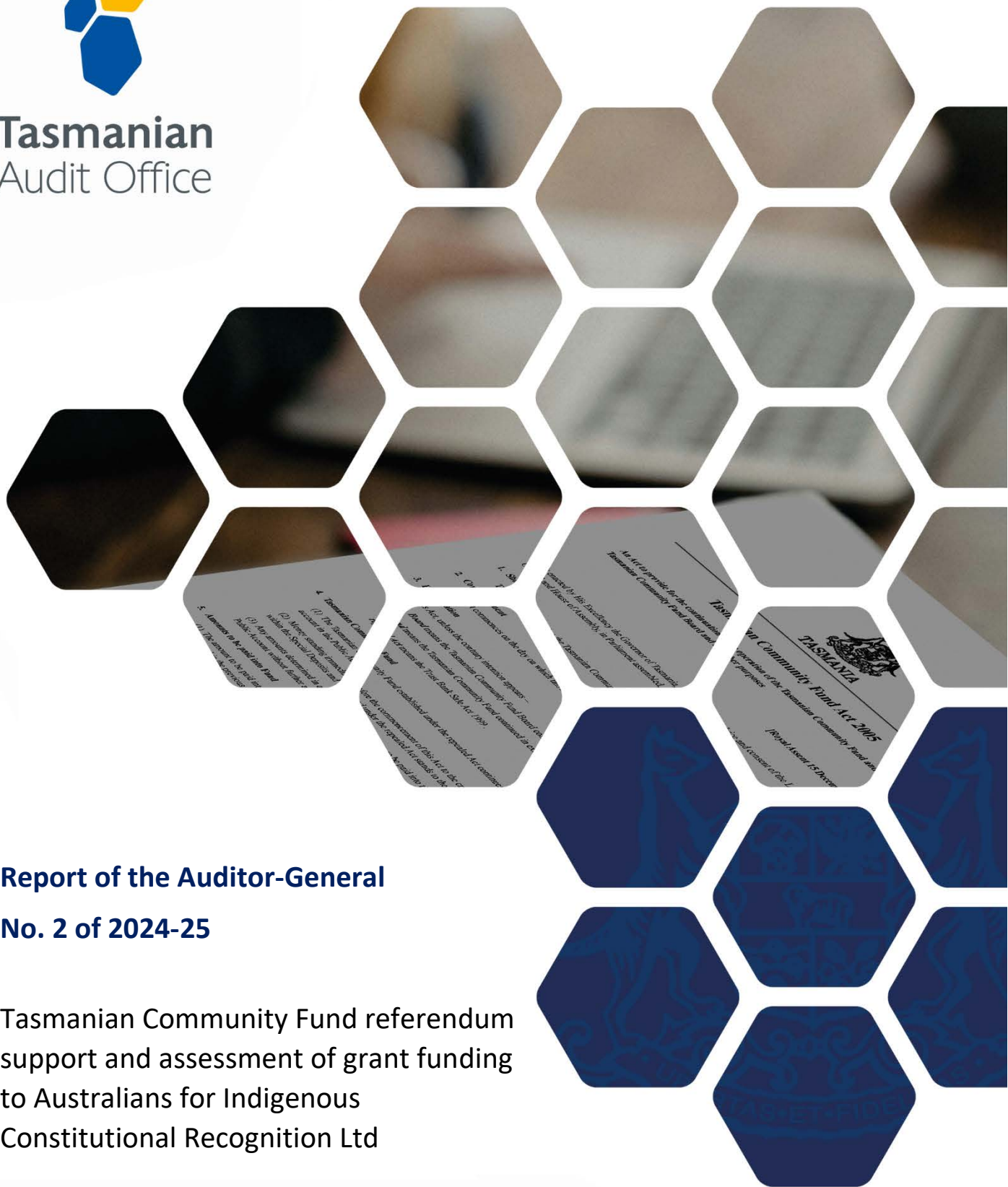




**Tasmanian**  
Audit Office



## Report of the Auditor-General

### No. 2 of 2024-25

Tasmanian Community Fund referendum  
support and assessment of grant funding  
to Australians for Indigenous  
Constitutional Recognition Ltd

8 August 2024

## Our role

The Auditor-General and Tasmanian Audit Office are established under the *Audit Act 2008* and *State Service Act 2000*, respectively. Our role is to provide assurance to Parliament and the Tasmanian community about the performance of state entities. We achieve this by auditing financial statements of state entities and by conducting audits, examinations and investigations on:

- how effective, efficient, and economical state entity activities, programs and services are
- how state entities manage resources
- how state entities can improve their management practices and systems
- whether state entities comply with legislation and other requirements.

Through our audit work, we make recommendations that promote accountability and transparency in government and improve state entity performance.

We publish our audit findings in reports, which are tabled in Parliament and made publicly available online. To view our past audit reports, visit our [reports](#) page on our website.

## Acknowledgement of Country

In recognition of the deep history and culture of Tasmania, we acknowledge and pay respect to Tasmanian Aboriginal people, the past and present custodians of this island. We respect Tasmanian Aboriginal people, their culture and their rights as the first peoples of this land. We recognise and value Aboriginal histories, knowledge and lived experiences and commit to being culturally inclusive and respectful in our working relationships.



**2024**  
**PARLIAMENT OF TASMANIA**

**Tasmanian Community Fund grant funding to  
Australians for Indigenous Constitutional Recognition Ltd**

**8 August 2024**

Presented to both Houses of Parliament pursuant to  
Section 30(1) of the *Audit Act 2008*

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8 August 2024

President, Legislative Council  
Speaker, House of Assembly  
Parliament House  
**HOBART TAS 7000**

Dear President, Speaker

**Report of the Auditor-General No. 2 of 2024-25: Tasmanian Community Fund referendum support and assessment of grant funding to Australians for Indigenous Constitutional Recognition Ltd**

This report has been prepared consequent to examinations conducted under section 23 of the *Audit Act 2008*.

This report relates to my review of the Tasmanian Community Fund's (TCF) grant to Australians for Indigenous Constitutional Recognition Ltd (AICR). The objective of the review was to express a limited assurance opinion on TCF's processes and considerations leading up to its decision to publicly support a yes vote in the Voice Referendum, and its processes for assessing the AICR grant.

Yours sincerely

Martin Thompson  
**Auditor-General**

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# Foreword

The Tasmanian Community Fund (TCF) is a state entity<sup>1</sup> established by legislation and funded by State Government appropriation, with an independent board whose primary purpose is to provide grant funds for community purposes. As a state entity with custody of public funds, it is imperative that its grants processes meet high standards of accountability and transparency.

In 2023, the TCF decided to publicly support a yes vote in the Commonwealth referendum on a Voice to Parliament (Voice Referendum). Subsequently, the TCF provided a grant of approximately \$557,800 to Australians for Indigenous Constitutional Recognition Ltd (AICR). This generated public interest and requests to examine matters related to this grant.

As such, the objective of this review was to express a limited assurance opinion on the TCF's processes and considerations leading to the decision to publicly support a yes vote in the Voice Referendum, and its processes for assessing the AICR grant. In my capacity as Auditor-General I have no view on merits of either the Yes or No case.

The review examined the TCF's governance in relation to its decision to support a yes vote. It also examined the grants assessment processes with reference to relevant legislation and its own policies and procedures. I also referred to various better practice guidelines relating to referendums, record keeping and grants assessment. The aim in completing this review is to provide transparency on the processes the TCF followed, and to enhance public trust in the TCF by strengthening its practices. This report provides information to all state entities on risks and better practice in relation to grants assessment.

In undertaking this review, I identified significant recordkeeping shortcomings. As the external auditor to the public sector, my role is to provide independent assurance to the parliament about the activities of state entities. My Office applies the relevant auditing standards and evidentiary requirements to ensure its opinions are evidence based. I do not consider non-compliance with record keeping requirements to be a sufficient reason to rely on testimony alone. As such, I have noted throughout this report where the TCF has advised of certain things, including through provision of statutory declarations, but no corroborating evidence was available.

I thank the TCF for their involvement and cooperation throughout the review.

Martin Thompson  
**Auditor-General**

8 August 2024

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<sup>1</sup> Tasmanian Legislation (2024), [Audit Act 2008](#), Section 4, Tasmanian Legislation, accessed 2 July 2024.

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# Independent assurance report

This independent assurance report is addressed to the President of the Legislative Council and the Speaker of the House of Assembly. It relates to my review of the Tasmanian Community Fund's (TCF) referendum support and assessment of grant funding to Australians for Indigenous Constitutional Recognition Ltd (AICR).

## Review objective

The objective of the review was to express a limited assurance opinion on the TCF's processes and considerations that led to its decision to publicly support a yes vote in the Voice Referendum, and its processes for assessing the AICR grant.

## Review scope

The review covered events that occurred between 4 December 2022 and 2 February 2024. The review did not examine the TCF's general grant administration processes. However, it did examine how the grants administration framework and other policies were applied to the AICR grant.

## Review approach

The review was conducted in accordance with Australian Standard on Assurance Engagements ASAE 3500 *Performance Engagements* issued by the Auditing and Assurance Standards Board, to express a limited assurance conclusion. The procedures performed in a limited assurance review vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement. Consequently, the level of assurance obtained in a limited assurance review is substantially lower than the assurance that would be obtained had a reasonable assurance engagement been performed.

The review evaluated whether:

1. the TCF's processes and considerations leading to its support for a yes vote in the Voice Referendum were adequate
2. the TCF's assessment of the AICR grant was conducted in accordance with an established and documented grants management framework.

I conducted my limited assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances. Evidence for the review was obtained primarily through discussions with relevant TCF personnel and by examining all documentation provided by the TCF relating to the scope of this review.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

## Responsibility of the Board

The *Tasmanian Community Fund Act 2005* (TCF Act) provides for the operation of the TCF and the TCF Board (the Board). It establishes the Board's powers, functions, and independence with respect to grant decisions within the constraints of particular purposes.

Responsibility for assessing TCF's advocacy in the Voice Referendum and decision to award funding to AICR rests with the Board. The Board is responsible for:

- administering grants in accordance with and for the purposes specified in the TCF Act
- ensuring its functions and powers are performed and exercised in the best interests of the Tasmanian community.

The Board has established an arrangement with the Secretary of the Department of Premier and Cabinet (DPAC) for persons employed by DPAC to be made available to the Board. This arrangement is provided for in the TCF Act. DPAC staff assist the Board in performing its functions, exercising its powers, and provide support in other capacities. Since the staff members are allocated to provide support to the TCF, this report refers to those individuals as TCF staff.

## Responsibility of the Auditor-General

In the context of this review, my responsibility was to express a limited assurance conclusion based on the evaluation criteria outlined in the review approach.

## Independence and quality management

I have complied with the independence and relevant ethical requirements, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

The Tasmanian Audit Office applies Australian Standard ASQM 1 Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements which requires the Office to design, implement and operate a system of quality management including policies or procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

## Conclusion

It is my conclusion that the Tasmanian Community Fund's support for a yes vote in the Voice Referendum and grant funding to AICR, as measured against the evaluation criteria, did not follow an effective process. This is because:

- the processes and considerations leading up to the decision to support a yes vote were inadequate
- the assessment of the AICR grant was not conducted in accordance with an established and documented grants management framework.

Martin Thompson  
**Auditor-General**

8 August 2024

# Executive summary

## Summary of findings

In relation to all findings, we identified significant record keeping gaps. Strict record keeping requirements are established in all jurisdictions for public entities that have custody of public funds. The intention of this is, in part, to ensure decisions in relation to the use of those funds are defensible, traceable and auditable.

In the Tasmanian State Service (TSS), record keeping requirements are articulated and publicly available in the relevant instrument, the Records Management Standard (the Standard). The Standard establishes clear expectations for all heads of agency.<sup>2</sup> Associated guidance also states that:

*'...regardless of their format, records enable you to explain or justify what you have done, show the extent of your responsibility for decisions taken, and show the order of events and your role in them... If you regularly make records and keep them in the right places, it will be easier to... produce evidence as to why a particular decision was made... [and] protect yourself, your clients, citizens and the Tasmanian Government.'*<sup>3</sup>

During this review, the Board noted that the Tasmanian Audit Office would not accept their statements as sufficient evidence without corroborating evidence. The Board noted that this placed an onus on them to justify their business activities in the absence of explicit documentation.

As the external auditor to the public sector, the Tasmanian Audit Office provides independent assurance to the parliament about the activities of state entities. This requires the application of the relevant auditing standards and evidentiary requirements to ensure findings are based on sufficient appropriate evidence. The Tasmanian Audit Office does not consider non-compliance with record keeping requirements to be a sufficient reason to rely on testimony alone. This includes statutory declarations proffered by Board members attesting to their considerations at and before the key decision points. As such, the Tasmanian Audit Office has retained its findings throughout this report which identified where the Board has advised of certain things, and where no corroborating evidence was available. The reader is advised that where a lack of evidence is noted, this could mean that the activity did not occur, or that it did occur, but either way the TCF did not comply with record keeping requirements.

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<sup>2</sup> Office of the State Archivist (OSA) (2020), [Information and Records Management Standard](https://osa.tas.gov.au/wp-content/uploads/2023/08/Information-and-Records-Management-Standard.pdf), OSA, accessed 21 March 2024. <https://osa.tas.gov.au/wp-content/uploads/2023/08/Information-and-Records-Management-Standard.pdf>

<sup>3</sup> OSA (2020), [Keep the Knowledge](https://osa.tas.gov.au/wp-content/uploads/2023/08/Implementation-Tool-Keep-the-Knowledge-Make-a-Record-Fact-Sheet.pdf), OSA, accessed 21 March 2024. <https://osa.tas.gov.au/wp-content/uploads/2023/08/Implementation-Tool-Keep-the-Knowledge-Make-a-Record-Fact-Sheet.pdf>

## **The TCF's support for the yes vote in the Voice Referendum**

We found the TCF did not record its reasons for supporting a yes vote in accordance with the Information and Records Management Standard, enabling it to explain and justify its decision. It did not consider the available guidance or seek advice as to whether it was prudent for a state entity to support a particular outcome of a Commonwealth referendum. It was not able to demonstrate that it identified, documented, and implemented controls in relation to any risks associated with this decision in accordance with its risk management framework.

The TCF's processes for declaring and managing conflicts of interests were also not documented in relation to this decision. There was no evidence that perceived non-pecuniary conflicts were declared or managed in accordance with the TCF's conflicts of interest policy. However, a reasonable person knowing that the Board had decided to support the yes case in the February meeting may form the perception that the Board's decision to grant funds in June was not objective.

## **TCF's assessment of the AICR grant**

We could not fully assess the TCF's compliance with its grant management framework, as the framework was not well documented. We found that TCF was informed of this issue in a 2020 internal audit report which made recommendations to develop and implement a process to:

- ensure compliance with section 7 of the TCF Act which sets out the purposes for which grants can be made
- record rationales for its final determinations of grant applications
- implement a structured risk assessment and management process.

These recommendations were accepted by the TCF but not applied to the AICR grant.

Therefore, there is no evidence of:

- the AICR grant's link to section 7 of the TCF Act
- the rationale for awarding the grant
- the grant being assessed against a defined funding strategy and established criteria
- the grant being assessed for risks in relation to design or delivery.

No documentation was available to demonstrate how the AICR grant aligned with the TCF's strategic plan. While the TCF advised the grant aligned with the defined 'educational purpose,' this was not clear given the project description and the use of the funds.

We also found that:

- the risk of a no vote and the potential impact of this outcome on the value for money of the grant was not assessed in accordance with the TCF's risk management framework
- the TCF did not consider whether the decision could be perceived to be political in nature

- the TCF did not seek Ministerial approval or external advice in relation to the powers under the TCF Act to this grant as the Board believed that it both aligned with the TCF Act and its strategic plan.

## Recommendations

We recommend the TCF:

1. Conducts and documents due diligence including recording the legislative basis, key considerations, conflicts of interest, assessment of risks, and any advice relied upon in reaching its decisions.
2. Adopts better practice grants management to objectively assess the relative merit of grants with clear reasons why applications are approved or denied.
3. Provides regular guidance, training, and clear directions to staff to ensure they are able to comply with Tasmanian State Service principles of remaining impartial and apolitical while following the Board's directions.
4. Adopts better practice records management in accordance with the Archives Act and associated guidance.



## Submissions and comments received

In accordance with section 30(2) of the Audit Act, a summary of findings or Report extract was provided to the Minister and other persons who, in our opinion had a special interest in the Report, with a request for submissions or comments.

Submissions and comments we receive are not subject to the audit nor the evidentiary standards required in reaching an audit or review conclusion. Responsibility for the accuracy, fairness and balance of these comments rests solely with those who provided the response. However, views expressed by the responders were considered in reaching review conclusions.

Section 30(3) of the Act requires this report include any submissions or comments made under section 30(2) or a fair summary of them. Submissions received are included below.

### Tasmanian Community Fund response (Page 1)

Summary of response for inclusion in the Auditor-General's executive summary:

1. The TCF Board strongly disagrees with and refutes the majority of the findings in the report. It also rejects that relevant matters were not considered by the Board and disputes the lack of evidence to support these conclusions.
2. While the Board accepts that its documentation could have been better, and has already introduced improvements, it does not accept that appropriate rigour was not applied to its decision-making. The TCF Board sought an opinion from Tasmania's previous Solicitor-General, Michael O'Farrell SC, as to the TAO's process, conclusions and recommendations.
3. Further, the TCF Board is critical of the fact that much of the contextual information provided to the Tasmanian Audit Office was not accepted as evidence or even considered relevant to the review. Specifically, the TCF Board is deeply disappointed and concerned that the TAO has:
  - a) Refused, on more than one occasion, to afford the Board procedural fairness. For example, the TAO denied the Board's numerous requests for access to the material that had commenced the Audit process and purported to deny the Board access to legal opinion on the draft reports it had been provided.
  - b) Strikingly, the opinion from Mr O'Farrell SC in relation to the Auditor General's 'conflict of interest section is the Auditor-General's conclusion that the Board had a conflict of interest is an assumption with no basis in legal principle. Further, the opinion says that the standard that the Auditor-General purports to apply to the Board's record keeping does not: (i) apply in the manner the Auditor-General contends; (ii) have a recognisable legal basis.
  - c) Failed to properly consider evidence presented or to respond to the Board regarding factual inaccuracies it identified as part of the TAO audit process. Mr O'Farrell SC advised the Board that: 'the Auditor-General makes various incorrect and/or misleading assertions as to what TCF records are available.'

- d) Reached a conclusion before receiving the evidence and held to its conclusion in the face of contradictory evidence. As in Mr O’Farrell SC’s opinion: ‘the Auditor-General was required to consider all the evidence that led to the Board’s decision, not just evidence that he considered was ‘corroborated’ by the TCF’s records.’
  - e) Not provided a report with a balanced view of the decision-making processes of the TCF based on the evidence provided. For example, Mr O’Farrell SC’s opinion is that ‘as the board of an independent statutory authority, provided it was acting honestly the Board was entitled to determine for itself that (i) the grant was for a community purpose as it thought fit; and (ii) that the grant was in the interests of the Tasmanian Community.
4. Every member of the TCF Board understands and meets the TCF values of integrity, community focus, collaboration and leadership. The Board is comforted by the opinion of Mr O’Farrell SC that the Board’s decision to adopt a policy to support the ‘yes’ vote was permissible, provided it did not apply the policy inflexibly. There is no finding that it did so.’

Signed by the Board members dated 29 July 2024.

### **Auditor-General’s rejoinder to Tasmanian Community Fund’s response**

I thank the Tasmanian Community Fund (TCF) Board for its response, provided on Monday 29 July 2024, comprising a one-page summary (page 1 of 5) that I have included above and a detailed response (pages 2-5 of 5) that is included in this report as Appendix B.

I note your request that a memorandum of advice, commissioned by the TCF, be published in my report. The Auditor-General is required to include in a report on an examination any comments or submissions made under section 30(2) of the Audit Act (2008). I am not required to publish any other material.

My limited assurance review was conducted under section 23 of the Audit Act (2008) in accordance with Australian Standard on Assurance Engagements ASAE 3500 *Performance Engagements* issued by the Auditing and Assurance Standards Board. Evidence for the review was obtained primarily through discussions with relevant TCF personnel and by examining all documentation provided by the TCF relating to the scope of this review.

I am satisfied that the procedures undertaken and the evidence I have obtained is appropriate to provide the basis for my conclusion.

### **Department of Premier and Cabinet response**

Thank you for the opportunity to provide comment on the Tasmanian Community Fund referendum support and assessment of grant funding to Australians for Indigenous Constitutional Recognition Ltd audit report prior to proposed tabling in Parliament.

The Tasmanian Community Fund (TCF) is a state entity supported by the *Tasmanian Community Fund Act 2005* (TCF Act), which outlines the operational parameters of the TCF and the TCF Board (the Board). It is important to clarify that the Department of Premier and Cabinet (DPAC) is not involved in any decision-making process regarding TCF, including

those detailed in your report, as the Board operates independently in accordance with the TCF Act.

DPAC provides staff to assist the Board in performing its Corporate Services functions and other related support services.

I note recommendation 3 pertaining to the staff that support the TCF Board and the importance of providing regular guidance, training, and clear directions to ensure they are able to comply with Tasmanian State Service principles of remaining impartial and apolitical while following the Board's directions. As these staff are employed by my Department, I will ensure staff receive clear and regular education and instructions regarding this. This will be documented in the Service Level Agreement between the TCF Board and DPAC.

We have no additional comments to provide at this stage and thank the Tasmanian Audit Office for the opportunity to provide comment.

Kathrine Morgan-Wicks

**Secretary**

29 July 2024

# 1. Introduction

## Tasmanian Community Fund

- 1.1 The TCF was established under the *Trust Bank Sale Act 1999* (Trust Bank Sale Act).<sup>4</sup> Its objective is to respond to the needs of the Tasmanian community and enhance services, opportunities and amenities by making grants to a diverse range of organisations within the community.
- 1.2 Under the Trust Bank Sale Act, the TCF received an annual appropriation from the State Budget via the Finance-General Division of the Department of Treasury and Finance equal to one half of the savings in interest costs that flow from debt retired following the sale of the Trust Bank. This amount was a reserved-by-law appropriation and was not subject to annual budget deliberation.<sup>5</sup>
- 1.3 In late 2005, the Tasmanian Parliament passed the *Tasmanian Community Fund Act 2005* (TCF Act). The TCF Act repealed the Trust Bank Sale Act and established standalone legislation governing the operation of the TCF.<sup>6</sup>
- 1.4 Under the TCF Act, the TCF continues to receive a reserved-by-law annual appropriation, but the amount is now calculated using the previous year's appropriation, indexed in accordance with the annual movement in the March quarter Consumer Price Index (CPI) figure for Hobart. The appropriation is received by the Department of Premier and Cabinet (DPAC) as administered revenue, which is then paid as a grant to the TCF as required by section 5 of the TCF Act. For the year ended 30 June 2023, the amount of revenue the TCF received was just over \$7.95m.

## Tasmania Community Fund Board

- 1.5 The TCF Board (Board) comprises up to 6 persons appointed by the Governor on the recommendation of the Minister for Community Services and Development.<sup>7</sup>
- 1.6 The provisions of the *State Service Act 2000* (State Service Act) do not apply to members of the Board in that capacity.
- 1.7 The functions of the Board are to provide grants out of the TCF for community purposes as the Board thinks fit, to manage the TCF as the Board thinks fit, and to conduct its operations in an efficient, effective, and economical manner.

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<sup>4</sup> Tasmanian Community Fund (TCF) (2023), [Annual Report 2022-2023](https://www.tascomfund.org/__data/assets/pdf_file/0020/319016/FINAL-TCF-Annual-Report-2023_WEB-low-res-4.pdf), TCF, accessed 21 March 2023.

<sup>5</sup> TCF (2001), [Annual Report 2000-2001](https://www.tascomfund.org/__data/assets/pdf_file/0024/198024/TCF_Annual_Report_2000-01.pdf), accessed 21 March 2023.

<sup>6</sup> Tasmanian Legislation (2024), [Tasmanian Community Fund Act 2005](#), Tasmanian Legislation, accessed 21 March 2023.

<sup>7</sup> Tasmanian Legislation (2024), [Administration Arrangements for Tasmanian Enactments](#), Tasmanian Legislation, accessed 21 March 2024.

- 1.8 Section 7(2) of the TCF Act allows the Board to provide grants for:
- (a) charitable purposes
  - (b) sporting or recreational purposes
  - (c) cultural and arts purposes
  - (d) educational purposes
  - (e) religious purposes
  - (f) any other community purpose approved by the Minister on the recommendation of the Board.
- 1.9 The Board may distribute, at its sole discretion, the whole or any part of the balance of the TCF. The Board may also, at its sole discretion, accumulate the whole or any part of the balance of the TCF. The Board is required to maximise the return earned on any money standing to the credit of the TCF, having regard to the need to provide grants and exercise reasonable care and prudence to maintain the integrity of the TCF.
- 1.10 In performing its functions and exercising its powers, the Board must act honestly in all matters concerning the TCF and ensure that its functions and powers are performed and exercised in the best interests of the Tasmanian community.
- 1.11 Other than employing staff, the Board may do anything necessary or convenient to perform its functions.
- 1.12 Notwithstanding the independence of the Board in grant decision-making and the operations of the TCF, as a state entity, the Board is required to operate to the standard of accountability and transparency applicable to all state entities.

## Tasmanian Community Fund administrative support

- 1.13 The TCF has established an arrangement with the Secretary of DPAC for persons employed by DPAC to be made available to the Board. This arrangement is provided for by section 7(6) of the TCF Act.
- 1.14 As such, administrative support to the Board is provided by employees of DPAC. These employees remain employees of the TSS, subject to the *State Service Act 2000*, but they may serve the Board in any capacity.

## The Voice Referendum

- 1.15 The Voice Referendum question and constitutional amendment were announced by the Prime Minister on 23 March 2023, following consultation with the First Nations Referendum Working Group.<sup>8</sup>

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<sup>8</sup> National Indigenous Australian Agency (NIAA) (n.d.), [Referendum on an Aboriginal and Torres Strait Islander Voice](#), NIAA, accessed 21 March 2023.

1.16 The referendum question and constitutional amendment were set out in *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023* (the Bill), with the intent to:

- recognise Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia
- establish an advisory body known as the Aboriginal and Torres Strait Islander Voice (the Voice)
- provide that the Voice may make representations to Parliament and the Executive on matters relating to Aboriginal and Torres Strait Islander peoples, and
- give Parliament the power to pass legislation with respect to matters related to the Voice.

1.17 The Bill was passed by both Houses of the Australian Parliament on 19 June 2023. As a proposed law to alter the Constitution, it was put to the Australian people by the electors at a referendum.<sup>9</sup>

1.18 On 14 October 2023, Australians voted in the Voice Referendum. The outcome was that the Voice Referendum did not pass.

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<sup>9</sup> Parliament of Australia (n.d.), [Constitution Alteration \(Aboriginal and Torres Strait Islander Voice\) 2023](#), accessed 21 March 2023.

## 2. The TCF's support for a yes vote in the Voice Referendum

In this chapter we assess the TCF's processes and considerations in supporting a yes vote in the Voice Referendum.

We expected that the TCF would have:

- documented its reasons for supporting a yes vote in accordance with the Information and Records Management Standard
- considered the available advice or sought advice in relation to a state entity's role in a Commonwealth referendum
- documented and managed risks in relation to supporting a yes vote in accordance with its risk management framework
- considered, documented, and managed real and perceived pecuniary and non-pecuniary conflicts of interest in accordance with its Conflicts of Interest policy.

### Chapter summary

We found that the TCF did not meet this expectation. It did not record its reasons for supporting a yes vote that, in accordance with the Information and Records Management Standard, enabled it to explain and justify its decision. It did not consider the available guidance or seek advice as to whether it was prudent for a state entity to support a particular outcome of a Commonwealth referendum. It was not able to demonstrate that it identified, documented, and implemented controls in relation to any risks associated with this decision in accordance with its risk management framework.

There was no documentary evidence that TCF's processes for declaring and managing conflicts of interests were applied in relation to its decision. There was no evidence that actual or perceived conflicts were declared or managed, in accordance with its conflicts of interest policy. This is despite public statements by Board members on the referendum. We also found no evidence that the Board had provided guidance to staff to ensure that any activities they undertook on behalf of the Board were appropriate.

### Background

- 2.1 The TCF advised that over several years it had recognised the need for it to understand the Tasmanian Aboriginal community better and have a position on how best to engage with them. It further advised that it had provided funding for the Tasmanian Aboriginal community in the form of grants, including capacity building and administrative leadership grants.
- 2.2 In December 2022, the Board decided to develop position statements to facilitate better engagement with the Tasmanian Aboriginal community and agreed to continue taking steps to support reconciliation and better outcomes. On 30 January 2023, at the Board's request, TCF staff finalised a discussion paper which proposed several

position statements to help inform the TCF's work with the Tasmanian Aboriginal community. One of the position statements was:

'The Tasmanian Community Fund supports the establishment of an Aboriginal Voice to Parliament through a yes vote at a referendum.'

2.3 At a Board meeting on 8 and 9 February 2023, the Board considered the discussion paper and unanimously endorsed the proposed position statement.

2.4 On 28 February 2023, the TCF published the following statement on its LinkedIn and Facebook social media sites:

'The Tasmanian Community Fund recognises the need for truth, treaty and voice and commits to working with the Aboriginal community towards these.

The Tasmanian Community Fund acknowledges and supports the Uluru Statement from the Heart.

The Tasmanian Community Fund supports the establishment of an Aboriginal Voice to Parliament through a yes vote at a referendum.'

## The reasons for the TCF's decision to support the yes vote were not documented

2.5 The Board considered its position on the Voice Referendum at meetings on 8 and 9 February 2023. As noted in the meeting minutes, the Board unanimously endorsed this position. However, no record of its reasons for supporting a yes vote was kept in accordance with the Information and Records Management Standard<sup>10</sup> that enabled it to explain and justify its decision.

2.6 It is important for state entities to keep appropriate documentation in the interest of accountability and transparency in decision making. The *Archives Act 1983* (the Archives Act) establishes legislative requirements for state entity record keeping in Tasmania. The State Archivist is responsible under the Archives Act for making and issuing guidelines in respect of any matter relating to the making and the keeping of State records.<sup>11</sup>

2.7 The State Archivist has published a range of guidance on its website, including the *Information and Records Management Standard* (the Standard) and *Keep the Knowledge* fact sheet.<sup>12</sup>

2.8 The Standard establishes minimum requirements intended to ensure appropriate record keeping. It requires all agencies to have policies, procedures, systems, appraisal

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<sup>10</sup> OSA (2020), [Information and Records Management Standard](https://osa.tas.gov.au/wp-content/uploads/2023/08/Information-and-Records-Management-Standard.pdf), OSA, accessed 21 March 2024. <https://osa.tas.gov.au/wp-content/uploads/2023/08/Information-and-Records-Management-Standard.pdf>.

<sup>11</sup> Tasmanian Legislation (2024), [Archives Act 1983](#), Tasmanian Legislation, accessed 21 March 2023.

<sup>12</sup> OSA (2020), [Keep the Knowledge](https://osa.tas.gov.au/wp-content/uploads/2023/08/Implementation-Tool-Keep-the-Knowledge-Make-a-Record-Fact-Sheet.pdf), OSA, accessed 21 March 2024. <https://osa.tas.gov.au/wp-content/uploads/2023/08/Implementation-Tool-Keep-the-Knowledge-Make-a-Record-Fact-Sheet.pdf>.



and disposal processes, staff capability, awareness, and responsibilities to maintain appropriate records which provide evidence of business, meet legislative and regulatory requirements, and stakeholder expectations.

2.9 The *Keep the Knowledge* fact sheet explains that:

‘Regardless of their format, records enable you to explain or justify what you have done, show the extent of your responsibility for decisions taken, and show the order of events and your role in them... If you regularly make records and keep them in the right places, it will be easier to... produce evidence as to why a particular decision was made... [and] protect yourself, your clients, citizens and the Tasmanian Government.’<sup>13</sup>

2.10 The TCF advised its minutes of meetings only record decision outcomes and actions and do not document the rationale for decisions or actions. We expected that either the discussion paper on the position statements or the Board minutes would have included commentary on the merit or otherwise of supporting the proposed positions to help guide or record the rationale for the Board’s decision.

2.11 We found the TCF was unable to demonstrate that the rationale for the Board’s decision was appropriately documented in compliance with good record keeping principles and the Archives Act.

## **Evidence of the Board’s due diligence in deciding to support the yes vote was inadequate**

2.12 The TCF’s risks management framework places emphasis on risk identification as a key process in decision making. It notes that risks can be identified through brainstorming, research, and interviews with a broad mix of stakeholders with varying experience and capability to ensure the broadest possible consideration of risk. As such, we expected that in articulating its support for the yes vote, the TCF would have conducted effective due diligence and research to support the identification and assessment of risks early in the process. This could have included seeking formal advice or examining available guidance, such as Australian Electoral Commission (AEC) and interjurisdictional guidance, or other discussion papers relating to the Voice Referendum.

2.13 We acknowledge that some guidance, such as the Head of the State Service message to all public servants to remain apolitical, was released after the TCF had made its decision to support the yes vote. Notwithstanding this, there were numerous publicly available sources of information, as documented in Appendix A. These articulated the position that state entities should not use public resources to support a particular outcome in a Commonwealth referendum.

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<sup>13</sup> OSA (2020), [Keep the Knowledge](https://osa.tas.gov.au/wp-content/uploads/2023/08/Implementation-Tool-Keep-the-Knowledge-Make-a-Record-Fact-Sheet.pdf), OSA, accessed 21 March 2024. <https://osa.tas.gov.au/wp-content/uploads/2023/08/Implementation-Tool-Keep-the-Knowledge-Make-a-Record-Fact-Sheet.pdf>.

- 2.14 The TCF advised that while it was not aware of the guidance, it did consult with the broader community including the Tasmanian Aboriginal community to understand their concerns on the TCF's position. However, no record of the discussions was kept.
- 2.15 In our view, other than informal discussions with the Tasmanian community, no informed due diligence and research was undertaken by the TCF prior to it making the decision to support a yes vote in the Voice Referendum, in accordance with its risk management framework.

## **The TCF did not assess risks in accordance with its risk management framework**

- 2.16 The TCF's risk management framework recognises the importance of risk identification and management. The framework notes that the TCF has a moderate appetite for risk and that '...risk management is designed to identify, analyse, evaluate, treat and monitor those risks that have been identified from strategic and operational planning processes that could prevent the achievement of its objectives.'
- 2.17 The framework further outlines various external risk environments including financial (grant programs), financial (operational), legal, regulatory and statutory, human resource, political/community and reputation, health and safety, and service delivery and operations.
- 2.18 According to the framework, the TCF is required to:
- document and describe key risks (i.e., risks that will have the most significant impact on the organisation/division/region or project) as '...documenting and describing the (key) risks effectively assists greatly with directing the mitigation strategies that would be appropriate to manage the risk'
  - identify and analyse risks to ensure a complete list of risks is identified. As noted above, this includes brainstorming, research, and interviews with a broad mix of stakeholders with varying experience and capability to ensure the broadest possible consideration of risk
  - adequately describe the identified risks and identify the likelihood of the risk occurring and potential consequences or impact that would result if the risk was to occur
  - assess and rate the risks after considering what the risk and impact is without any controls in place
  - identify and document risk mitigation strategies/controls currently in place to manage the risk and assess the effectiveness
  - identify and implement risk treatment
  - report, monitor and review risks, noting the TCF operates in a constantly changing environment and inaccurate risk information may lead to poor decisions.

- 2.19 As such we expected the TCF to have considered the risk of loss of confidence by key stakeholders in accordance with its risk management framework, and other risks associated with supporting a particular side of the Voice Referendum. This would include the risk of this decision being perceived as political, and the potential loss of support from members of the Tasmanian community advocating for a no vote.
- 2.20 The TCF advised that it did engage with the wider community to understand their concerns relating to the Board's position. However, any potential risks arising from this engagement were not formally assessed and documented, and there was no evidence of controls and strategies put in place to mitigate the risks, as required by the framework.
- 2.21 In the absence of evidence to inform us otherwise, we concluded the TCF did not adequately assess risks relating to supporting a yes vote in the Voice Referendum in accordance with its risk management framework.

## **No evidence was presented that TCF managed conflicts of interest in accordance with its conflicts of interest policy**

- 2.22 Schedule 2 to the TCF Act outlines procedural matters relating to meetings of the Board. Section 6 of that Schedule sets out requirements relating to the disclosure and management of conflicts of interest. In particular, the section requires:<sup>14</sup>
- a member to disclose to the Board any interest, pecuniary or otherwise, in a matter being considered, or about to be considered, by the Board where the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter
  - disclosures to be recorded in the minutes of the meeting at which the matter is considered, and
  - unless the Board otherwise determines, a member who makes a conflict of interest disclosure in respect of a matter must not be present during any deliberation of the Board in relation to the matter, or take part in any decision of the Board in relation to the matter.
- 2.23 In addition to the requirements in Section 6, TCF's conflict of interest policy sets out requirements for the Board to disclose and appropriately manage perceived pecuniary and non-pecuniary conflicts of interest.
- 2.24 The conflicts of interest policy states that:
- a conflict of interest can exist in several kinds of situations, including situations where a Board or staff member may have personal interests that compete with decisions of the TCF

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<sup>14</sup> Tasmanian Legislation, [Tasmanian Community Fund Act 2005](#), accessed 21 March 2023.

- given the public nature of the roles within the TCF, it is important to manage mere perceptions of conflicts of interests for the sake of integrity of the TCF and its Board members and employees
  - where Board members are in any doubt as to whether circumstances might amount or lead to an actual or potential conflict of interest or whether the conflict is material, they should contact the Chair or Manager to discuss course of action and resolve any conflict or incompatibility between the Board members' private or personal interest and the impartial performance of duties.
- 2.25 As such, to maintain public trust and confidence, it is important for the Board to manage perceptions that Board members may already have positions on public matters that may influence the Board's decision when deliberating the TCF's position on such matters.
- 2.26 The TCF advised that while it is normal for Board members to discuss potential conflicts of interest with the Chairperson and between meetings, no such discussions were held prior to TCF's decision to support the yes vote as no conflicts existed. However, some Board members had shared their personal positions on the referendum on social media platforms. These public statements could have created perceptions in the public that the decision was influenced by Board members' personal positions on the referendum.
- 2.27 Noting TCF's conflict of interest policy emphasis on the importance of the management of mere perceptions of conflicts of interests, perceived conflicts of interest arising from Board members' personal positions on the Voice Referendum were not declared or managed in accordance with the policy.

## **No additional guidance was provided to TCF staff in relation to engaging publicly with the Voice Referendum**

- 2.28 TCF staff engage with the broader community on behalf of the Board to understand community concerns and to identify and engage with organisations whose work aligns with the TCF's strategic objectives.
- 2.29 While the Board is independent of the TSS, the TCF staff are public servants and therefore are subject to the requirements of the TSS Principles and Code of Conduct. The first TSS Principle states that "the State Service is apolitical, performing its functions in an impartial, ethical and professional manner."<sup>15</sup>
- 2.30 Given that either side of the referendum became associated with major political parties, TCF staff's public engagement with the referendum at the direction of the

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<sup>15</sup> Department of Premier and Cabinet (DPAC) (2013), [Tasmanian State Service Principles](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0023/27284/ED2_StateServicePrinciples.PDF), DPAC, accessed 28 May 2024. [https://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0023/27284/ED2\\_StateServicePrinciples.PDF](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0023/27284/ED2_StateServicePrinciples.PDF).

Board could have resulted in a conflict between the TSS Principles and Code of Conduct requirements to act apolitically and impartially.

- 2.31 As such, we expected the Board to have provided additional guidance to staff to ensure that any activities they undertook on behalf of the Board did not conflict with the TSS Principles and Code of Conduct. This would have protected staff from any perception that they were not upholding the TSS Principles and Code of Conduct in performing their functions.
- 2.32 We found that no additional guidance was provided to staff in relation to engaging publicly with the referendum.

### 3. The TCF's assessment of the AICR grant

In this chapter, we assess the TCF's assessment of the AICR grant.

Given that the TCF awards publicly funded grants, we expected that it would have made an objective funding decision by:

- applying its grants management framework, including documenting a rationale for awarding the AICR grant
- considering and documenting how the AICR grant fit within its objectives, and the risks to achieving the grant outcomes if the referendum was not successful
- considering seeking Ministerial approval or external advice on whether the funding aligned with the purposes defined in the TCF Act
- considering whether this decision may be perceived to be political in nature.

#### Chapter summary

The TCF's position statements supporting the yes vote created:

- a threat to their independence in relation to their decision to award the AICR grant having already indicating their support
- a perception that any funding decisions related to the yes vote were not objective.

This meant consideration of the AICR grant application exposed the TCF to a reputational risk. This risk could have been reduced through documentation that transparently showed the rationale for awarding the AICR grant.

However, we found that the TCF had not documented:

- how the AICR grant aligned with section 7 of the TCF Act or the TCF's strategic plan
- its risk assessment associated with awarding the grant, including the impact of a no vote referendum outcome on the value for money of the grant
- its rationale for awarding the grant.

We also could not fully assess the TCF's compliance with its grants framework as the framework was not well documented. The TCF was informed of this issue in a 2020 internal audit report. It had accepted but did not implement the recommendations in relation to the AICR grant.

The TCF advised:

- the grant aligned with the defined 'educational purpose' set out in section 7(2)(d) of the TCF Act
- it did not consider whether the decision could be perceived to be political in nature
- it did not seek Ministerial approval or external advice in relation to this grant as the Board believed that it aligned with the TCF Act and TCF's strategic plan.

## Background and grant timeline

- 3.1 The TCF advised that over several years it had recognised the need for it to understand the Tasmanian Aboriginal community better and have a position on how best to engage with them. The Board advised that it had provided funding for the Tasmanian Aboriginal community in the form of grants, including capacity building and administrative leadership grants.
- 3.2 The Board decided to develop position statements to facilitate better engagement with the Tasmanian Aboriginal community.
- 3.3 Subsequent events relating to the grant being awarded to AICR are summarised in Table 1 below.

Table 1: Timeline of events leading to the provision of funding to AICR

Date	Details
8-9 February 2023	The Board considered the discussion paper and unanimously endorsed the proposed position statement.
28 February 2023	The TCF published the following statement on its LinkedIn and Facebook social media sites:  <i>'The Tasmanian Community Fund supports the establishment of an Aboriginal Voice to Parliament through a yes vote at a referendum.'</i>
March and April 2023	The TCF Chairperson and Senior Executive Officer (SEO), with the support of the Board, held informal conversations with Reconciliation Tasmania and AICR. They discussed what the TCF was doing to support a positive outcome in the Voice Referendum, and what they planned to do before the Voice Referendum.
10 May 2023	The Board agreed to consider a joint Stage 2 application from Reconciliation Tasmania and AICR under TCF's flexible funding approach. The TCF advised that its preference was to provide funding to Reconciliation Tasmania. However, given Reconciliation Tasmania's limited experience in managing large funding projects this was considered a risk. As a result, the TCF agreed that funding would be provided to AICR and that the grant deed would include an allowance for AICR to sub-contract Reconciliation Tasmania to deliver some parts of the project.
1 June 2023	AICR and Reconciliation Tasmania jointly applied via email to the TCF for an education campaign grant. This was to help Tasmanians understand the issues surrounding the referendum, and to support a yes vote in the referendum. It was to include workshops, kitchen table conversations, etc.
8 June 2023	AICR and Reconciliation Tasmania presented their project proposal to the Board.

Date	Details
	<p>Following the presentation, the Board considered the proposal. The Board agreed that the project aligned with their strategy. This was because it focused on educating the community, would remove barriers to learning and, in the long-term, would lead to positive education outcomes for the Tasmanian community.</p> <p>The Board agreed to provide funding of \$557,800 to AICR with an allowance for AICR to sub-contract Reconciliation Tasmania to deliver some parts of the project.</p> <p>The Board determined that:</p> <ul style="list-style-type: none"> <li>• this project aligned with the overall TCF 2023 funding strategy priorities of education, employment, learning, and leadership</li> <li>• the project aligned with the TCF Act’s specified purpose of education, as the intent of the project would, in the long-term, have a positive impact on educational outcomes.</li> </ul> <p>The TCF did not need to seek specific Ministerial approval for the grant as they believed it aligned with specified educational purpose allowed for by the TCF Act.</p>
25 July 2023	<p>A grant deed between the Crown in the Right of Tasmania and AICR was signed, with the project to be completed by 31 October 2023.</p> <p>The first project report was due on 31 July 2023, the second progress report due on 31 August 2023 and the final project report due on 31 December 2023. The total funds use was approximately \$458,092, as outlined in Table 2.</p>

Source: Tasmanian Audit Office (based on information provided by TCF).

## The TCF’s support for a yes vote could have created a perception that the decision to award the AICR grant was not objective

- 3.4 As noted earlier, schedule 2 to the TCF Act outlines requirements relating to the disclosure and management of conflicts of interest.
- 3.5 Conflicts of interest are declared to ensure that the TCF make objective funding decisions. Objective decisions are free from influence.
- 3.6 The TCF’s position statements supporting the yes vote could have created a perception that any subsequent funding decisions were not objective. The TCF board had publicly advocated for the cause to which the AICR grant was related, and this advocacy could have given the impression that the decision-making process was not objective.



- 3.7 In the presence of this independence threat, consideration of the AICR grant application created a reputational risk to the TCF. This risk could have been reduced through documentation that transparently showed the reasons why the TCF's decided to award the AICR grant.

## Documentation supporting the awarding of the AICR grant was inadequate

- 3.8 The TCF advised that, while it does not have a documented grant management framework, the process has the following broad stages:
1. **Design:** the Board defines the funding strategy, determines the budget of the grant program and size of grants, identifies and assesses compliance requirements and program risks, conducts risks management discussions, determines program guidelines, eligibility and process and approves the program.
  2. **Application:** the TCF publishes guidelines and eligibility criteria, invites applications through SmartyGrants.
  3. **Assessment:** applications are initially assessed by staff for pre-eligibility checks and completeness and reviewed by the SEO against TCF's priorities before being allocated to individual Board members for assessment. This is followed by a collective assessment by the Board, including risk assessment of individual applications, and Stage 2 presentations from applicants.
  4. **Award and approve:** the Board makes the decision and notifies applicants of outcomes and any relevant feedback.
  5. **Execute grant deed:** grantee specific Key Performance Indicators (KPIs) and grant conditions are negotiated.
  6. **Performance:** performance monitoring of grantee measured against established KPIs, and payments are made in instalments per the conditions defined in the deed.
  7. **Monitor and review:** final grant payments are made, and final acquittal reports are received from grantees at project completion, followed by audits or other applicable reviews; outcomes data is collected; annual review of funding strategy is conducted, and continuous improvements are identified.

- 3.9 A video published on TCF's YouTube channel explains the TCF's application assessment and decision-making process. According to the video, applications are assessed on merit, with consideration given to 'value for money', 'real cut through in the community', and 'sustainability' of the project.<sup>16</sup>
- 3.10 Under its broader grant management framework, the TCF has 2 funding approaches – competitive grants rounds and flexible funding. While the TCF uses the same grants management framework for the 2 approaches, it uses different processes for designing the funding strategy, shortlisting applicants and assessing applications.
- 3.11 The TCF advised that under the competitive grant round approach, it:
- publishes funding guidelines and eligibility criteria for every grant round
  - invites Stage 1 applications from interested applicants
  - progresses with the other stages of the framework outlined above.
- 3.12 The TCF advised that under the flexible funding approach:
- it seeks applications from specific community organisations whose initiatives align with TCF's strategic plan and funding strategy, and engages with the broader community to understand community concerns and to identify aligned organisations
  - the Board and SEO engage in informal conversations with the identified organisations to discuss the proposed project(s)
  - if interested, the Board requests the organisation(s) to submit a Stage 2 application through SmartyGrants
  - the application(s) are provided to Board members for individual assessment
  - Board members receive presentation(s) from the applicant(s)
  - the Board then collectively assess the application(s) and make a decision.
- 3.13 The AICR grant was awarded through the flexible funding approach. However, we found that there was no documentation recording the rationale for awarding the AICR grant. There was also no documentation showing the:
- link between the proposed AICR grant and the TCF's legislative objective
  - assessment of the AICR grant, including an objective way to determine the merit, value for money, cut through in the community, and sustainability of the AICR grant, in accordance with TCF's grant assessment and decision making process

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<sup>16</sup> TCF (2022), [What is the TCF assessment and decision-making process? \(youtube.com\)](https://www.youtube.com/watch?v=...), TCF, accessed 21 March 2023.

- potential risks in awarding the AICR grant – the TCF advised that it recognised a risk relating to providing funding solely to Reconciliation Tasmania and provided joint funding to AICR in response to that risk.

3.14 Our expectations for this information were based on principles outlined in Best Practice Guide for the Administration of Grants<sup>17</sup> and Commonwealth Grants Rules and Guidelines 2017<sup>18</sup>.

### Legislative objective

3.15 The TCF Act provides autonomy to the Board to set the TCF’s direction and award grants out the TCF for Tasmanian community purposes as the Board thinks fit.

3.16 In outlining the principles of the TCF Bill, the second reading speech reiterated the purpose of the TCF Act to provide complete independence to the Board from the government, and the decision on how to allocate the funds rests solely with the Board.

3.17 In the parliamentary debate on the TCF Bill, concerns were raised about whether the fund might be used for political purposes. At the time, it was emphasised that the Board’s decisions would be independent of government to ensure grants were not used for the purposes of the Government of the day.

3.18 While the TCF Act provides complete autonomy to the Board to award grants, section 7(2) of the TCF Act provides guidance to the Board and states that the grants may be made for:

- charitable purposes
- sporting or recreational purposes
- cultural and arts purposes
- educational purposes
- religious purposes
- any other community purpose approved by the Minister on the recommendation of the Board.

3.19 We expected that given the grant funds were provided to support a Commonwealth referendum, the Board would have considered whether the provision of funds would comply with the TCF Act requirement that the Board ensures that the TCF’s functions and powers are performed and exercised in the best interests of the Tasmanian community. However, we found that this was not the case. The TCF later advised that ‘...Commonwealth referendums require the majority support of all States so, as such, become state issues as well. The TCF advised that funding was provided for state-

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<sup>17</sup> Department of Treasury and Finance (DoTF) (2013), [Best Practice Guide for the Administration of Grants](#), DoTF, accessed 21 March 2023.

<sup>18</sup> Department of Finance (DoF) (2017), [Commonwealth Grants Rules and Guidelines 2017](#), DoF, accessed 23 March 2024. <https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>.

based activities to inform the Tasmanian community in relation to issues around the yes vote.’

### Consideration of the grant purpose and expenditure

3.20 As part of the application for the grant, AICR and Reconciliation Tasmania jointly proposed to the TCF a collaboration between AICR and Reconciliation Tasmania to help secure a successful referendum. The TCF advised that the funding primarily aligned with the ‘educational purposes’ outlined in section 7 of the TCF Act as well as the ‘building community capacity, capability and leadership’ focus of TCF’s strategic plan.

3.21 The grant funding was used as outlined in Table 2.

Table 2: Summary of expenditure of grant funds

Amount claimed	Item
\$120,000	A national cross-media campaign, including paid television advertisements, stories and posts on social media platforms, and opinion pieces and media releases.
\$31,450	Video production.
\$20,000	Media consultant.
\$10,800	Multicultural community organiser.
\$275,840	Information about the referendum, including conversation tables and workshops, and provision of promotional material and resources to libraries.
\$99,710 <sup>19</sup>	Unutilised funds not expended by TCF.
<b>\$557,800</b>	<b>Total</b>

Source: Tasmanian Audit Office (based on information provided by TCF).

3.22 However, at the time the grant was assessed a significant portion was to be used for a media campaign with the aim of securing a successful outcome at the Voice Referendum, and it was not documented how this would support education in Tasmania. Specific invoices relating to payments made for Tasmanian media allocations were not available as payments “were made in lump sum at a national level.” It is therefore not clear what percentage of these funds were for advertisements aired in Tasmania.

<sup>19</sup> This is an approximate value.

3.23 The remaining \$275,000 was used for information specifically about the Commonwealth referendum. The TCF did not document how information about the referendum fits the Tasmanian community purpose of education.

### **Consideration of referendum outcome**

3.24 The grant deed signed between the TCF and AICR outlined the followed project outcomes:

- increased understanding of Aboriginal and Torres Strait Islander people
- increased recognition of Aboriginal and Torres Strait Islander people
- improved self-agency for Aboriginal and Torres Strait Islander people
- improved outcomes (educational, employment, health etc) for Aboriginal and Torres Strait Islander people
- stronger cross-cultural relationship in Tasmania
- reduced racism and stigma
- improved community wellbeing.

3.25 It was noted in the grant application and the final acquittal report from AICR to the TCF that the ultimate aim of this project was to deliver a yes vote in Tasmania. In assessing the grant, the Board did not consider the risk of a no outcome, and whether this would impact the overall value for money. The Board advised it did not consider the risk of a no vote, as the grant reflected the TCF's overall support for the Uluru Statement from the Heart and the referendum. Further, no documented analysis was conducted to inform how the grant would achieve the agreed outcomes in the longer-term.

3.26 The TCF later advised that the '...consideration of risks of a No vote would have arisen when the Board determined to support a Yes vote in February 2023. The later decision to fund the AICR was consistent with the position the Board had reached in February 2023'.

3.27 While the TCF advised that the consideration of the risk of no vote would have arisen while deliberating TCF's support for the yes vote, the risk became apparent when the TCF decided to award funding to support its earlier decision to support the yes vote. As such, we expected this risk to have been considered and documented in accordance with TCF's risk management and grant management frameworks to ensure relevant mitigation strategies were developed. However, we found this was not the case. As such, we concluded that the TCF did not comply with the 'sustainability' and 'value for money' criteria of its decision-making framework, and its overall risk management and grant management frameworks in relation to this grant.

### **Consideration of politicisation and ministerial approval**

3.28 It was noted in the grant application and the final acquittal report from AICR to the TCF that the aim of this project was to deliver a yes vote in Tasmania. Given the referendum did become associated with political parties, there was a risk of this grant

being perceived to be political. As such, we expected the TCF to have considered this risk in accordance with its risk management framework. We found that this risk was not formally assessed, and no mitigation strategies were developed as required by TCF's risk management framework.

3.29 As noted above, the TCF Act has the provision for the Board to seek approval from the Minister for funding on any other community purpose in addition to those categorised under section 7(2) of the TCF Act. We expected the TCF would have considered seeking Ministerial approval on the funding provided to AICR, or external advice for clarity. However, we were advised that given the Board believed that the grant aligned with 'educational purposes' outlined in the TCF Act, no Ministerial approval was required. While we were also advised that the TCF Chairperson had informal conversations with the Minister regarding TCF's position on the referendum and provision of funding to support a yes vote, these were not formally recorded in the available meeting agenda and minutes.

### **Known limitations of the TCF's grant management framework contributed to the lack of documentation**

3.30 In 2020 TCF's internal auditors reviewed the TCF's grant management framework. The internal auditors recommended that the TCF:

- develops and implements a process to ensure it can demonstrate compliance with section 7 of the TCF Act, including documenting the approach to funding decisions
- considers developing a process for documenting reasons for its final determinations of the grant applications
- consider whether to implement a structured risk assessment and management process.

3.31 These recommendations were accepted by the TCF, but were not implemented in relation to the AICR grant.

## 4. Appendix A – Publicly available information regarding funding for referendum positions

The below table documents the various publicly available sources of information which articulate the position that public sector entities should not use public resources to support a particular national referendum outcome.

Type	From	Summary	Date released / Last updated
Legislation	<i>Referendum (Machinery Provisions) Act 1984 (Cth)</i> <sup>20</sup>	<p>Section 11 - Distribution to electors of arguments for and against proposed law</p> <p>Subsection 11(4) - The Commonwealth shall not expend money in respect of the presentation of the argument in favour of, or the argument against, a proposed law except in relation to:</p> <ul style="list-style-type: none"> <li>(a) the preparation, printing and sending, in accordance with this section, of the pamphlets referred to in this section;</li> <li>(aa) the preparation, by or on behalf of the Electoral Commission, of translations into other languages of material contained in those pamphlets;</li> <li>(ab) the preparation, by or on behalf of the Electoral Commission, of presentations of material contained in those pamphlets in forms suitable for the visually impaired;</li> <li>(ac) the distribution or publication, by or on behalf of the Electoral Commission, of those pamphlets, translations or presentations (including publication on the internet);</li> <li>(b) the provision by the Electoral Commission of other information relating to, or relating to the effect of, the proposed law; or</li> </ul>	27 March 2023

<sup>20</sup> Commonwealth Register of Legislation (FRL) (2023), [Referendum \(Machinery Provisions\) Act 1984 \(Cth\)](#), FRL, accessed 26 March 2024.

Type	From	Summary	Date released / Last updated
		(c) the salaries and allowances of members of the Parliament, of members of the staff of members of the Parliament or of persons who are appointed or engaged under the <i>Public Service Act 1999</i> , including salaries, remuneration, allowances and expenses payable under the Constitution, the <i>Parliamentary Business Resources Act 2017</i> and agreements for employment or engagement referred to in the <i>Members of Parliament (Staff) Act 1984</i> .	
Journal	The University of Adelaide – Achieving fairness in the allocation of public funding in referendum of campaigns <sup>21</sup>	This Journal discussed robustness of the then regulation around the Australian Government’s decision to allocate 95% of the available promotional funding to the Yes campaign in the 2013 Referendum on Local Government, and evaluated the merits of three approaches to funding allocation, including equal funding between Yes and No campaigns; proportionate funding i.e., allocation based on proportion of parliamentary support; and discretionary funding i.e., allocation at the discretion of the Commonwealth government.	2016
News article	ABC - No public money for 'Yes' or 'No' campaigns in Indigenous Voice to Parliament referendum, Burney confirms <sup>22</sup>	The article reports on the Australian Government’s decision to not use public funds to support Yes or No campaigns in the referendum.	29 November 2022
Letter	Australian Public Service Commission (APS) – Referendum on Constitutional	Reminding Commonwealth agencies’ employees of the need for acting impartially in relation to the referendum and their	28 February 2023

<sup>21</sup> Kildea P (2016), [Achieving fairness in the allocation of public funding in referendum of campaigns](https://law.adelaide.edu.au/ua/media/476/alr-37-1-ch02-kildea.pdf), The University of Adelaide, accessed 21 March 2024. <https://law.adelaide.edu.au/ua/media/476/alr-37-1-ch02-kildea.pdf>.

<sup>22</sup> Elton J (29 November 2022), [No public money for 'Yes' or 'No' campaigns in Indigenous Voice to Parliament referendum, Burney confirms](#), ABC News, accessed 25 March 2024.



Type	From	Summary	Date released / Last updated
	Recognition of Aboriginal and Torres Strait Islander People <sup>23</sup>	employment, and upholding APS Values and reputation of their agency and APS.	
Guidance / Guidelines	APS - Engagement in the Voice Referendum in a personal capacity: Guidance for APS employees and agencies <sup>24</sup>	<p>Reminding Commonwealth agencies' employees of the need for acting impartially in relation to the Voice Referendum and their employment.</p> <p>These guidelines specifically discussed APS employees' obligations to uphold APS Values, Employment Principles and Code of Conduct.</p> <p>The guidelines further discussed the risks of damage to public confidence depending on employee circumstances specifically relating to factors that can increase or mitigate that risk including:</p> <ul style="list-style-type: none"> <li>• seniority in the APS</li> <li>• the connection between the concerned topic with official duties</li> <li>• extremeness of expression of view on the concerned topic.</li> </ul>	3 April 2023
Guidance / Guidelines	Australian Electoral Commission (AEC) – Constitutional referendums in Australia: a quick guide <sup>25</sup>	This guide provided specific guidance to Commonwealth entities on the legislative requirements of the <i>Referendum (Machinery Provisions) Act 1984</i> (the Act). The Act specifies that the Government is not prevented from 'expending money in relation to neutral public civics education and awareness activities' but that campaign 'must not address the arguments for or against a proposed law for the alteration of the Constitution'.	Updated 8 May 2023

<sup>23</sup> Australian Public Service Commission (APSC) (2023), [Joint Letter to Secretaries and Agency Heads - Referendum on Constitutional Recognition](#), APSC, 28 February 2023, accessed 21 March 2024.

<sup>24</sup> APSC (2023), [Engagement in the Voice Referendum in a personal capacity: Guidance for APS employees and agencies](#), APSC, 3 April 2023, accessed 21 March 2024.

<sup>25</sup> Australian Electoral Commission (AEC) (2023), [Constitutional referendums in Australia: a quick guide](#), AEC, updated 8 May 2023, accessed 21 March 2024.

Type	From	Summary	Date released / Last updated
Guidance / Guidelines / Circular	Victorian Public Service Commission – Referendum on altering the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice <sup>26</sup>	This guide provided detailed guidance and examples of public sector employees’ public engagement with the referendum, while reiterating the importance to demonstrate compliance with the Victorian Public Sector Values, Codes of Conduct and <i>Public Administration Act 2004</i> .	23 June 2023
News article	The Daily Telegraph – Campaigns but no cash: State governments will not spend taxpayer dollars on the Voice <sup>27</sup>	The article reports on the various interjurisdictional governments’ decisions to not use public funds to support either the Yes or No campaigns.	10 July 2023
Article	RMIT University – No, the Commonwealth government is not bankrolling the Yes campaign <sup>28</sup>	The article stated that the Australian Commonwealth Government is funding neutral civics education programs on the Voice to Parliament. Both the Yes and No campaigns are funded by private donations and were both granted tax deductibility status by the government.	14 August 2023
Tasmanian State Service Circular from Head	Head of State Service – Referendum of Constitutional Recognition of	Stated that the TSS is entrusted to remain apolitical and continue to perform its functions in an impartial, ethical and professional manner. Therefore, it is not appropriate for any Tasmanian State Service employee to use.	1 September, 2023

<sup>26</sup> Victorian Public Service Commission (VPSC) (2023), [Referendum on altering the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice](#), VPSC, 23 June 2023, accessed 21 March 2024.

<sup>27</sup> Bharadwaj A (10 July 2023), [Campaigns but no cash: State governments will not spend taxpayer dollars on the Voice](#), The Daily Telegraph, accessed 25 March 2024.

<sup>28</sup> Graham L, Whitfield K (14 August 2023), [No, the Commonwealth government is not bankrolling the Yes campaign](#), RMIT University, accessed 21 March 2024.

Type	From	Summary	Date released / Last updated
of Tasmanian State Service	Aboriginal and Torres Strait Islander People <sup>29</sup>	Tasmanian Government resources, including information technology, to advertise and/or promote information or content related to the forthcoming Voice Referendum.  Further emphasised on TSS Employees' duty of care responsibilities to uphold the TSS Principles and Code of Conduct.	
Guidance / Guidelines	Queensland Government – Voice to Parliament: guidance for public sector employees <sup>30</sup>	Stated that the public sector is apolitical and impartial, and for the referendum it is important to recognise that a department or public sector entity cannot decide to formulate a position, that is to support either the yes or no case.	Last updated 26 September 2023
Discussion paper	Tuesday Ethics Club – The case of rallying for the Voice <sup>31</sup>	This article discusses the rights of public servants to express genuinely held ethical views and campaign for causes they believe in as citizens.  However, the article also emphasises on the need to delineate and place boundaries that individual public roles place on an individual's ability express their views to maintain the public trust in public service which requires not just being apolitical but also avoiding the <i>perception</i> of political views to compromise impartiality.	19 September 2023

Source: Tasmanian Audit Office.

Note: This is not an exhaustive list.

<sup>29</sup> Gale J (1 September 2023), [Referendum of Constitutional Recognition of Aboriginal and Torres Strait Islander People](#), Tasmanian Head of State Service, accessed 21 March 2024.

<sup>30</sup> Queensland Government (updated 26 September 2023), [Voice to Parliament: guidance for public sector employees](#), accessed 21 March 2024.

<sup>31</sup> Dean T (19 September 2023), [The case of rallying for the Voice](#), Tuesday Ethics Club, accessed 21 March 2024.

## 5. Appendix B – TCF detailed response

The below outlines TCF's detailed response (pages 2-5 of 5). Page 1 of 5 is included in the executive summary of this report.

Page 2 of 5

### ***Fulsome Response to Report of the Auditor General No.2 of 2024-2025: Tasmanian Community Fund referendum support and assessment of grant funding to Australians for Indigenous Constitutional Recognition Ltd***

#### **2. Background to the Tasmanian Community Fund Board and its Strategy**

- 2.1. The TCF Board upholds and delivers on best practice, contemporary governance and grant management processes. Every member of the TCF Board understands and meets the TCF values of integrity, community focus, collaboration and leadership.
- 2.2. The TCF Strategic Plan and funding strategy are focused on supporting strong, vibrant and resilient communities across Tasmania.
- 2.3. With this in mind, the TCF Board accepts that it will need to make hard, and sometimes unpopular, decisions in its efforts to achieve its strategic plan and *'to break barriers and build futures for the benefit of all Tasmanians.'*

#### **3. The Investigation and Audit Process**

- 3.1. The Board was informed by the Auditor General that if it provided a 1 or 2 page response, that response would be included in full with the Auditor-General's Executive Summary. The Board has provided a one page Summary in light of that direction. The remainder of this response should be read in conjunction with that Summary, together with the annexed opinion from Mr Michael O'Farrell SC and Butler McIntyre & Butler.
- 3.2. It is the Board's view that choosing to look at one grant in isolation, as this report does, represents a fundamental flaw with the overall approach to this audit.
- 3.3. Failing to take a wholistic view of the processes relating to the decision to support Yes and the funding decision to the Australians for Indigenous Constitutional Recognition (AICR) means the TAO has not had any regard for the many factors that provide important context to this decision, including:
  - (a) The Board's longstanding support for grants that assist Tasmanian Aboriginal communities.
  - (b) Overarching context of the Board's strategy and funding priorities.
  - (c) Historic processes, precedents, protocols followed by the Board for more than 3,000 grants it has made.
  - (d) The TCF's collective knowledge and deep understanding of the needs of the community and the sectors and industry supporting many Tasmanians - all of which are relevant when the Board made its judgements.
- 3.4. Because of the Board's serious concerns about the investigation and audit process it was being subjected to, the Board instructed Butler McIntyre & Butler to seek an opinion from the previous Solicitor General to Tasmania, Michael O'Farrell SC.
- 3.5. The only information, records and evidence that have been provided to the TCF's legal advisers is information, records and evidence that was also provided to the TAO and Auditor-General as part of the audit processes.

3.6. The Board sought the opinion because it genuinely wanted to know if the process was sound, and if the report contents, recommendations and conclusions had any basis in the standards and principles that applied to it and the Fund.

3.7. For the sake of transparency, that opinion is annexed to this response in full.

#### 4. The TCF Board's Concerns with the Report

4.1. The TCF Board believes that the report fails to acknowledge what it actually did in making its decision, which is consistent with its established processes. For example, all TCF Board members voluntarily provided individual statutory declarations to confirm for the TAO the processes followed for this and all grants. These statutory declarations appear to have been broadly ignored. The TCF Board was informed by the TAO prior to providing the statutory declarations that those statutory declarations were not likely to change the commentary or conclusions contained within the report.

4.2. The TAO appear to have taken the starting approach of assuming that the TCF Board may not have done certain things. As a result, the onus has been placed on the Board to justify what it did and in the absence of explicit documentation the TAO has concluded that there was no consideration.

4.3. This is particularly true of the conflict-of-interest section – given the evidence that has been provided and the statements that have been made (including sworn statements) the TCF Board does not understand how it could have proven that there were no conflicts as there has been a complete unwillingness to accept that this is the case despite the TCF Board's statements and evidence to the contrary. As in the opinion from Mr O'Farrell SC:

*28. In our opinion, it cannot be properly, or fairly be suggested that the evidence of a person who was present at the meeting is irrelevant. The result does not result in an attempt to discover the truth about what happened. It pays attention to form, not substance.*

*29. Quite apart from the statutory declarations proffered on behalf of Board member, there was other evidence which the Auditor-General has chosen to exclude from his considerations.<sup>1</sup>*

4.4. And specifically, with regard to Conflicts of Interest:

*From our review of the evidence supplied to the Auditor-General by the TCF on this issue, there was evidence (including documentary evidence) of the TCF applying its conflict of interest policy to the decision.<sup>2</sup>*

4.5. And as quoted above in the Board's summary:

*...the Auditor-General's conclusion that the Board had a conflict of interest is an assumption with no basis in legal principle.<sup>3</sup>*

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<sup>1</sup> Paragraph 28, page 8 of 13

<sup>2</sup> Paragraph 32, page 9 of 13

<sup>3</sup> Paragraph 5(f), page 2 of 13

- 4.6. Not accepting evidence that provides contextual information in relation to that decision results in unfair and demonstrably incorrect findings. For example, as in the opinion from Mr O'Farrell SC attached: *the Auditor-General was required to consider all the evidence that led to the Board's decision, not just evidence that he considered was 'corroborated' by the TCF's records*<sup>4</sup> and more fully:

*If we understand that conclusion properly, despite the fact that there was a minute of the Board's decision to support the 'yes' vote (it is not 'testimony alone'), the Auditor-General will not permit the TCF, or its Board members present at the meeting, to explain or justify what it has done by providing evidence of its decision-making process. That is confirmed by the TAO's response to the comments made by the TCF in relation to paragraph 2.5 of the Report. The TAO response is that the 'minutes do not meet the requirements of the Information and Records Management Standard'. This reasoning is unsound.<sup>4</sup>*

- 4.7. The report implies that "special treatment" was applied to the decision to support funding for the Australians for Indigenous Constitutional Recognition project. This application was considered through the same lens as all applications for funding and assessed on merit. As in the opinion from Mr O'Farrell SC:

*the Board's decision to adopt a policy to support the 'yes' vote was permissible, provided it did not apply the policy inflexibly. There is no finding that it did so.*

- 4.8. Consistent across all boards, TCF Board members are appointed to make decisions and as part of their decision-making consider risk and the external environment together with legislative requirements and strategy alignment, etc. The position, role and decision-making process of a Board member does not appear to have been taken into consideration in the report.
- 4.9. Board members are part of the decision-making process and decisions build upon previous decisions, therefore there is not an expectation that things will be reconsidered as if there is no understanding of issues. This is part of the culture of the TCF Board.
- 4.10. This culture equally applies to the continuous improvement approach of the TCF and its ongoing desire to have a good and contemporary grants management process and practice. These positive cultural components of the TCF's operations do not seem to have been acknowledged in the report.
- 4.11. The TCF Board has a long history of supporting indigenous Tasmanians. The report concluded that the TCF Board did not properly consider the political context of its decision. However, at the time the decision was made to approve the grant in June 2023, all three leaders of the three main political parties in Tasmania had publicly professed their support for the Yes vote. That is not recognised anywhere in the report. The grant applications specifically included a plan to have included in the project tripartite support of the Yes vote.
- 4.12. To be very clear, the TCF Board has never funded a political party. AICR is a registered charity and is not a registered political party.
- 4.13. This means what the Board advised has been totally disregarded. The tone of the report appears to be based on a presumption of guilt or failure and the TCF needing to prove its innocence.

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<sup>4</sup> Paragraph 26, page 8 of 13

- 4.14. It seems to the TCF Board that what it advised and provided has not been believed and disregarded, nor has there been any regard to the fact the TCF has operated successfully for more than 20-years providing more than 3,000 grants to Tasmanian organisations. This is not just disappointing but perplexing and disregards the TCF's strong culture and practice of merits-based grant making.
- 4.15. For example, consistent with TAO's process for checking factual accuracy the TCF, on two occasions, provided TAO written comments expressing concerns about factual inaccuracies in draft reports. Many of these comments were disregarded by the TAO with the TAO also then on occasion not providing any reasoning for ignoring the Board's concerns.
- 4.16. The TCF Board is deeply concerned that many of the report's findings were constructed to portray a false picture of the how the Board operates, and has significant concerns regarding the lack of procedural fairness afforded by the TAO to the TCF over the way this audit has been conducted.
- 4.17. For example, the TAO denied the Board's numerous requests for access to the material that resulted in the commencement of the audit, despite the TAO advising the Board in writing of the cause of the commencement, and at of least one of the referral parties.
- 4.18. The Board accept that these may have needed to be redacted and they recognise that they did not need to know who provided the information that instigated the review. However, the Tasmanian Community Fund Board believe that they needed to understand the basis and motivations for the review to enable them to have context for the report as it is written and to enable the Tasmanian Community Fund Board to respond appropriately. The Board and its members insist that they should have be given access to the substance of any adverse material and be given an opportunity to respond.
- 4.19. The TCF Board strongly disagrees with and refutes the majority of the findings in the report. It also rejects that relevant matters were not considered by the Board and disputes the lack of evidence to support these conclusions.

SIGNED:

Sally Darke  
Chairperson

Alexander McKenzie  
Board Member

Enrico (Ric) De Santi  
Board Member

Michelle Swallow  
Board Member

Stephen Walley  
Board Member

# Acronyms and abbreviations

AICR	Australians for Indigenous Recognition Ltd
Archives Act	<i>Archives Act 1983</i>
Audit Act	<i>Audit Act 2008</i>
DPAC	Department of Premier and Cabinet
Policy	Tasmanian Community Fund's Conflicts of Interest Policy
SEO	Senior Executive Officer
State Service Act	<i>State Service Act 2000</i>
TCF	Tasmanian Community Fund
TCF Act	<i>Tasmanian Community Fund Act 2005</i>
Trust Bank Sale Act	<i>Trust Bank Sale Act 1999</i>
TSS	Tasmanian State Service
Voice Referendum	2023 Indigenous Voice to Parliament Referendum



# Audit mandate and standards applied

## Mandate

Section 23 of the *Audit Act 2008* states that:

- (1) The Auditor-General may at any time carry out an examination or investigation for one or more of the following purposes:
  - (a) examining the accounting and financial management information systems of the Treasurer, a State entity or a subsidiary of a State entity to determine their effectiveness in achieving or monitoring program results;
  - (b) investigating any matter relating to the accounts of the Treasurer, a State entity or a subsidiary of a State entity;
  - (c) investigating any matter relating to public money or other money, or to public property or other property;
  - (d) examining the compliance of a State entity or a subsidiary of a State entity with written laws or its own internal policies;
  - (e) examining the efficiency, effectiveness and economy of a State entity, a number of State entities, a part of a State entity or a subsidiary of a State entity;
  - (f) examining the efficiency, effectiveness and economy with which a related entity of a State entity performs functions –
    - (i) on behalf of the State entity; or
    - (ii) in partnership or jointly with the State entity; or
    - (iii) as the delegate or agent of the State entity;
  - (g) examining the performance and exercise of the Employer's functions and powers under the *State Service Act 2000*.
- (2) Any examination or investigation carried out by the Auditor-General under subsection (1) is to be carried out in accordance with the powers of this Act

## Standards applied

Section 31 specifies that:

'The Auditor-General is to perform the audits required by this or any other Act in such a manner as the Auditor-General thinks fit having regard to -

- (a) the character and effectiveness of the internal control and internal audit of the relevant State entity or audited subsidiary of a State entity; and
- (b) the Australian Auditing and Assurance Standards.'

The auditing standards referred to are Australian Auditing Standards as issued by the Australian Auditing and Assurance Standards Board.



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