



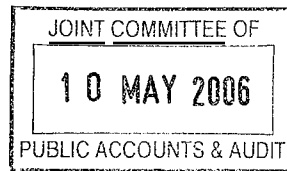
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9 May 2006



Submission No. 1

Mr Russell Chafer
Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Dear Mr Chafer

REVIEW OF AUDIT REPORTS 2005-06

Thank you for your letter of 18 April 2006, in which the committee advises that it is reviewing certain reports of the Auditor-General.

The purpose of this submission is to draw to the attention of the committee issues arising from two of those reports, Report No. 28 and Report No. 31 of 2005-06, relating to the management of net appropriation agreements and the Roads to Recovery program, respectively.

REPORT NO. 28, 2005-06 — NET APPROPRIATION AGREEMENTS

According to this report, in 2004-05 there were 67 Commonwealth agencies which had revenues available to them under net appropriation agreements amounting to \$1.46 billion. Agencies are able to spend or accumulate this money without prior parliamentary approval and, until this Audit report, without any systematic overview of the sources of this money.

Technically, the Parliament has appropriated the money in compliance with section 83 of the Constitution, by a combination of the appropriation acts and the Financial Management and Accountability Act. In reality, however, the Parliament has not approved in advance of this money being available to agencies for the purposes for which it may be expended.

This source of money for expenditure is added to other sources which are, in reality, not approved in advance by the Parliament by an appropriation: special appropriations, now amounting to over 80 per cent of all Commonwealth expenditure, and usually of indefinite amount and duration; surpluses carried over by agencies from their appropriations; special accounts into which some revenues are directly paid; and advances to the Minister for Finance and Administration, albeit that expenditure from the latter is theoretically limited to urgent and unforeseen or overlooked expenditure.

Section 81 of the Constitution was regarded in the past as requiring that all money raised or received by government be paid into the Consolidated Revenue Fund which then had to be appropriated by the Parliament for expenditure to be made. This was referred to in a previous

hearing of the committee as the jam jar system of accounting.¹ It was put to the committee that the Constitution compels this jam jar accounting. It was mandated not only, as indicated at the hearing, because it allowed the surplus revenue of the Commonwealth to be identified, but because it facilitated parliamentary control and approval of expenditure.²

What we now have is a system of multiple jam jars and multiple hollow logs and virtual, not real, accounts, and very large expenditures not in reality appropriated by the Parliament.

The problems identified by the Audit report in relation to net appropriation agreements are similar to the problems identified by previous reports in relation to the management of special accounts and special appropriations.³

It is suggested that the problems identified in all of these reports, which might be described as neglect of legal requirements and unsatisfactory management and accounting, have arisen partly from a system which encourages those attributes by having those multiple jam jars and hollow logs and complex flows of funds. While this system may give maximum flexibility to agencies, it is not conducive to respect for legality and good management and accounting, nor to parliamentary accountability.

The High Court may have given the legal green light to the system in judgements such as that in *Northern Suburbs General Cemetery Reserve Trust v the Commonwealth*,⁴ but that does not absolve the Parliament of the responsibility to ensure an appropriate degree of parliamentary scrutiny and control.

REPORT NO. 31, 2005-06 — ROADS TO RECOVERY PROGRAM

Apart from identifying some problems with this program, this report demonstrates that the outcomes system of appropriations has effectively removed parliamentary control of the purposes of expenditure. The Department of Transport and Regional Services has two outcomes: "a better transport system for Australia", and "greater recognition and development opportunities for local, regional and territory communities". Having previously charged expenditure on the Roads to Recovery program to the first outcome, the department decided that the program could just as well be charged to the second outcome, and in this it had the support of a legal opinion. This confirms that, apart from having indefinite amounts of money not appropriated by the Parliament at their disposal, agencies are able to spend that money on whatever they choose.

This was also confirmed by the majority of the High Court in *Combet v Commonwealth*. The joint judgment by four of the majority justices was accurately characterised by one of the dissenters, Justice McHugh, as authorising an agency "to spend money on whatever outputs it pleases".⁵ In so holding, the joint judgment, as indicated by dissenting Justices McHugh and Kirby, effectively repudiated the principles on which earlier relevant judgments of the court were based.⁶

More significant, however, were the words of the separate judgement of Chief Justice Gleeson:

If Parliament formulates the purposes of appropriation in broad, general terms, then those terms must be applied with the breadth and generality they bear.⁷

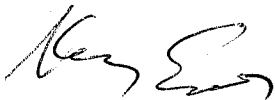
The problem with the case before the court was that the outcomes in the appropriation bills now have such "breadth and generality" that they will bear any application. The Chief Justice went on to draw attention to the solution to this problem:

The higher the level of abstraction, or the greater the scope for political interpretation, involved in a proposed outcome appropriation, *the greater may be the detail required by Parliament before appropriating a sum to such a purpose*; and the greater may be the scrutiny involved in a review of such expenditure after it has occurred.⁸

It is submitted that the Parliament should take up the Chief Justice's suggestion and insist on a much greater level of detail before appropriating sums to outcomes. As long as the outcomes remain as vague and nebulous as they are currently, and the information provided to Parliament is of such paucity, loose shuffling of money such as revealed by this report and previous reports will continue.

Please let me know if the committee requires any elucidation of these points.

Yours sincerely



(Harry Evans)

¹ Review of the draft Financial Framework Legislation Amendment Bill, transcript of hearing, 7 March 2003, pp 5-6.

² Section 81 was the descendant, via the colonies, of the Consolidated Fund, established in 1787 as part of the reforms of the Pitt administration, to secure parliamentary control over expenditure. See *Australian Tape Manufacturers Association v the Commonwealth*, 1993 176 CLR 480 at 503, 506.

³ Reports Nos 24 of 2003-04 and 15 of 2004-05, respectively.

⁴ 1993 176 CLR 555.

⁵ *Combet v Commonwealth* [2005] HCA 61, reasons for judgment 21 October 2005, at 89.

⁶ *Attorney-General (Victoria) v Commonwealth*, (1945) 71 CLR 237; *Brown v West* (1990) 169 CLR 195. Referred to at 89, 233, 234.

⁷ at 27.

⁸ at 7, emphasis added.