

The dark arts

This lecture on budgets and finance is subtitled ‘Sunlight and the Dark Arts’ because although the sunlight of transparency and accountability is the aim of policy and statute, darkness is still nourished by politicians. ‘Sunlight’ also refers to *Operation Sunlight*—the Labor Party’s 2007 commitment to ‘a practical suite of measures to enhance Budget transparency’. *Operation Sunlight* was billed as ‘a long-term investment in greater accountability’ for current and future Commonwealth governments.¹

In 2008 I was asked by Finance Minister Lindsay Tanner to conduct an independent review of *Operation Sunlight*. My report contained 45 recommendations aiming at improving budget transparency and fiscal practice.² Ten recommendations have been implemented and 21 rejected, with the rest in play to some degree.

To be fair, a number of useful advances have been made, and continue to be made. For instance, the Labor government committed to regular regulatory stocktakes in response to my report on *Operation Sunlight*. The Statute Stocktake Bill (No. 1) 2011 is the latest in the series of essential financial housekeeping that abolishes 39 special appropriations, including a statutory special account, repeals redundant provisions in 11 Acts and repeals 25 Acts in their entirety.³

The ‘dark arts’ in my lecture title is derived from the second of two quotes that show that deceit in government is alive and well. In 2007 Professor John Wanna said, at the end of the Howard Liberal/National era:

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 10 June 2011.

¹ Australian Government, *Operation Sunlight: Enhancing Budget Transparency*, December 2008, p. 2, <http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/operation-sunlight/docs/operation-sunlight-enhancing-budget-transparency.pdf>.

² Andrew Murray, *Review of Operation Sunlight: Overhauling Budgetary Transparency*, June 2008, <http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/operation-sunlight/docs/budget-transparency-report.pdf>. A crude analysis indicates 10 recommendations implemented, seven partly implemented, seven still in progress and 21 recommendations not implemented.

³ Gary Gray, Second reading speech, Statute Stocktake Bill (No. 1) 2011, House of Representatives debates, 23 March 2011, p. 2981.

The executive likes to keep the legislature guessing, at arm's length and one or two steps behind. There are problems with the alignment of data and activities, figures and results; it is hard to identify or distinguish old money from new money, offsets from new programs, and how changed preferences for reporting activities vary from previous years.⁴

In reacting to such deceit, in *Operation Sunlight* Labor's Lindsay Tanner argued on a principled basis for budget transparency and fiscal integrity. In that light, how appalling was it to read Mr Tanner's confession in 2011:

As a shadow minister *and minister for finance* [emphasis added], I became adept at these dark arts, using some of what are now the standard tricks employed to maximise political appearances: switching between cash and accrual accounting; using nominal, real or proportion of gross domestic product indicators of spending, according to which indicator suited the argument better; classifying yearly spending as capital; making commitments beyond the forward-estimates years; and spending money at the end of the financial year when you know you're on track to exceed the original budget estimates.⁵

In an indictment of ministerial ethics, the Business Council has so despaired of fiscal dishonesty that it has called for a permanent independent commission of budget integrity.⁶

The Wanna and Tanner quotes show that political expediency can trump fiscal honesty. If a thorough review of the *Charter of Budget Honesty Act 1998* ever happens, hopefully a way will be found to not only identify but punish this sort of deceitful conduct. I was prescient in 2008 in my budget transparency report,⁷ when I wrote:

⁴ John Wanna, *Through a Glass Darkly: The Vicissitudes of Budgetary Reform in Australia*. Melbourne, CPA Australia, 2007, p. 2 quoted in Murray, *Review of Operation Sunlight*, op. cit., p. 18.

⁵ Lindsay Tanner, *Sideshow: Dumbing Down Democracy*. Carlton North, Vic., Scribe Publications, 2011, p. 108. The Hon. Lindsay Tanner was Minister for Finance, 2007–10.

⁶ Graham Bradley, 'We need to have faith in the government's sums', *Australian*, 30 May 2011, p. 14.

⁷ To encourage readers to read the 2008 report on budgetary transparency: in correspondence to me Minister Tanner described the report to the Australian Government *Review of Operation Sunlight* as 'a landmark work on public sector accountability'; and in 2009 the Australian National University advised me they were 'using your outstanding Operation Sunlight report as a reference on the nature, requirements and importance of governmental accountability for our Public Sector Accounting course this year. It is the best reference available on the topic—your insight into the topic is most valuable'.

If you want high standards, accountability and good governance, you cannot rely on particular individuals in a particular role at a particular time—you have to institutionalise and legislate those standards, so they are there whoever is in charge.⁸

The combination of partisan politics, executive judgement and discretion, authority, power, and money, has always posed dangers. Heeding the lessons of history, liberal democracy's response to such dangers has been to stress the rights of the people, the importance of the separation of powers, the rule of law, representation, having to account to the people, transparent process, ethics and strong governance. It has created institutions and laws to support these democratic pillars. Liberal democracies stress regular elections and the importance of parliaments as a necessary safeguard, separate from and at times opposed to governments.

But systems and institutions are not enough. Individuals matter, their personal and collegiate conduct matters, their ethics matter. If you cannot rely on someone of the calibre and promise of Lindsay Tanner not to practice the dark arts as Minister of Finance, an office where the highest standards are essential, what hope is there for ethics and integrity in public finance?

I say there is plenty of hope. Tanner wasn't constantly in dark arts mode. Ministers often do the right thing. There are lots of good people in politics and the public sector. Most of all there is hope because of a very high standard of legislated institutionalised and practised integrity, accountability and governance measures, supported by strong institutions, and buttressed by parliamentary opposition, the media and civil society.

The dark arts quotes remind us that more needs to be done, not just to improve accountability, not just to advance efficiency and effectiveness, but to improve political performance and the political culture. I intend to devote much of this lecture to issues of the Parliament. Combating the dark arts in this very complex world requires the Parliament to become a lot more able and assertive. The dark arts prevail when the media and the Parliament don't notice or don't care, or are too weak to do anything about it. Accountability and transparency is weakened where parliaments are weak, and where parliamentarians are weak.

In this lecture I am not going to repeat the prescriptions and suggestions I laid out in my budget transparency report. Instead I will suggest ways to help improve fiscal practice and to help combat the dark arts by:

- improving parliamentary performance;

⁸ Murray, *Review of Operation Sunlight*, op. cit., p. ii.

-
- improving the states' performance;
 - improving Commonwealth performance.

Improving parliamentary performance⁹

Parliament has to do battle against the dark arts, against that which is wrongly hidden, that which is not what it seems, and performance that is not good enough. History's lessons require them to be wary of those who rule and the might of the state.

Parliament is inferior to the executive in its resources. If power is best challenged by countervailing power, what more can be done to lend parliamentarians a hand?

- the Senate should get tough on the Compact;
- Parliament should be in control of its own budget;
- Parliament should be better serviced;
- parliamentarians' standards and training need to be lifted.

The Senate should get tough on the Compact

It is my experience that the House of Representatives, the media, and the public expect the Senate to buckle in most battles with the executive. Nothing illustrates the psychological dominance of the Senate by the executive more than the saga of the Compact. The way in which the executive gets its hands on money matters (which incidentally is another reason why Parliament must insist on my budget report recommendations on standing appropriations).¹⁰

Budget transparency and financial accountability are a constitutional imperative: legal requirements that flow from the higher law of the Australian Constitution, as

⁹ For a more detailed exposition of some of the elements in this section, see a paper by Andrew Murray delivered to the Australasian Council of Public Accounts Committees Eleventh Biennial Conference in Perth, Western Australia, 27–29 April 2011, titled 'Parliamentarians, politicians and accountability'.

¹⁰ Murray, *Review of Operation Sunlight*, op. cit., pp. 29–32:
'Recommendation 11: That the Government include sunset clauses in all future Standing Appropriations.
Recommendation 12: That Special (or Standing) Appropriations and their continued operation be given greater attention whereby:
a) the Government conduct a housekeeping exercise and repeal standing appropriations that are redundant;
b) at least annually Finance undertake reviews of these appropriations and report to Parliament as to whether there is a continuing need for the appropriations and/or the legislation within which those appropriation clauses reside; and
c) Parliament, through the appropriate and relevant Committees, undertake periodic reviews of Special (or Standing) Appropriations.'

supplemented by statute.¹¹ Section 53 restricts the powers of the Senate to amend bills providing for the ‘ordinary annual services of the government’. An appropriation bill not for the ordinary annual services of the government may be directly amended by the Senate.

In the Compact of 1965 the Senate and the government finally agreed on which matters constitute the ‘ordinary annual services of the government’. The purpose of placing ordinary annual services and new policies in separate appropriation bills is to enable Parliament to identify which expenditure is for normal ongoing activities of the government, and which expenditure is for other purposes and is subject to Senate amendment. The Constitution says there must be separation, and the Compact clarifies the allocation to be followed, but short of rejecting the annual appropriation bills, there is presently no mechanism for resisting breaches of the Compact by the executive.

I noted in my 2008 report that parliamentary committees and the Australian National Audit Office identified a growing number of expenditure measures that were wrongly included in the appropriation bills reserved for the ordinary services of the government, such as the 2007 ‘ordinary annual’ horse flu outbreak response.¹² The 2011–12 Budget has examples of significant new policies included in the ordinary annual services appropriation bill, such as the government allocation of \$1.3 billion over eight years to ‘reward payments for great teachers’. The government itself concedes this is a new initiative.¹³ A direct challenge by the executive to the unambiguous intention of the Australian Constitution and a blatant disregard for budgetary propriety will likely again¹⁴ go unchecked by the Senate.

The treatment of appropriation bills is very important constitutionally, from an accountability perspective, from a transparency perspective, and from a propriety perspective. Lindsay Tanner, the new Minister for Finance, indicated in 2008 that he would help the Senate resolve this matter with the government. In September 2009 a

¹¹ Murray, *Review of Operation Sunlight*, op. cit., p. ii.

¹² See for example: Australian National Audit Office, *ASIC’s Implementation of Financial Services Licences*, Audit report no. 25, 2005–06, January 2006; Senate Standing Committee on Finance and Public Administration, *Annual reports, no. 2 of 2007*, September 2007 and *Additional Estimates 2007–08*, March 2008; Senate Appropriations and Staffing Committee, 45th report, March 2008.

¹³ Commonwealth of Australia, *Budget Measures 2011–12*, Budget paper no. 2, 2011–12, p. 172, <http://cache.treasury.gov.au/budget/2011-12/content/download/bp2.pdf>; Commonwealth of Australia, *Education, Employment and Workplace Relations Portfolio Budget Statements 2011–12*, Budget related paper no. 1.6, pp. 54 and 63, http://www.deewr.gov.au/Department/Budget/Documents/20112012/2011-2012_DEEWR_PBS_04_Outcome_2.pdf.

¹⁴ Murray, *Review of Operation Sunlight*, op. cit., p. 13. Ordinary annual services appropriation bills can contain a bizarre list of significant government expenditure that could only be classified as new policies. Prominent examples included the 2004 ‘ordinary annual’ tsunami relief, the 2006 ‘ordinary annual’ Work Choices advertising campaign, the 2007 ‘ordinary annual’ horse flu outbreak response and the 2008 ‘ordinary annual’ 2020 Summit.

resolution of the Senate called on Tanner to provide a substantive response to the Senate Appropriations and Staffing Committee.¹⁵ In November 2009 Tanner indicated that the government saw ‘no need to change the Executive’s interpretation of the Compact’.¹⁶ The dark arts triumphed. Nothing changed.

Ordinary annual services are not contentious appropriations. New measures can be. What the executive has been doing is putting completely new programs and projects that could be amended by the Senate in a bill that constitutionally cannot be amended by the Senate. The rejection of new budget measures could cause a double dissolution, which isn’t the end of the world. Blocking supply is an entirely different matter. The rejection of the ordinary annual services appropriations bill paying wages¹⁷ would initiate a financial and constitutional crisis.

Successive Senates have been stonewalled by the executive, secure in the knowledge the Senate will do nothing, despite the Senate Finance and Public Administration Committee and the Senate Appropriations and Staffing Committee unanimously and consistently saying how serious the matter is.

The Senate should toughen up. The Senate should refuse to deal with the appropriation bill for the ordinary annual services of the government until those items that the Senate itself agrees are not ordinary annual services are moved to the correct appropriation bill. That is not a rejection, it is just insisting on constitutional and budgetary propriety.

Parliament should be in control of its own budget

Democracies are wary of a concentration of power and the abuse of power. If parliament controlled its own budget it would advance the separation of powers. Democracies try to keep separate the parliament’s power to make laws and to tax, from the executive’s power to propose laws and to spend the revenue, from the bureaucracy’s power to administer laws and programs, and from the judiciary’s power to determine disputes according to law. Each of these is meant to act as a check and balance on the other, but if the executive holds the financial and resources whip hand (and the appointments and tenure whip hand, but leave that for another day ...) then there is a great imbalance in power.

¹⁵ *Journals of the Senate*, 16 September 2009, p. 2511, http://www.aph.gov.au/senate/work/journals/2009/jnlp_091.pdf.

¹⁶ Senate Standing Committee on Appropriations and Staffing, *Ordinary Annual Services of the Government*, 50th report, June 2010, p. 6, http://www.aph.gov.au/senate/committee/app_ctte/50th_report/report.pdf.

¹⁷ Commonwealth of Australia, *Agency Resourcing*, Budget paper no. 4, 2011–12, pp. 7–9, describes Appropriation Bill (No 1) that covers the ordinary annual services of the government.

Supporters of a genuine separation of powers argue that a strong, well-resourced, properly funded, independently minded and fully effective parliament needs financial independence. A financially hamstrung or subservient parliament cannot adequately scrutinise or hold accountable the executive. The executive can withhold or limit the funds available for an effective independent committee system and for adequate independent research and analysis.

The parliamentary service is separate from the public service, and the government accords the Australian Parliament its own appropriations bill (and now, finally, there are appropriations committees in both houses), but the executive retains a tight hold over content and insists on maintaining financial control, a power it occasionally uses unilaterally.

As an example, the Senate Appropriations and Staffing Committee's report endorsed three proposals for the Senate's 2011–12 funding submission to the Prime Minister and Finance Minister for:

- the new Joint Select Committee on Gambling Reform;
- legislative drafting and advice (to meet a higher demand for private senators' bills resulting from the 'new paradigm'); and
- enhanced information management capacity.

The executive only approved extra funding to support the new joint select committee. There was no response to the committee's correspondence and no reason was given for their decision.¹⁸ This is despite Senate resolutions outlining a process for resolving disagreements between the Senate and the government over the estimates for the Department of the Senate.

Other parliaments balance parliamentary financial independence with sound responsible budgeting, including the United Kingdom, New Zealand and Canada. Some retain executive approval for parliamentary budgets; others such as Denmark, France, Sweden and Switzerland do not.

In 2006, then House of Representatives Speaker David Hawker said 'greater financial autonomy, together with enhanced management and scrutiny, is a desirable reform for Australia's parliamentary administration; there is no more important power for a

¹⁸ Senate Standing Committee on Appropriations and Staffing, *Estimates for the Department of the Senate 2011–12*, 52nd report, May 2011, p. 1, http://www.aph.gov.au/Senate/committee/app_ctte/52nd_report/report.pdf.

parliament than control over its resources'.¹⁹ If the new parliamentary budget officer is to really be an independent officer of Parliament, he or she should be given financial autonomy. Like the Parliament, the Parliamentary Budget Office (PBO) will not get it. There has been no sign in this time of minority government of the Greens and independents taking up this cause.

Parliament should be better serviced

When the dark arts are being employed, we need to help the victims. Parliament's power to tax and spend is arguably its most important power of all. Parliamentarians need to understand money: how it is raised, how it is spent and by whom; how it is accounted for; how justified; how reported.

Three ways in which Parliament can be better served on money matters are by:

- insisting on clear consistent budget and financial reporting;
- providing independent quality research analysis and advice to Parliament on fiscal matters;
- making the Auditor-General an independent officer of the Parliament.

It is parliamentarians who are required to assess the myriad financial information with which they are presented. Since most are financial laymen, financial statements and reports need to be as clear and easy to use and understand as possible.²⁰

Independent advice and analysis on fiscal matters

Too much of parliamentary analysis or reaction to budgets and financial information is left to portfolio-holders, to individual initiative and vigilance, or to set-piece sessions like estimates. More real-time reaction is required.²¹ To help resist the dark arts the Parliamentary Library and the specialist parliamentary fiscal committees should be given additional persons with accounting or finance skills, and additional authority to analyse and react in real time to relevant government financial reporting, by providing parliamentarians with objective analysis.

Thankfully, the independents capitalised on the present minority government situation to initiate a Parliamentary Budget Office responsible to the Parliament, intended to provide independent quality research analysis and advice to Parliament on fiscal

¹⁹ David Hawker, *Funding Arrangements for the Parliament of Australia: A View to the Future*, 37th Presiding Officers and Clerks Conference, Perth, July 2006, http://www.democraticaudit.anu.edu.au/papers/20070302_hawker_parlfund.pdf.

²⁰ There is extensive commentary on this topic in Murray, *Review of Operation Sunlight*, op. cit.

matters. The PBO should also be tasked with parliamentary oversight of Commonwealth Grants Commission activity and to watch over Commonwealth–state financial relations.

The inquiry into the PBO described key values in a parliamentary budget office as transparency of process, equality of access to its services, and observing the separation of the parliament from the executive. They ‘recommended that the mandate of the PBO be to inform the Parliament by providing independent, non-partisan and policy neutral analysis on the full budget cycle, fiscal policy and the financial implications of proposals’.²² I endorse the committee’s recommendation that the position of Parliamentary Budget Officer be established as an independent officer of Parliament through dedicated legislation, but there are concerns on access to information and financial independence.

The committee suggested that ‘for the PBO to effectively fulfil its mandate ... it will need special access to information and data held by Government ...’²³ and considered several options, including giving the PBO legislated powers to compel information (like the Auditor-General), legislated provisions to request information (like the New South Wales PBO), negotiated agreements with agencies, and the use of freedom of information (FOI) laws. The committee decided that the PBO should seek to negotiate and develop memoranda of understanding with the departments of Treasury and Finance to share information and data. As a backup, if information is not forthcoming under the memoranda of understanding, the committee recommended that the PBO should be entitled to use the formal freedom of information processes without cost. The committee also noted that a further option would be to report the matter to the Joint Committee of Public Accounts and Audit.²⁴

Hardly an encouraging statement of authority and independence is it? The idea that the sovereign Parliament of Australia needs to go cap in hand to negotiate agreements with bureaucracies or to get documents under FOI is repugnant. I agree with the Clerk of the Senate, that:

... the parliament as the grand inquisition of the nation is scrutinising the operations of government on behalf of the people ... and has both the right and the powers to have information to inform it to do that job properly.²⁵

²¹ These observations were also made in Murray, *Review of Operation Sunlight*, op. cit.

²² Joint Select Committee on the Parliamentary Budget Office, *Inquiry into the Proposed Parliamentary Budget Office*, Canberra, March 2011, p. vii.

²³ *ibid*, p. 75.

²⁴ *ibid*, p. 76.

²⁵ Rosemary Laing in Joint Select Committee on the Parliamentary Budget Office, *Committee Hansard*, 1 February 2011, p. 32, <http://www.aph.gov.au/hansard/joint/commtee/J13557.pdf>.

To be truly effective the PBO will need to be given legislated powers to compel information, including from third parties, with the appropriate safeguards for genuinely confidential and private information. It is interesting to contrast the full support of the need for wide-ranging powers for the Auditor-General in the Joint Committee of Public Accounts and Audit (JCPAA) *Report 419*²⁶ and Rob Oakeshott's consequent bill,²⁷ with the PBO committee's qualified approach.

Making the Auditor-General an independent officer of the Parliament

The idea that the Auditor-General should be an independent officer of the Parliament with secure tenure is widely accepted.²⁸ That the Auditor-General's budget should be the responsibility of the Parliament and not the executive is not.²⁹ I have seen under-resourcing of the Audit Office by the executive and it is a risk and restraint that should be avoided.

Bearing in mind how vital it is for Parliament to 'follow the dollar', and bearing in mind how vital the Auditor-General is as an aid to this task, scrutiny committees should be alert to weaknesses in the powers of an auditor-general.

JCPAA's *Report 419* recommended:

- allowing full Auditor-General audit access to all entities controlled by government, and authority to 'follow the dollar' where non-government bodies are in receipt of funding to deliver agreed outcomes;
- that claims of legal professional privilege should not override the Auditor-General's information gathering powers;
- that funding agreements to other levels of government should automatically include standard clauses permitting Auditor-General access to information and records, and a capacity to inspect work.

²⁶ Joint Committee of Public Accounts and Audit, *Report 419: Inquiry into the Auditor-General Act 1997*, Canberra, December 2010, <http://www.aph.gov.au/house/committee/jcpaa/agact/report.htm>.

²⁷ Auditor-General Amendment Bill 2011.

²⁸ The Auditor-General is an independent officer of the Parliament: *Auditor-General Act 1997* section 8(1).

²⁹ Paragraphs 8(1)(j) and (l) of the *Public Accounts and Audit Committee Act 1951* requires the JCPAA to consider draft estimates for the Audit Office and to make recommendations to both houses of Parliament, and to the relevant minister, on the draft estimates. This does not amount to financial independence for the Auditor-General, or parliamentary control of the Auditor-General's budget. This is illustrated in a recent statement by the chair of the JCPAA: 'The Auditor-General advised that, in common with other agencies, the ANAO is facing increased employee and supplier costs. He again reiterated that the Audit Office has had to absorb the impact of recent changes to the Australian Auditing Standards: 'Despite the support of the ... committee the ANAO was not successful in receiving additional supplementation in the 2009–10 and 2010–11 budgets to offset these costs.' (Rob Oakeshott, Proof House of Representatives Hansard, 10 May 2011, p. 26, <http://www.aph.gov.au/hansard/reps/dailys/dr100511.pdf>).

There has long been a need for Auditor-General access to other levels of government and non-government third parties, often the biggest providers of services and goods. Third parties have been spending the money, but the Commonwealth has been carrying the risk. By the way, third parties should include states and territories that underperform on Commonwealth programs. It should be possible for the Commonwealth to request a state Auditor-General do a performance audit, and to pay for it if they agree. As Senate estimates recently explored, additional funding will need to go to the Auditor-General if he is to use third party access powers effectively.³⁰

Parliamentarians' standards and training need to be lifted

Combating the dark arts requires capable parliamentarians. In the liberal democratic system an election is meant to be a fair, honest, open, affordable contest engaging as many eligible voters as possible and giving them an informed choice on the best candidates to represent them, either independents or from well-run political parties. Candidate quality is meant to be ensured by high preselection standards, with able candidates on offer because they are attracted by the honour of public service, the vital role of parliamentarians in a liberal democracy, and the very nature of the political profession.

Are elections like that? If they are not, how can democracy be strengthened? In my writings elsewhere³¹ I have proposed a focus on three areas:

- addressing issues that affect the supply of candidates—remuneration and governance;
- addressing reputational and affordability issues—funding and expenditure;
- strengthening Australia's democracy.

A Senate inquiry³² cited evidence that not-for-profit organisations in general exhibit a lack of transparency in the way in which public or donated funds are spent, a lack of accountability, and poor reporting to donors and the public, exacerbated by no

³⁰ Senate Finance and Public Administration Legislation Committee, Estimates Hansard, 24 May 2011, pp. 35–7, <http://www.aph.gov.au/hansard/senate/committee/s52.pdf>.

³¹ Andrew Murray, Submission no. 3 to the Joint Standing Committee on Electoral Matters' inquiry into the conduct of the 2010 federal election, January 2011, <http://www.aph.gov.au/house/committee/em/elect10/subs/Sub003.pdf>.

³² Senate Standing Committee on Economics, *Disclosure Regimes for Charities and Not-for-profit Organisations*, Canberra, December 2008, http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/report.pdf.

uniform accounting or reporting standards.³³ Third sector law regulation and reporting is a mess.³⁴

Those faults are also characteristic of political parties. It might help if those who govern us had governance systems for their organisations that led by example.

In the midst of social, economic and environmental reform, the Australian political sector is left largely untouched, as if only the political class do not need to be more able, a higher calibre, more productive, more competitive, professionally more suited for the future. I won't rehash my 2009 ANU *Agenda* article entitled 'Can better political governance give Australia an improved political class?'³⁵ but I did say there that Australians are demanding higher standards and better performance from their governments and politicians and that:

Governance through law, regulation and process makes power subject to performance and accountability and leads to better outcomes and conduct; which is why so much effort was put into better governance in the bureaucratic, union and corporate sectors, with great improvements resulting.

Improved political governance will over time lift the overall calibre of the political class by requiring greater professionalism, better preselection recruitment and training, a sustainable career path for professional parliamentarians as well as those that aspire to an executive ministerial career, and by reducing the opportunity for patronage, sinecures and dynastic factionalism. Australia has many able politicians but the overall quality and ability of politicians, parliamentarians and ministers—local, state, territory, and federal—needs lifting to cope better with the modern world.

A trained, professional, experienced political class that is sourced from a deep talent pool and that is subject to the rigours of regulation, due process, and organisational integrity will always perform better than one that is not. Most work environments are focussed on productivity and performance delivered through training. In contrast formal training is curiously neglected in politics, and training is best characterised as 'on the job'. One of the reasons many parliamentarians struggle is the lack of

³³ See also the public submission by Andrew Murray in February 2009 in response to the Australian Government's December 2008 *Electoral Reform Green Paper: Donations, Funding and Expenditure*.

³⁴ See for instance Andrew Murray, 'One regulator one system one law: the case for introducing a new regulatory system for the not for profit sector', Canberra, July 2006, available from the Parliamentary Library, Canberra.

³⁵ The Australian National University's Faculty of Economics and Commerce publishes *Agenda: A Journal of Policy Analysis and Reform*. Andrew Murray's article in vol. 16, issue 3 (2009) was 'Can better political governance give Australia an improved political class?'

professional development and training for them. Many parliamentarians do not attend to finance. Most do not make the effort to train in finance. Not enough parliamentarians on public accounts committees can read financial statements and balance sheets. Not enough have a working knowledge of government accounting principles and systems. The government pours billions into lifting the skills and training of every sector but politics. Like all workforces, elected representatives would benefit from better training on entering their new profession,³⁶ reinforced by periodic professional development.

Improving the states' performance

Appendix A of Budget paper no. 3³⁷ is an interesting read, covering federal–state financial relations. It does not acknowledge that this relationship is under real strain. I cannot cover the big federalism issues here,³⁸ and will only comment on tax expenditures, the Commonwealth Grants Commission, and the goods and services tax (GST).

Tax expenditures

Tax expenditures are provided in many forms including tax exemptions, tax deductions, tax offsets, concessional tax rates and deferral of tax liability.³⁹ Tax expenditures have been called the ‘twilight zone of government spending’.⁴⁰ In many cases it is not possible to show whether objectives are being achieved and whether the actual concession benefits are proportionate to the costs.⁴¹

In a 244-page report the Commonwealth lists 349 tax expenditures for 2010–11 estimated at \$117 billion.⁴² When I looked at the Queensland tax expenditure report in

³⁶ Intensive residential courses could be devised. As an example formal courses might include essential legal principles and legislation design; political parliamentary electoral and constitutional law and systems; government and the bureaucracy in all its complexity; foreign affairs, treaties and diplomacy; accountability laws, systems and practices; procurement and tendering; budgets finance and revenue, including cost–benefit analysis; managing a parliamentary office and staff; and so on.

³⁷ Commonwealth of Australia, *Australia's Federal Relations*, Budget paper no. 3, 2011–12, <http://www.aph.gov.au/budget/2010-11/content/bp3/html/index.htm>.

³⁸ However, see my evidence to the Senate Select Committee on the Reform of the Australian Federation (Reference: Relations between federal, state and local governments), *Official Committee Hansard*, 9 March 2011, Perth, <http://www.aph.gov.au/hansard/senate/committee/S13649.pdf>.

³⁹ The Treasury defines tax expenditures as a ‘provision of the tax law that provides a benefit to a specified activity or class of taxpayer that is concessional when compared to the “normal” tax treatment that would apply’. The Treasury, *Tax Expenditures Statement 2010*, January 2011, p. 13, http://www.treasury.gov.au/documents/1950/PDF/2010_TES_consolidated.pdf.

⁴⁰ Julie Smith, *Tax Expenditures: The \$30 Billion Twilight Zone of Government Spending*, Department of the Parliamentary Library research paper no. 8, 2002–03, <http://aph.gov.au/Library/pubs/rp/2002-03/03RP08.pdf>.

⁴¹ Murray, *Review of Operation Sunlight*, op. cit., p. 47.

⁴² The Treasury, *Tax Expenditures Statement 2010*, op. cit., p. 4.

2011 it totalled seven pages, and it was one of the better ones.⁴³ On the analysis and reporting side, there is very poor tax expenditure analysis and reporting by the states.⁴⁴

Many billions of sometimes over-generous historical concessions on taxes fees and charges apply under state and local governments. The Commonwealth and states, both ever-anxious about money, should pay attention to the sums concerned.⁴⁵ The WA Government's phased end to the royalty concession on 'fines' produced from iron ore will realise nearly \$2 billion over the next four years.

In 2008 the Audit Office recommended that Treasury develop standards to govern the integrated reporting of outlays and tax expenditures, drawing on international developments. Indirect budget outlays or tax expenditures have a long way to go before they catch up to the accounting and reporting standards that apply to direct outlays. This is particularly so with respect to the need for a settled, nationally applicable and comprehensive reporting framework for tax expenditures, a set of benchmarks, and accounting standards.⁴⁶

Estimates of tax expenditures at the state level are calculated using benchmarks defined by each state, and differences can be significant. Some states consider payroll tax exemptions for small business a tax expenditure, while others do not.⁴⁷ Victoria estimates its payroll tax expenditure to be \$887 million in 2010–11, but if the small business exemption was included the tax expenditure would increase to \$2.853 billion.⁴⁸ Western Australia reports a tax expenditure for payroll tax of \$1.612 billion in 2010–11, which would reduce to \$29.9 million if the small business exemption were not considered a tax expenditure.⁴⁹

⁴³ Queensland Government, *State Budget 2010–11, Budget Strategy and Outlook 2010–11*, Budget paper no. 2, Appendix A.

⁴⁴ Murray, *Review of Operation Sunlight*, op. cit., pp. 43–8.

⁴⁵ The Henry Review recommended simplifying and rationalising many Commonwealth tax expenditures; *Australia's Future Tax System: Report to the Treasurer*, Canberra, The Treasury, December 2009.

⁴⁶ Australian National Audit Office, *Preparation of the Tax Expenditures Statement*, Audit report no. 32, 2007–08, p. 47, http://anao.gov.au/~media/Uploads/Documents/2007%2008_audit_report_32.pdf.

⁴⁷ The Treasury, *Architecture of Australia's Tax and Transfer System*, August 2008, pp. 34–6, http://www.taxreview.treasury.gov.au/content/downloads/report/Architecture_of_Australias_Tax_and_Transfer_System_Revised.pdf.

⁴⁸ Victorian Department of Treasury and Finance, *Victorian Budget: 2011–12 Statement of Finances*, Budget paper no. 5, pp. 175–7, [http://www.budget.vic.gov.au/CA25783300199E40/WebObj/BP52011-12/\\$File/BP52011-12.pdf](http://www.budget.vic.gov.au/CA25783300199E40/WebObj/BP52011-12/$File/BP52011-12.pdf).

⁴⁹ Western Australian Department of Treasury and Finance, *2011–12 Budget: Economic and Fiscal Outlook*, Budget paper no. 3, p. 97, http://www.dtf.wa.gov.au/cms/uploadedFiles/State_Budget/Budget_2011_12/2011-12_bp3.pdf.

It is perfectly reasonable for the grantor to insist that the grantee properly accounts for its financial situation. As a condition of providing finance to the states the Commonwealth should insist that the states and territories report in full on their tax expenditures on a uniform basis as agreed through the Council of Australian Governments (COAG), or in the absence of that, as laid down by the Commonwealth.

The Commonwealth Grants Commission

Some think the Commonwealth Grants Commission's processes opaque and Delphic. Some claim an outdated philosophy means the commission cosssets anti-development Tasmanian nirvanists at the expense of the rest. Still others say it is a daft system that takes money away from the states that need it to produce jobs and national wealth, so reducing Australia's capacity to produce more jobs and more wealth.

Born in the Great Depression,⁵⁰ affected by the attitudes that era entails, the commission process for resolving grants to the states and territories does need review and overhaul. With respect to the commission, the government suggests that at the moment underperformance in service delivery and economic growth can be rewarded, states can be hit with unexpected shocks to their finances, and current arrangements are complex and accordingly not very transparent. They say states should not be put in the position where they can be penalised for investing in economic growth and improved service delivery, and that states should have an incentive to invest in economic reform and should not be unfairly punished for success.⁵¹ I agree.

Unfortunately, there is no holistic review of the commission under way, just an important but slow 17-month look at its GST distribution to the states and territories. Western Australia needs more money to continue its investment in a growing state economy that also holds the key to Australia's prosperity, yet the Commonwealth arrangements have reduced its income, so simultaneously harming both Western Australia and Australia. When WA's government quite rightly makes up the shortfall through revenue measures and greater borrowings,⁵² it is pilloried, threatened and could well be penalised.

⁵⁰ The Commonwealth Grants Commission is an independent statutory authority which was established in 1933 to assess claims made by states for financial assistance.

⁵¹ Wayne Swan, 'Review of GST distribution', Media release no. 028, 30 March 2001, <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/028.htm&pageID=003&min=wms&Year=&DocType=0>.

⁵² Western Australia has shifted to a projected net debt of \$22.4 billion by 2015—Christian Porter, 'State Budget 2011–12: supporting our community, building the state—increased accountability through disciplined financial management', Media statement, 19 May 2011, <http://www.mediastatements.wa.gov.au/Pages/Results.aspx?ItemId=140392>.

The goods and services tax is remitted to the states and territories after deducting Commonwealth administration costs. In 2011–12 GST will be \$51 billion.⁵³ Currently, Western Australia receives just 68 cents for every GST dollar that is collected in WA, and this is projected to decrease in 2014–15 to less than 40 cents back for every dollar. The WA Government wants a guaranteed floor at around 75 cents in the dollar which would mean WA would retain an additional \$5.6 billion in GST revenue over the next four years.⁵⁴

There are no poker machines in pubs and clubs in WA. Ridiculously, if WA introduced gaming machines and raised half a billion a year in gambling taxes from them it would be rewarded by the commission, not penalised. All the states gambling tax revenue was \$5 billion in 2008–09.⁵⁵ The Grants Commission does not cut the other states share of GST revenue as a result of their gambling revenue, but it does cut WA's share of GST revenue as a result of WA's royalties revenue.

The aggressively proprietorial federal attitude to mineral resources is misplaced. Australia is a federation, not a unitary state. Western Australian mineral resources belong to Western Australians; Queensland mineral resources belong to Queenslanders. The Grants Commission treats mining royalties as taxes when they are a payment for the extraction and use of a non-renewable state-owned asset.

Peter Urban,⁵⁶ former Chief Economist for the Department of Foreign Affairs and Trade, suggested in a 2010 article that if the commission includes mining royalties in state revenues it should be consistent and include other property income such as revenue from state land or other asset sales, which it does not. The commission's formula disadvantages the main mining states relative to other states. Conversely, it advantages states that rely relatively heavily on asset sales to support their budget.

Overall, the commission either heavily discounts or assesses equally almost half of some states' revenue capacity, and effectively applies a premium to other states' revenue-raising. The result is the burden of Australian horizontal fiscal equalisation is disproportionately pushed onto states such as WA where the tax base is neither discounted nor assessed as equal in revenue-raising capacity. I hope that the current review of GST distribution will address this significant issue.

⁵³ Commonwealth of Australia, *Budget Strategy and Outlook*, Budget paper no. 1, 2011–12, Statement 5: Revenue, pp. 5–35, <http://www.budget.gov.au/2011-12/content/bp1/html/index.htm>.

⁵⁴ Colin Barnett, 'Premier's statement', Media statement, 15 February 2011, <http://www.mediastatements.wa.gov.au/Pages/Results.aspx?ItemId=136383>.

⁵⁵ *Gambling: Productivity Commission Inquiry Report*, no. 50, 26 February 2010, Overview, p. 6, <http://www.pc.gov.au/projects/inquiry/gambling-2009/report>.

⁵⁶ Peter Urban, 'Simplified GST sharing formula is simply wrong', *Australian*, 18 November 2010, p. 14.

Improving Commonwealth performance

In Australia, most of the big financial systems changes have been bedded down. Governments now have frameworks of inputs outputs and outcomes, performance measures, and advanced reporting requirements. Accrual budgeting and accounting is in place. Inter-government financial relations have been modernised, and reporting has improved. Public sector agencies have been given more operational flexibility.

The feeling is that systems changes are now less important than institutional changes, such as strengthening parliament or introducing an independent office of budget responsibility. However there are still systems innovations for Australia to consider. New Zealand has introduced their Investment Statement. It provides an overview of the significant assets and liabilities on the Crown's balance sheet, how they have changed over time and how what the Crown owns and owes is forecast to change over the next five years. The main objective of New Zealand's new report is to enable greater scrutiny of the government's management of its assets and liabilities, in order to strengthen the current financial reporting framework. A second objective is to provide a regular statement of the government's investment intentions over the medium term.⁵⁷

Overall, the concept of accountability has moved from just accounting for monies raised and spent to an emphasis on performance, with a focus on results or outcomes.⁵⁸

Value for money

The big issue now is performance. There are those who think successful performance in agencies should be rewarded. Apart from being a legitimate reason for merit-based promotion, I don't. Satisfactory performance should be expected as a requirement of the job, and its absence should be penalised. What is missing are penalties for poor performance.

There has always been a focus on quantum, on cost. More important is value for money, and timely service delivery of a high standard. Both require measurement and active monitoring of that performance measurement by the executive, the Auditor-General, and the Parliament. This is inadequate at present.

⁵⁷ Bill English, *2010 Investment Statement of the Government of New Zealand*, 14 December 2010, <http://treasury.govt.nz/budget/2010/is>.

⁵⁸ Ian McPhee, *Public Sector Accountability*, CPA Australia International Public Sector Convention, Melbourne, 11 March 2011, p. 2.

It is essential that parliaments and auditors-general focus on what results or outcomes governments get for the money that is spent. The JCPAA is awake to this and has recently recommended:

That the Act be amended as necessary to enable the Auditor-General to review an agency's compliance with its responsibilities for a sub-set of performance indicators ... The Auditor-General should be resourced appropriately to undertake this function.⁵⁹

But if that gets up, it won't help as much as it should if parliamentarians are not interested, trained or skilled enough to use this material to hammer the government.

Performance is key. Value for money is key. That value is gained for the money spent is an essential requirement of government. The larger the sum, the more complex the issue, the harder it is to assess value for money—the cost of a road, or a ship, or of broadband may be largely ignored by the electorate because they can't grasp its financial elements, unless others interpret it for them. Because it is within their range of experience, much easier to grasp is a school hall or TV installation that is not value for money.

People want their governments proactive, responsive, professional, far-seeing, productive, and performance-driven. The demand for higher standards and better performance is strong. The Auditor-General says that performance measurement remains the greatest challenge.⁶⁰ The gap between expectation and performance has to be addressed.⁶¹ The Auditor-General says that soft areas in agency management include:

- insufficient mechanisms to ensure value for money;
- insufficient active management of programs by senior executives;
- inadequate performance reporting as programs proceed; and
- performance reporting focussed on program efficiency and effectiveness can be thin or non-existent.⁶²

He has provided advice to the Finance Minister on a range of considerations that would contribute to better government.⁶³ Hopefully she is not only listening but

⁵⁹ Joint Committee of Public Accounts and Audit, *Report 419*, op. cit., p. 25.

⁶⁰ McPhee, op. cit., p. 14.

⁶¹ See also Andrew Murray's 17 February 2009 public lecture given in Brisbane for the Australia and New Zealand School of Government: *Essential Linkages—Situating Political Governance, Transparency and Accountability in the Broader Reform Agenda*.

⁶² McPhee, op. cit., pp. 4–5.

⁶³ *ibid*, p. 8.

implementing; and also getting on with more of my recommendations from my review of *Operation Sunlight*.

Her job is to be the defender of sunlight. That means fighting those who practice the dark arts.



Question — Regarding professional development of parliamentarians, you've put the case very strongly for parliamentarians to be financially literate, able to read balance sheets, able to scrutinise the mysteries of the information that's put before them. But in practical terms, how do we achieve this? Who's responsible and what do we do?

Andrew Murray — Ideally it would flow from the Parliament controlling its own budget and having the resources to carry out professional development. In the end my thesis in this lecture is that the most profound weakness we have in our system is not in the bureaucracy, not in our laws, not in our institutions, not in our systems, but in our parliaments and that we need to upgrade the capacity and capability of those who serve within them. I notice from today's media coverage that Senator Faulkner was off on a similar theme today, as I read it. If you take a much wider pool of talent than we have at present going into Parliament, if you have a much more diverse group, it will I think strengthen Parliament but you are still faced with the fact that a plumber, or a grave digger or a law professor arriving in Parliament might all lack some of the skills and abilities that are needed to be a capable and effective parliamentarian.

Businesses, professional organisations, universities and everybody else out in the working world face this problem every day with people who come to them and you take your new recruits and you train them in those areas which they need to develop and in which they don't have an ability. One of the great problems with our parliament is a very high turnover. The consequence of a high turnover in any organisation is a loss in productivity, a loss of performance. At times to get up to speed you need to institutionalise the deliverance of better capability. That is what every workforce does except for the Parliament. People arrive in this parliament who have never managed an office, never run a budget, never controlled an organisation, never had any experience whatsoever in the very big tasks that they then have to assume as a parliamentarian and some fail, some never get there. Some never achieve the essential abilities which they should have in the job. Frankly it's a failure of budgetary and institutional ability to recognise that and to deliver the outcomes. And by the way, a lot of ministers could do with a lot more professional development.

Question — You delivered this report on *Operation Sunlight* but in your presentation you didn't speak about the recommendations that were accepted and the impact they had. Would you like to reflect on your recommendations and the extent to which they were a success?

Andrew Murray — There is an Australian expression 'as boring as bat shit' and I suspect that my report was considered such by many people. I'll give a case of beer to anyone who can find me five journalists of repute who've read the thing—or many parliamentarians. But the government did and so did the Department of Finance and Deregulation. Not as a result of my work, of course. It was a combination of *Operation Sunlight's* intention. But there have been really considerable improvements in budgetary practice as a result of the intersection of those two things. I can give you a number of examples but we don't have a lot of time here. By the way, even though you might consider it boring it was a report highly praised and used as a textbook by the ANU, I'm told, so it is a reasonable read in its scope. Budget paper no. 4, for instance, really does exhibit some of the strengths that came through. The modern set of budget papers are way ahead of what they were twenty years ago and *Operation Sunlight* and my report have contributed to that and there have been other areas of advance. But one of the reasons I didn't approach it is firstly I would have bored you to death, but secondly I think it's up to people to go back to that as a reference and think about it and react to it but I wanted to reinforce a number of key propositions which I think need to be attended to surrounding that and that's why I did what I did today.

Question — My question is related to tax expenditures and what we have to do to get them treated the same way as direct expenditures in the budget process. Going back to 1997, I am old enough to remember the Charter of Budget Honesty and that included bringing tax expenditures onto a comparable basis as direct expenditures and how they are reviewed by the parliamentary committees, the estimates committees and how they are reviewed by the government during its budget processes. I also recall an Auditor-General's report which reported on the tax expenditure statements and the problems or otherwise in them and again this issue has come up. The government at the time committed that it was going to review tax expenditures such as the 20 or so billion dollars spent on superannuation tax concessions and they were going to review them in each budget process on a comparable basis to the \$30 billion or so of public pension expenditures which are aimed at the same objective. Similarly, you have got health expenditures of \$30-odd billion, compared to several billion of tax incentives and penalties which come under the same heading. On the other side of the Budget, what do you think is the chance of ever shining the light on tax expenditures, tax concessions, tax incentives on a comparable basis with the money that's spent directly out of the Budget rather than given away out of the back pocket?

Andrew Murray — I think there is a lot of chance because in the end governments are hungry for money and this is about an area where reform can result in much more money available to either the people of Australia or to the governments of Australia. Most people do not understand that tax expenditures, if you add them to direct budget outlays, these indirect budget outlays, if you put the two together you increase the total size of budgetary commitment by about 50 per cent. What you have with tax expenditures is revenue foregone. In other words, when you give somebody a concession against a particular tax or fee or charge you are giving them some revenue which otherwise you might have put into the consolidated revenue fund. Now unless you identify these correctly and assess them and understand them, you aren't able to identify where there is no value for money or you are hanging onto something which is no longer needed or is outdated and where waste occurs.

Now if you look at the Commonwealth tax expenditure report the result of that exercise over a number of years has been that people like the Henry tax review look in there and say, 'Here's where we need rationalisation, here's where we need reform and these are the consequences of doing that'. You get more money or you are able to use your money more effectively than you were doing beforehand. One of the reasons I'm so strong about the states' deficiencies is because if you look in the states, the concessions that apply at local government and state government level are just not tracked. The result is there is an enormous waste of money. People are getting concessions and moneys to which they are just not entitled, in my view. But the first way to work that out is to properly identify them and establish them. In the end, and I think that's the point I gathered from your remarks, tax expenditures are as important in fiscal analysis and understanding as direct budget outlays. If you were to ask if that is the case in the media mind, the academic mind, the public mind, the parliamentary mind, I'd say they don't recognise that as a truth.

Question — I confess to not being one of the five journalists who have possibly read your report partly because it came out at the time of the GFC and when I did start to read it I thought 'this is as boring as batshit'. It seemed to me a lesser issue than what we were dealing with at the time. I'm sorry I have not got back to it. Two questions. The first one is on tax expenditures and I note in passing that it does depend also on what you define as a tax expenditure. For example, negative gearing is not defined as a tax expenditure and it costs five billion dollars of revenue in real estate alone. I have had successive ministers from both sides of politics assure me that in the budget process the ERC (Expenditure Review Committee) doesn't deal with tax expenditures but the revenue committee gives as much emphasis to tax expenditures as it does to outlay expenditures. I find this very hard to believe. I'd just be interested to know if you think that is just an example of the dark arts of deceit being practiced on an unsuspecting journalist.

Also on the question of the Grants Commission, is it the whole principle of horizontal fiscal equalisation that you want to tackle? There is simply no way around the fact WA has vastly greater capacity to raise revenue than any other state has ever had relative to the rest in the history of Federation and this does create serious issues for a commission which, like it or not, has been doing a job it has been set up by an Act of Parliament to do with a very specific mandate that governments in each state should be capable of providing the same level of services to their constituents.

Andrew Murray — Dealing with the tax expenditures area first, most tax expenditures are what you describe as a standing appropriation. In other words, it is a concession which has been determined by legislation and continues on forever. So it is not examined or introduced or reviewed in every budget session. By the way, one of the reasons why I am so strongly aggressive about oversight and review of appropriations is that about between three-quarters and 80 per cent of budget outlays are in fact standing appropriations. They were laid out in legislation long ago and they go on for infinity. Well how a sovereign parliament can give up the most fundamental power of all, which is the power over money, eternally, and allow standing appropriations to go on to infinity is beyond me. But you'll find more about that in my report. You asked if ministers were telling the truth: no they weren't. You know that. I know that. You all know that. They all know that. Nobody cares. That's the problem.

Dealing with your second issue, with respect to the Commonwealth Grants Commission, any federal or state relationship does need an ordered way of managing the way in which moneys flow between the two. I made the point in my remarks that federal–state financial relationships have been reformed in a positive way so that's not an issue. The mechanism, the formula, which determines so much of that distribution is a problem, which is what I outlined. One of the great virtues of democracies is that it attends to the issue of equity. Horizontal fiscal equalisation, which is a mouthful, is just about equity, trying to ensure that there is a basic standard between states. It is a bit like the welfare argument. You need to go back and look at it. There was a time when people looked at welfare as a blanket. I've always been the kind who believes welfare is a safety net. The problem with the present Commonwealth Grants Commission sense of funding is that it gives certain states a blanket, not a safety net. I think it needs reviewing in terms of its principles. I think the equity principle has to be maintained, but the idea that the present way to deal with it is the only way of dealing with it is a problem and I do rather like Wayne Swan's summation of the problems with the Commonwealth Grants Commission approach.

Question — In 1900 the Australian fathers took our section 83 out of the US Constitution. In America the agencies there get an obligation budget. In Australia it's

called a commitment budget or guidance figure. In America you cannot obligate the government unless you have approval to obligate the government. In Australia for 110 years departments have not been presenting their commitment budgets to the Parliament prior to committing the funds such that in Australia, if I am in the public service, I can commit the taxpayer to a future expenditure prior to the approval of the Parliament. Mr Tanner, who may have got my paper that I wrote before 2008 on the unconstitutionality of money bills in Australia, said that he was going to stop the retrospective approval of provisions in money bills, but I don't think he has done it.

Andrew Murray — With respect to your last remark, I wouldn't know. Only a departmental person might be able to tell me, but I don't think so. I have two answers to the principal question. The first is that I am old fashioned in the belief that you must abide by law, so therefore what the Constitution asks and requires the Parliament and the government to do with respect to money, it should do. Until such time as the Australian people change that Constitution that's what we should abide by. The second thing is that I was also taught the general rule that there is an exception to every rule. There are some times in which retrospectivity is in fact desirable in money bills. Let me give you an example (and by the way, I happen to disagree with how it is conducted but this is the way it happens in Australia): when the Prime Minister determines that we shall go to war, he commits Australia to a budgetary consequence. That is exactly what John Howard did with Iraq and that is the law, that is what he is entitled to do. So in fact when Parliament eventually passed the appropriation bill for that war it was retrospective because the decision had been made, the commitment had been made, the money was being spent and Parliament was retrospectively agreeing to it. Now I happen to believe that external war-making should be a parliamentary decision. I agree that the executive should be able to react to any emergency or danger on our shores without going to Parliament but that's a separate issue. But the fact is you do need circumstances where there is a cyclone event or there is a war event or where there is something you haven't imagined where retrospectivity is warranted in terms of money bills. In other circumstances, I think, I can understand there would be an argument about it but I'll just leave my answer at that as I haven't read your paper.