS and CECG (who are not members of the Board). Two members of the Priorities Committee are nominated to form the Finance Sub-committee. Further, the Board Chair and two members of the Priorities Committee ("PC") attend each applicant school for a site visit as part of the assessment process (the two PC members are different for each applicant school).

### 5.3.2 Assessment of applications

The initial assessment of applications is conducted by the Priorities Committee, and applicants with eligible projects are ranked in order of educational need (the highest need being ranked the highest priority). The assessment of schools' financial needs and capacity is then undertaken by the Finance Sub-committee. The financial assessment procedure is not documented, and each individual financial assessment is only documented at a high-level in the Project Assessment Report.

A school may be ranked highest in the Priorities Committee report, only to be not recommended for funding by the Finance Sub-committee. This may occur if, for example, the school was considered to have sufficient funds to pay for the project itself (which is uncommon), or if the school was not deemed to be capable of paying its' share of the project funding (which is more common). Examples of this occurred in the 2018 and 2019 Rounds.

The Priorities Committee meets to consider the Finance Sub-committee's report, against the Priorities Committee's original findings, and subsequently makes a recommendation to the BGA Board on which projects should be funded, and the amounts to be provided to each successful applicant. The BGA Board then makes recommendations to the Department.

## 6 Review of issues raised by Brindabella Christian College

### 6.1 Background

Following the announcement of the 2018 Funding Round results, BCC made a series of claims, complaints and allegations in regard to the processes undertaken by the BGA in making its' assessments.

The claims, as listed below, were derived from electronic communications between BCC and: the BGA; the Department; and the Minister.

### 6.2 Findings of the review

BCC has confirmed the issues stated in Table 4 below are representative of its concerns in respect of the 2018 and 2019 Rounds, during our interview conducted on 30 August 2018:

**Table 4: List of BCC issues, McGrathNicol findings and recommendations**

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<sup>6</sup> Clause 5

<sup>7</sup> Clause 10

<sup>8</sup> Clause 15

<i>Issue</i>	<i>Finding</i>	<i>Recommendation</i>
<b><i>Priorities Committee did not conduct a sufficient site visit for the 2018 Round assessments.</i></b>	<p>The Priorities Committee conducted a site visit to BCC (Lyneham) on 8 June 2017, attended by PC members s 47F, s 47F, s 47F and s 47F.</p> <p>The site visit appears to have been consistent with the duration and activities for site visits at other schools. PC member notes were provided for each of the site visits.</p> <p>Accordingly, there is no evidence to conclude that the Priorities Committee did not conduct a sufficient site visit.</p>	None.
<b><i>A school received a funding offer in 2018 and declined it. Funds were not redistributed fairly.</i></b>	<p>Based on evidence reviewed, this is incorrect. The school in question was ranked second by the Priorities Committee, however the Finance Sub-committee received notice that financial support would not be forthcoming from the school's parent entity. As such, the school was not offered a grant.</p>	None.
<b><i>ACT BGA's electronic submission process has security flaws. BCC's application was changed from 'Submitted' to 'Draft' due to BGA concerns with wording used in the application. BCC questions the integrity of the system if the BGA is able to tamper with applications.</i></b>	<p>We are satisfied that the process used by the BGA provides reasonable audit trails, and that the BGA rightly has the capability to adjust application status.</p> <p>The BGA maintains a register of applications and the relevant status of each application at any date during the application process.</p> <p>We have found no evidence that the BGA changed any details in the BCC applications, except for the status, prior to the application closing date.</p>	None.
<b><i>Changing the 2019 application back to 'Draft' was: "to mask BCC's concerns..."</i></b>	<p>There is no evidence to support this claim. The application's status appears to have been changed in order to allow BCC to remove some potentially defamatory statements made in the 2019 application.</p>	None.
<b><i>ACT BGA arrangements are corrupt, as is the joint Catholic/Independent arrangement.</i></b>	<p>It is not possible within the scope of this review for McGrathNicol to make a finding in respect of the BCC claims of corruption. The BGA has a process outlined for assessing grant applications, and this process appears to have been followed in respect of the assessment of the 2018 Round applications.</p> <p>However, the existing structure of the Priorities Committee and Finance Sub-committee (in particular), lends itself to a risk that conflicts of interest are not managed appropriately, or the perception that they are not managed appropriately.</p>	Recommendations 1-5 inclusive.

<i>Issue</i>	<i>Finding</i>	<i>Recommendation</i>
<b><i>ACT BGA is comprised of dominant sector players who use the CGP to obtain information on lesser schools' plans and finances. The appointments are tactical and unfair.</i></b>	<p>We have found no evidence that BCC was unfairly or inequitably treated during the 2018 Round assessments (noting that we did not review the assessment itself).</p> <p>However, we have found that there is potential for improvement to the structure of the Priorities Committee. In view of the membership of the Priorities Committee being nominees of either the CECG or the AIS, members are often directly attached to competing schools.</p> <p>As applicants are required to lodge master planning and financial details, PC (and therefore Finance Sub-committee) members are privy to information from applicant schools which are competing for student market share with their own school(s).</p> <p>Whilst we have no evidence of tactical or unfair appointments, we have found that the assessment process is potentially compromised through having applicant schools represented on the Priorities Committee and/or Finance Sub-committee.</p>	Recommendations 1-5 inclusive.
<b><i>Priorities Committee is a closed 'Club' which BCC can't get access to.</i></b>	<p>The Priorities Committee is formed through the nomination by the CECG and the AIS ACT, of four nominees each; in addition to the Chair of the ACT BGA. As such, the relevant body for BCC to apply to is the AIS ACT, of which it is a member.</p> <p>Accordingly, this matter was outside the scope of the review.</p>	None.
<b><i>The dominant players install their school staff members in years they are going for funds themselves.</i></b>	<p>There was a clearly apparent conflict of interest in the 2018 Round, in that the Burgmann and Good Shepherd schools, which had applied for funding, were represented on the Priorities Committee, and the Burgmann nominee was also on the Finance Sub-committee. Both schools were successful applicants in the Round.</p> <p>The minutes of the first Priorities Committee for that year indicate that the conflicts were disclosed by both parties. However, we note that the conflicts were not required to be disclosed under the BGA's Conflict of Interest Policy, as: "<i>Such obvious conflicts of interest do not need to be regularly declared</i>". We have found that this does not appear to meet good probity and transparency practice.</p>	Recommendation 2.

<i>Issue</i>	<i>Finding</i>	<i>Recommendation</i>
<b><i>BCC did not engage with the appeals process because it is futile, so elected to make complaints not in the form of an appeal against a decision, they were complaints about the process, made to the Minister.</i></b>	This is accepted by BCC, and this review is part of the Department's response to BCC's complaints. (We note that BCC has lodged a formal appeal against the outcome of the 2019 Round).	None.
<b><i>BCC requested a pre-allocation of \$1 million in funds from the 2019 Round, or at least, an understanding of how forward funding allocations were made.</i></b>	This request was declined by the BGA. Whilst it is not clear from the CGP Guidelines, the BGA appears to be within its rights to adopt this approach. We note Section 7.4 of our report, in which this issue is discussed in detail.	None.
<b><i>Previous corruption allegations were not sufficiently investigated, back to 2008.</i></b>	This matter was outside the scope of this review, with the scope limited to the 2018 and 2019 Rounds.  However, BCC appears satisfied that their concerns from prior years are similar to the concerns in scope that have been addressed in this review.	None.
<b><i>BCC wants the Minister to review the processes, structure and appointments to the BGA and committees.</i></b>	BCC agreed that this review met its request.	Recommendations 2 and 3.
<b><i>A Priorities/Finance Committee member was a financial controller for one of the successful schools in the 2018 Round (Burgmann).</i></b>	This was confirmed, as noted above.	Recommendations 1-5 inclusive.
<b><i>Applicants have no visibility over the assessment process. We have been asked for detailed financial information and we don't believe all applicants are asked for the same level of detail.</i></b>	It is not clear if the same level of information is asked of, or provided to, all applicants. The Finance Sub-committee process in particular is not clearly defined, and minutes are not retained from its' deliberations or meetings.	Recommendations 6 and 7.
<b><i>The BGA directly contacted BCC's bank during the assessments.</i></b>	Whilst there was a substantial amount of correspondence from BCC which raised its' suspicions about direct contact between the BGA and the National Australia Bank, there was no evidence found to support the allegation.	None.



## 7 Recommendations

### 7.1 Recommendations 1-4

1. *The ACT BGA should maintain a register of relationships with applicant schools (or any other bodies) with which a potential conflict of interest exists.*
2. *The ACT BGA should revise its' Conflict of Interest Policy, particularly in terms of how conflicts of interest are raised and managed. We recommend that the ACT BGA aligns its policy with the ACT BGA Board Charter (particularly Section 7.7), and adopts a best practice approach.*
3. *The ACT BGA should consider changing its constitution, to allow for independent members of the Board and/or Priorities Committee and Sub-committees. In particular, it should consider reducing the number of appointees by the AIS and CECG, and appointing independent committee members with each of: probity; financial; and legal backgrounds. This would ensure that the ACT BGA is seen to be above reproach in its' decision-making.*
4. *The ACT BGA should provide each applicant school with a formal opportunity to present its case to a meeting of the full Priorities Committee, during the assessment period.*

#### 7.1.1 Rationale for Recommendations 1-4

The ACT BGA has a conflict of interest risk management process and a conflict of interest (COI) policy, however it does not have a documented conflict of interest register. We have found that the COI policy<sup>9</sup> appears inconsistent with the ACT BGA Board Charter<sup>10</sup>. Within both the Charter and the COI, there is an acknowledgement that there is an inherent danger of conflicts of interest arising within the ACT, due to *"...the limited pool of potential Assessment Committee members..."* (Charter, section 7.7) and that *"It is recognised that Members, Directors and Committee members work for or represent actual or potential grant recipients"* (COI, page 1).

However, the management of these conflicts is different, and inconsistent, between the documents. For example, in relation to Committee members with an *"actual, potential or perceived conflict"*, the two documents state the following:

- COI: *"Such obvious conflicts of interest (Type 1) do not need to be regularly declared...For Type 1 conflicts, approaches (b) or (c) will be the normal approaches adopted...(b) allow them to take part in discussions but not decision-making...(c) recognise the conflicts of interest and allow those involved to take a full part in the discussion and decision-making";* and
- Charter: *"the normal position being that such a member should not participate in decision-making on a project with which they are associated, and should participate in discussion of such a project only when invited by the Chair for clarification, with equivalent clarification opportunities being provided to those associated with other projects who are not Committee members".*

We note that the Charter wording is also included in the COI policy, rendering the latter inconsistent within itself, and somewhat confusing to the reader as to which procedure is applied.

We have found that the BGA Board's management of identified conflicts would be improved if alternative options, as were available under the Conflict of Interest policy and as stated in the Board Charter, had been implemented. We have found that there remains a risk that conflicts of interest existed, or may be perceived to have been ineffectively managed during the assessment of the 2018 Round.

We note the *Commonwealth Grants Rules and Guidelines 2017* states, in regard to 'Probity and Transparency', particularly noting the **bolded** areas below:

- "13.2 Transparency refers to...being open to scrutiny about grants administration...
- 13.3 Probity and Transparency in grants administration is achieved by ensuring...that decisions relating to grants opportunities are impartial; appropriately documented and reported...

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<sup>9</sup> ACT BGA Conflict of Interest Policy, page 1 (Auditor reference – E17)

<sup>10</sup> Extract from ACT BGA Board Charter, section 7.7 (Auditor reference – PF2)



- 13.6 **Actual or perceived conflicts of interest can be damaging to...granting entities and its officials...**  
A conflict of interest arises where a person makes a decision or exercises a power in a way that may be, or may be perceived to be, influenced by...material personal associations. A conflict of interest may arise:
  - **where decision-makers...**involved in grants administration have a direct or indirect interest, which may influence the selection of a particular grant activity;
  - **where a potential grantee** has a direct or indirect interest, which may influence the selection of their proposed grant activity...
- 13.7 Officials should establish transparent processes which help manage misconceptions and the potential for personal or related party gain...
- 13.8 [Authorities] should put in place appropriate mechanisms for identifying and managing potential conflicts of interest for grant opportunities. These mechanisms may include:
  - establishing procedures...to declare their interests;
  - developing procedures to manage potential conflicts of interest in all phases of grants administration (**it is not advisable to include potential grantees for a grant opportunity on bodies which directly input into the grant selection process**);
  - **maintaining a register** of staff and other party interests...
- 13.9 Officials should conduct grants administration in a manner that minimises concerns about equitable treatment..."

We have found that whilst the ACT BGA has established processes for dealing with conflicts of interest, the implementation of the Conflict of Interest policy may not be achieving the requisite outcomes and we consider Recommendation 2 to be an important first step in overcoming this issue. Further, we recognise that the structure of the Priorities Committee membership creates a situation whereby decision-makers are also grantees (as occurred in the 2018 Round with Burgmann and Good Shepherd schools). The principles espoused in section 13.6, above, confirm that this is an issue which is potentially damaging to the ACT BGA. Accordingly, Recommendation 3 is that the ACT BGA should consider changes to its constitution which will help ameliorate the conflict of interest position through increased probity, and if undertaken in conjunction with Recommendations 1 and 2, would improve transparency.

In regard to the 2018 Round, conflicts were declared for four members of the Priorities Committee<sup>11</sup>, including for s 47F of Burgmann College, and s 47F of Good Shepherd Primary School, noting that each of their schools had applied for funding in the 2018 Round<sup>12</sup>. Whilst the Conflict of Interest policy determines that such conflicts "*do not need to be regularly declared*", we consider that such an approach is not reasonable in terms of providing sufficient transparency to the grants assessment process, and that the parties were right to make the declarations.

In view of the potential representation on the Priorities Committee of some applicant schools, we consider there is an imbalance in the amount of information available to committee members, between those schools with, and those without, representation. For applications from the Catholic Education sector, for example, it was declared (in minutes of the first Priorities Committee meeting for the 2019 Round) by two Priorities Committee members that they had already been "*involved with the project planning and submission of applications for the...catholic schools*"<sup>13</sup> prior to the CGP applications being lodged. At interview, the BGA indicated that the presence of school representatives on the Priorities Committee meant that if further information was required from those members' schools, it was able to be provided verbally during the meeting. We consider that such opportunities should be afforded to all applicants, as per Recommendation 4.

<sup>11</sup> Priorities Committee Meeting 1/2018 Final Minutes – Auditor reference PF3

<sup>12</sup> ACT BGA Board Meeting 3/2017 of 21 August, Capital Grants recommendations for 2018 Round – Auditor reference PF31

<sup>13</sup> Priorities Committee Meeting 1/2018 Final Minutes – Auditor reference PF3

## 7.2 Recommendation 5

5. ***The ACT BGA should consider having the Finance Sub-committee function performed by an organisation which is independent of the school system.***

### 7.2.1 Rationale for Recommendation 5

In addition to reducing conflict of interest issues (as noted in Recommendations 2 and 3), we consider that the probity of financial assessments would be improved by engaging a third party organisation to perform the task.

Applicant schools are required to submit master plans and detailed financial information as part of the grant funding application. We have found that there is a potential level of unfairness or inequity present, in that schools which do not have representation on the Priorities Committee or Finance Sub-committee may be disadvantaged, in having such information made available to representatives of competing schools who do have committee representation.

In regard to the 2018 Round, BCC raised concerns that its financial information was being assessed by a Finance Sub-committee member - s 47F of Burgmann College - who had prepared his school's competing application for grant funding. Further, it is ACT BGA policy that the two appointed members of the Finance Sub-committee are members of the Priorities Committee. As such, these members are involved in the assessment/ranking of projects, and subsequently make an assessment on the financial capability of the applicants. Whilst the ACT BGA stated: '**s 47F commented that he would make no comment or assessment of his school...**'<sup>14</sup>, there is no evidence to substantiate this claim, as minutes are not taken for Finance Sub-committee meetings or deliberations. In general, we consider that transparency surrounding the Finance Sub-committee aspect of the assessments is less than ideal.

We consider that probity would be improved if the educational need assessment (Priorities Committee) and financial assessment (Finance Sub-committee) tasks were conducted independently of each other, and that an (external) independent financial assessment would be a more appropriate approach than the existing situation. As such, even if Recommendation 3 were to be implemented, we consider that Recommendation 4 would result in an improved probity approach and reduce the risk that the CGP process (as undertaken by the ACT BGA) could be compromised, or perceived to be compromised.

We recognise that this recommendation would result in increased administrative costs for the ACT BGA, and accordingly, the BGA (or the Department) will need to assess whether there are sufficient funds available.

## 7.3 Recommendations 6 and 7

6. ***The ACT BGA should document the procedure used to assess the financial need of each applicant school, specifically including how the proposed grant amount was determined, and the procedure should be published on the ACT BGA website.***
7. ***The ACT BGA should provide comprehensive written feedback to each applicant school on the assessment of the application, including the financial assessment for that school, and consider advising the school's position in the rankings.***

### 7.3.1 Rationale for Recommendations 6 and 7

Schools are recommended for grants by the BGA Board based on detailed applications, evaluation of the application by the ACT BGA Priorities Committee (including site visits), and financial analysis by the ACT BGA Finance sub-committee. School visits are undertaken for all applications by a group including some of the Priorities Committee members, the ACT BGA Chair and the ACT BGA Executive Officer.

The assessment of schools' financial need is undertaken by one of the two Priorities Committee members possessing financial backgrounds. The financial assessment procedure is not documented, and each individual financial assessment is only documented at a high-level in the Project Assessment Report. Unsuccessful schools are contacted by telephone by the Executive Officer, who provides a summary of the assessment.

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<sup>14</sup> ACT BGA response to interview questions, 22<sup>nd</sup> August 2018 – Auditor reference PF32

Whilst we have made recommendations for future communications between the BGA and applicant schools to improve clarity, we do not consider that communications between BGA and BCC impacted on the 2018 Round assessment process, however, we found that post-assessment communications, in general, from the BGA could be improved. We have recommended that applicants are provided with more detail than is currently the case, which we consider may have substantially reduced the amount of communications between the BGA and BCC following the 2018 Round.

#### 7.4 Issue of future year funding

The background to this section is that BCC's application for 'Specialist Classrooms' was not assessed during the 2018 Round, as the school had indicated the project would be commenced on 1 February 2019. The BGA advised BCC of this outcome by letter on 23 August 2017: *"...this project was deemed ineligible and was not assessed during this Round...it is a 2019 project and we encourage you to resubmit this application during the 2019 Round"*<sup>15</sup>. We sought clarification from the Department, which has advised that *"CGP is a calendar year program and projects are required to commence in the year for which they were approved"*<sup>16</sup> and accordingly, the BGA was correct in its determination.

Following the decision, BCC requested that future year (2019) funding be appropriated to the project. BGA responded that it was unable to fulfil the request: *"You are aware that the BGA does not consider applications for pre-commitment from individual schools, but this is done as part of our annual assessment Round. Therefore, the BGA Board is unable to consider this request from BCC"*<sup>17</sup>.

During the review, we questioned whether Item 30 of the CGP Guidelines 2018 did, in fact, allow the BGA to do this: *"BGAs may identify funding from subsequent years to be allocated to a project (forward commitment)...This funding will be subject to the availability of funding in future years for a BGA...funding for a future year where the CGP funding will not be required until a future year (the project will commence within 12 months of approval)"*<sup>18</sup>. We sought clarification from the Department, which advised that: *"All projects approved [are] required to commence in the program year for which they were approved – future commitments [simply] allow for funding to be committed to projects over multiple years, to fit with the profile of the project"*<sup>19</sup>.

The Department advised: *"BGAs are able to commit up to 50% of their current allocation to projects (forward commit)"*<sup>20</sup>. In view of the allocated funds and resulting annual grants being for similar amounts in the years 2016-2019 (as detailed in Section 5.3, above), the ACT BGA does not appear to be using future year allocations as a 'top-up' for making grant recommendations in a given year.

Whilst there is no finding or recommendation in relation to this issue, the Department may wish to consider discussing the issue with the ACT BGA to ensure that potential applicants are provided with accurate and straight-forward information on the amount of funding available in any funding year.

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<sup>15</sup> Letter from ACT BGA to BCC of 23 August 2017 - Auditor reference – A

<sup>16</sup> Email from s 22 (Department) to auditor, 7 September 2018 - Auditor reference – DC1

<sup>17</sup> Letter from ACT BGA to BCC of 28<sup>th</sup> November 2017 - Auditor reference – D

<sup>18</sup> Capital Grants Program Guidelines 2018, page 9

<sup>19</sup> Email from s 22 to auditor, 7 September 2018 - Auditor reference – DC1

<sup>20</sup> Email from s 22 (Department) to auditor, 7 September 2018 - Auditor reference – DC1