Review of the NCOSS role on ClubGRANTS Local Committees: Summary Report

Office of Responsible Gambling

July 2021

About NCOSS

The NSW Council of Social Service (NCOSS) is the peak body for the social services sector in NSW. With over 400 members and a wider network of organisations and individuals who share our values, we advocate to alleviate poverty and disadvantage in NSW.

NCOSS was founded in 1934 during the Great Depression when unemployment rose to 28% and extreme poverty was rampant. With few government programs available, assistance was provided through a limited number of overstretched religious charities. A small group was motivated to improve the lives of those suffering and so the NSW Council of Social Services was formed, to coordinate relief efforts and maximise benefit for those in need. Our core vision remains unchanged: a NSW free from poverty and disadvantage.

To achieve this vision, we work to:

- Amplify the experience of people affected by poverty and disadvantage
- Support a diverse, collaborative and innovative community sector
- Form constructive partnerships to influence change
- Ensure a strong, effective and sustainable organisation.

Over 880,000 people are living below the poverty line in NSW and this number is growing. As communities struggle to meet the cost of living, many people are being left behind. Natural disasters as well as the COVID-19 pandemic have exacerbated the already growing number of vulnerable communities.

As the peak body for the social services sector, NCOSS is uniquely placed to work together with our members, government, business and other stakeholders to strive for a more equitable and inclusive society. We provide a platform for sharing information and resources, developing agreed positions, progressing joint work and seeking greater transparency and delivery on commitments from government.

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Review of NCOSS role on ClubGRANTS Local Committees

Summary Report

1. Introduction

This Summary Report provides an overview of our review of the NCOSS role on ClubGRANTS Local Committees and the review deliverables, in keeping with the Terms of Reference set by the Office of Responsible Gambling (ORG).[1] It draws on the detailed information, evidence, analysis and other material contained in the full report.

This Summary Report also sets out observations, findings and recommendations relating to the operation of the ClubGRANTS Scheme and, in particular, the governing Ministerial Guidelines, as they impact on the role of Local Committees and NCOSS and are relevant to improving governance, transparency and accountability.

It includes the NCOSS Board's consideration of the role NCOSS is required to play under the current governance framework for the ClubGRANTS scheme and the Board's decision on the way forward.

2. Pokies in NSW: A brief overview

Gaming machines – better known as poker machines or pokies – were first introduced in 1956 in two locations: Las Vegas and NSW. Today, NSW has the largest number of pokies in Australia and accounts for around 30% of pokies globally, outside casinos.

In 2019, more than $22 million a day[2] was lost through the state's 91,382[3] pokies, making NSW the world's gambling capital on a per capita basis.[4] Clubs account for 68,692 of these poker machines, the rest (22,690) are in hotels. These figures do not include the 1,500 pokies operated by The Star casino in Sydney.

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1. ORG, which sits in the NSW Government's Customer Services Department, administers what are known as Category (CAT) 3 grants from the ClubGRANTS Fund.
2. L&GNSW publish profit, tax and ranking data for Clubs and hotels twice a year at https://www.liquorandgaming.nsw.gov.au/resources/gaming-machine-data. For Clubs, this is 1 July to 30 November and 1 December to 30 June. For hotels, it's 1 January to 30 June and 1 July to 31 December. These figures are taken from L&GNSW's reports for Clubs that roughly correlate to the 2019 calendar year (1 December 2018 to 31 May 2019 and 1 June 2019 to 30 November 2019) and the reports for the 2019 calendar year for hotels.
3. Figures are taken from the reports described in (1) above.
4. See *The Sydney Morning Herald* (SMH), https://www.smh.com.au/national/nsw/what-are-gambling-cards-and-how-would-they-stop-money-laundering-in-the-pokies-capital-of-australia-20210209-p570s8.html, 10 February 2021.

According to L&GNSW data, in the two six month periods that roughly correlate with the 2019-20 financial year, pokies in pubs and clubs contributed $1.74 billion to NSW Government revenues. [5]

This left Clubs with after-tax pokies profits around $3.27 billion for the 2019-20 Gaming Machine Tax Year (GMTY) – despite the first wave of COVID-19 lockdowns – compared with $3.97 billion for the previous year.[6] Pubs, which don't get the same concessional tax treatment as Clubs or the benefit of being able to claim tax rebates through a scheme like ClubGRANTS, made after-tax profits of $2.4 billion in the 2019-20 financial year and $2.57 billion in 2018-19.

The NSW Government forecasted that pokies would bring in $1.9 billion in 2020-21.[7]

3. What is ClubGRANTS and what's the NCOSS role in the scheme?

ClubGRANTS is a small grants scheme, first established in 1998. It allows registered Clubs in NSW to claim dollar-for-dollar tax rebates on poker machine profits over $1 million (capped at 1.85% of those profits) when they make grants to eligible community projects. Clubs pay no tax on pokies profits up to $1 million.[8]

NCOSS has had a role in the scheme from its very beginning. It was our agreement to participate – and assurances given to the Legislative Council that a role for NCOSS would ensure community benefits from the scheme were maximised[9] – that secured the necessary Opposition and Cross Bench support for the passage of the enabling legislation.

After the legislation passed through Parliament, we had a role in developing the Ministerial Guidelines that govern the operation of the scheme and, under the Guidelines, we were designated a "core member" of Local Committees, which play a role in the administration of Category (CAT) 1 grants.[10]

CAT 1 grants are for projects that contribute to the welfare and broader social fabric of the local community, and are aimed at improving the living standards of low income and disadvantaged people.[11] Local Committees are required in all LGAs where the total pool of CAT 1 grant funding from all Clubs participating in ClubGRANTS is $30,000 or more.[12]

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5 Figures are taken from the report set out in (1) above.

6 This is based on reports published by L&GNSW for the periods 1 December to 31 May 2019 and 1 June to 30 November 2020. The GMTY actually runs 1 September to 31 August annually. It's not clear why L&GNSW does not report Club data based on either the GMTY or the financial year.

7 NSW Government (2020) *Budget Statement 2020-2021* (Budget Paper No. 1) pp 4 – 13.

8 See s17(4) of the *Gaming Machine Tax Act* 2001.

9 Hansard at https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-14789. In the then Treasurer's 6 May 1988 reply to the second reading debate on the *Liquor and Registered Clubs Legislation (Community Partnerships) Bill* in the Legislative Council, the Council was advised that that there would be a role for NCOSS "to ensure that the maximum level of benefit to local communities is provided by this portion of club expenditure."

10 See clause 6.2 of the August 2020 ClubGRANTS Guidelines.

11 See clause 2.1 of the August 2020 ClubGRANTS Guidelines.

12 See clause 6.1 of the August 2020 ClubGRANTS Guidelines.

Clubs must allocate at least 0.75% of profits over $1 million to CAT 1 projects. The difference (up to 1.1% of profits over $1 million) go to CAT 2 grants, which are for other community development support projects that are not eligible for CAT 1 funding.

Together, it is estimated that the NSW ClubGRANTS scheme, comprising CAT 1 and 2 grants, is worth nore than $60 million a year. CAT 1 grants are estimated to be worth around $24.5 million a year.

4. Why is NCOSS undertaking this project?

While NCOSS was given a role in the ClubGRANTS scheme from the outset, we were never resourced to perform it. Over time, NSW Government contracting arrangements governing our core funding have become more focused on specified deliverables and less flexible. As a result, our ability to play a role in, and have oversight of, the Local Committee process diminished. In short, we were not able to keep sight of it.

Realising this, NCOSS approached L&GNSW in 2019, raising a range of concerns and flagging our intention to withdraw from what was an 'in name only' involvement in the scheme.

Our concerns included that we were associated with what appeared to be a highly devolved process, where there was no clear understanding of our role and no visibility over what was happening, on the ground, and supposedly in our name.

We were also aware that some of our members had long-standing concerns about the source of ClubGRANTS funds and the overall operation of the scheme, including purported conflicts of interest and poor levels of transparency and accountability.

We were subsequently funded by the Office of Responsible Gambling (ORG), which also sits in the Department of Customer Services and which administers what are known as CAT 3 grants, to develop appropriate systems and processes to support an ongoing role for NCOSS and, more broadly, to:

- consider what was working well and what could be improved in the processes we were involved with, including the key roles of Local Committees established by the Guidelines and how NCOSS involvement would contribute to these expectations being met; and
- work with stakeholders to identify improvements to governance, transparency and accountability.

5. What the project delivered

In keeping with the Terms of Reference, the Review's deliverables comprised two components:

i) Development of systems, processes and resources to support NCOSS involvement in the scheme and effective administration in this regard (ToR 1, 2 and 4).

ii) Observations and findings on the operation of the scheme and its impact on the role of Local Committees (including the NCOSS role) – including what is/isn't working well, and improving governance, transparency and accountability of ClubGRANTS processes (ToR 3, 5 and 6).

i) Development of systems, processes and resources to support NCOSS involvement in the scheme and effective administration

We developed the tangible deliverables required under ORG's ToR 1, 2 and 4, comprising:

- A proposed nomination and selection process for NCOSS member organisations to be appointed to Local Committees, including identification of responsibilities, selection criteria, term of appointment, and management of conflicts of interest (see Section 2.1 of the full report);
- A Register of NCOSS members on Local Committees, noting considerable barriers to compiling this information. This task highlighted that 30% (20) of the 67 LGAs required to have a Local Committee do not appear have one; and of the 47 LGAs that do have one, 55% (26) do not appear to have an NCOSS representative (see Section 2.2 of the full report); and
- A transparent, consistent process for determining local priorities in areas that are not required to have a Local Committee. This includes specification of roles and responsibilities, key steps and timeframes; and draws on readily available information, resources and tools such as local council social plans, input from NCOSS members, NCOSS/NATSEM Economic Disadvantage in NSW interactive mapping tool and other research (see Section 2.3 of the full report).

Our approach to the above took account of existing arrangements; balancing issues of transparency, fairness and accountability with resource constraints and the need for streamlined and efficient processes; and community expectations for the administration of public funds. In this regard, it is worth noting that the grants made through the ClubGRANTS scheme is foregone tax revenue.

It has highlighted that adequate, dedicated resources would be required for NCOSS to continue, and appropriately fulfil, its role in the administration of the scheme.

ii) Observations and findings on the operation of the scheme and its impact on the role of Local Committees and NCOSS, including what is/isn't working, and improving governance, transparency and accountability (ToR 3, 5 and 6)

In considering the key role of Local Committees established under the Guidelines and how NCOSS can contribute to expectations for these Committees being met, it was necessary to look at the operation of the scheme overall, and the contribution of Local Committees within this context. This also assisted with consideration of what is and isn't working well, and opportunities to improve governance, transparency and accountability.

Our findings and observations are based on extensive consultation with a range of stakeholders, fact-finding, document review and analysis of publicly available information.

We heard that our members value a locally managed, small grants scheme which is not overly bureaucratic and where decisions are timely. For many, it is also an important source of additional revenue when government funding does not meet rising demand or the increasing cost of service provision. On balance, NCOSS members would prefer that NCOSS remain involved in ClubGRANTS, as long as we are properly resourced to do so and the governance flaws we have identified through this review are addressed.

In this respect, this project has revealed significant flaws in the ClubGRANTS' processes that involve us or our member representatives, and which appear to have been primarily designed in the interests of the Clubs industry, rather than in the public interest. Specifically, we have found that:

- Local Committee roles and processes under the ClubGRANTS Guidelines do not establish a governance framework that meets contemporary expectations for the expenditure of taxpayer funds. In places, they are also internally inconsistent. This is a reputational issue for NCOSS, especially if our involvement gives the appearance there is an effective process in place.
- Clubs are the sole decision makers for CAT 1 grants and, under the Guidelines, Local Committees have limited opportunities to influence outcomes. While this reflects the policy position of the NSW Government that Clubs are best placed to understand the needs of their communities, the allocation of taxpayer funds should be underpinned by a sufficiently robust and transparent process with appropriate checks and balances.
- There appears to be a failure by many Clubs to engage with, and participate meaningfully on, Local Committees, and meet the modest obligations the Guidelines impose on them. This includes compliance with key requirements to determine the proportion of the total CAT 1 funding pool for the LGA that should be spent on projects recommended by the Local Committee.
- It seems that the identification of local priorities has increasingly become a 'tick a box' exercise from a broad list of potentially eligible services, rather than being used to target known community needs that are the highest priority.
- Reporting requirements to Local Committees (and the public) are light on and compliance levels are poor. It also seems likely that the eligibility criteria are not being properly applied, so projects funded through CAT 1 grants are not always aimed at improving the living standards of people who are disadvantaged or on low incomes.
- The Guidelines do not provide a mechanism for Local Committees to act where Clubs fail to clear the low compliance bar they set. Yet the *Gaming Machine Tax Act* 2001 (GMT Act) prohibits L&GNSW from allowing a tax rebate if it is satisfied, based on Local Committee advice, that the Club has not complied with the Guidelines.[13]

[13] See s17(3) of the GMT Act.

- The Guidelines allow Clubs to make grant decisions to give themselves a financial or other advantage, giving rise to real or perceived conflicts of interest and not enabling a fair, transparent and consistent process.
- Some Clubs are making CAT 1 grants to for-profit businesses. While there is a general understanding that CAT 1 grant recipients must be local, not-for-profit organisations, the Guidelines are not clear whether for-profit businesses are eligible for this funding. This is inconsistent with requirements in the Guidelines for the fair, consistent and transparent local management of ClubGRANTS.
- These issues are not new. Concerns have been raised about the operation of the scheme almost since it was first established 23 years ago, including in reviews of the Guidelines, a performance audit by the NSW Audit Office, and media coverage concerning conflicts of interest. But no action has been taken to address these issues or strengthen the governance framework.

Additionally, NCOSS has found:

- There is no transparency in how the regulator administers the scheme. This gives rise to the perception of a lack of effective regulatory oversight.
- Without resourcing to properly administer our role, NCOSS involvement in the scheme has been in name only for many years. As a result, until this review, NCOSS did not have a proper understanding of what the Guidelines expect of us or our members, and we had no visibility over how the scheme was operating on the ground.
- The source of the CAT 1 funding is also a significant concern to NCOSS members, given pokies contribute substantially to gambling harm. More recently, allegations of widespread money laundering through Clubs and other venues that operate pokies – and Clubs allowing people with serious problems with gambling to feed proceeds of theft into their poker machines – have added to these concerns. On the other hand, many of our members consider ClubGRANTS to be an important revenue stream in the absence of growth funding, or even indexation adequate to cover costs growth.
- Our members value a locally managed, small grants scheme which is not overly bureaucratic and where decisions are made is a timely way. They would prefer that NCOSS remained involved in ClubGRANTS, as long as we are properly resourced to do so and the governance flaws we have identified are addressed.

These issues are explored in Section 3 of the full report.

6. Recommendations

The NCOSS Board has carefully considered the issues raised by our review, feedback from our members on the options NCOSS identified (see Section 3.9 of the full report), and advice from Liquor & Gaming NSW (L&GNSW) that they intend to conduct a full review of the Guidelines (though they were unable to provide a timeframe for this).

As a result of these considerations, and as there was no apparent preparedess to resource NCOSS to adequately fulfill its function, the Board has determined that, on balance, NCOSS's involvement with the ClubGRANTS scheme should cease.

As a result, we recommend that the Minister for Customer Service:

- Amend the Guidelines to remove references to NCOSS.
- Consider alternative arrangements for independent community sector representation on Local Committees
- Amend the Guidelines to incorporate the important monitoring and oversight role envisaged for Local Committees under the GMT Act, so Local Committees can assist the regulator meet its statutory obligation to ensure tax rebates are not granted where a Club has failed to comply with the requirements of the Guidelines.
- Pending the L&GNSW review of the Guidelines, require the regulator to actively enforce the Guidelines as they stand, including ensuring that Clubs fund projects that meet the eligibility criteria for CAT 1 grants; participate in Local Committees; and meet, at minimum, their existing reporting obligations to the pubic and to Local Committees.
- Require L&GNSW to publish key information relating to Local Committees including the LGAs where a Local Committee is required, the Clubs in the LGA that are scheme participants (that is, they claim a tax rebate under the scheme), and the membership of the Local Committee.

We also recommend that, should any Club decide to withdraw from participation in what is a voluntary scheme, the Minister commit to hypothecating the 1.85% of profits over $1 million the Club would have otherwise been entitled to claim, and make it available to local Councils to disburse to projects that would be eligible for CAT 1 and CAT 2 grants under the Guidelines, with input to grant decisions from local community reprsentatives.

For a broader overhaul of the Guidelines, as part of the review L&GNSW has indicated it intends to undertake, NCOSS puts forward the following recommendations. We believe they provide a comprehensive, but commonsense and achievable, roadmap for bringing the ClubGRANTS scheme into the 21st century:

- Strengthening the role of Local Committees in CAT 1 grant decisions. At the very least, the so-called "75% rule"[14] should be a requirement, not a recommendation, and Clubs should be bound by the Local Committee determinations regarding the amount of CAT 1 funding that must be expended on projects the Committee recommends, where it is over that amount.
- Improving the management of conflicts of interest, including requiring Clubs to act in the public interest when making CAT 1 decisions, removing the ability for Clubs to claim 'in-

[14] Clause 2.1.6 of the August 2020 ClubGRANTS Guidelines recommends that Clubs allocate a minimum 75% of the funds for CAT 1 projects to projects recommended by the Local Committee.

kind' CAT 1 donations, and clarifying that only not-for-profit entities are eligible for CAT 1 funding.

- Ensuring that the Guidelines are streamlined, written in plain English and with internal inconsistencies removed so the roles and responsibilities of all parties are clear.
- Enforcing the requirement for specified Clubs to have a Local Committee with the required representation.
- Removing the option for CAT 1 grant allocations to bypass the Local Committee process.
- Requiring substantially more public reporting on grants made, and disclosure of key information concerning the scheme, by both Clubs and L&GNSW. In particular, public reports should ensure that it's easy for the public to see that CAT 1 grants were made to projects aimed at improving the living standards of people on low incomes or who are disadvantaged.