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A paper by Andrew Murray<sup>1</sup> for the Australian Senate Occasional Lectures Series

## *Budgets and Finance: Sunlight and the Dark Arts*

My thanks to the Clerk for asking me to deliver this Senate Occasional Lecture.

### *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.<sup>2</sup>

In 2008 I was asked by Finance Minister Tanner to conduct an independent review of *Operation Sunlight*. My report contained 45 recommendations aiming at improving budget transparency and fiscal practice.<sup>3</sup> 10 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.<sup>4</sup>

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<sup>1</sup> Andrew Murray BA Hons (Rhodes) MA (OXF), an Australian Senator for Western Australia from July 1996 to June 2008, is best known in politics for his work on finance, economic, business, industrial relations and tax issues; on accountability and electoral reform; and for his work on institutionalised children. For twelve years in the Senate he sat on the Joint Committee of Public Accounts and Audit and the Senate Economics and Senate Finance and Public Administration committees. He authored the Report to the Australian Government at their request: *Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray Canberra June 2008. That report is available from the Senate or the Department of Finance and Deregulation.

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

<sup>3</sup> A crude analysis indicates 10 recommendations implemented, 7 partly implemented, 7 still in progress and 21 recommendations not implemented.

<sup>4</sup> [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=BillId\\_Phrase%3Ar4553%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20\(Dataset%3Ahansardr%20%7C%20Dataset%3Ahansards\);rec=0](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=BillId_Phrase%3Ar4553%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20(Dataset%3Ahansardr%20%7C%20Dataset%3Ahansards);rec=0)

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:

*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.*<sup>5</sup>

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.*<sup>6</sup>

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.<sup>7</sup>

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,<sup>8</sup> when I wrote:

*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.*<sup>9</sup>

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<sup>5</sup> Professor John Wanna (ANU), *Through a Glass Darkly: The Vicissitudes of Budgetary Reform in Australia*, CPA Continuing Professional Development Program Lecture, 2007, page 2 quoted in the *Report to the Australian Government: Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra,

<sup>6</sup> Lindsay Tanner, *Sideshow: Dumbing Down Democracy*, Scribe Publications, Carlton North, 2011, page 108. The Hon Lindsay Tanner was Minister for Finance 2007-2010.

<sup>7</sup> *We need to have faith in the government's sums* Graham Bradley, President of the Business Council of Australia *The Australian* 30 May 2011, page 14.

<sup>8</sup> 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: Overhauling Budgetary Transparency* 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."

<sup>9</sup> *Report to the Australian Government: Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra, page ii.

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
- Improving the states performance
- Improving commonwealth performance

## *Improving parliamentary performance*<sup>10</sup>

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).<sup>11</sup>

Budget transparency and financial accountability are a constitutional imperative: legal requirements that flow from the higher law of the Australian Constitution, as supplemented by statute.<sup>12</sup>

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.

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<sup>10</sup> 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*.

<sup>11</sup> *Report to the Australian Government: Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra, pages 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.

<sup>12</sup> *Report to the Australian Government: Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra, page ii.

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.<sup>13</sup>

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.<sup>14</sup>

A direct challenge by the executive to the unambiguous intention of the Australian Constitution and a blatant disregard for budgetary propriety will likely again<sup>15</sup> 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.

Mr 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 resolution of the Senate called on Mr Tanner to provide a substantive response to the Senate Appropriations and Staffing Committee.<sup>16</sup> In November 2009 Mr

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<sup>13</sup> See for example: Australian National Audit Office, *ASIC's Implementation of Financial Services Licences*, Audit Report No. 25 of 2005–06, January 2006; Senate 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.

<sup>14</sup> Commonwealth of Australia, *Budget Measures 2011–12*, Budget Paper No. 2, page 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, pages 54 and 63, [http://www.deewr.gov.au/Department/Budget/Documents/20112012/2011-2012\\_DEEWR\\_PBS\\_04\\_Outcome\\_2.pdf](http://www.deewr.gov.au/Department/Budget/Documents/20112012/2011-2012_DEEWR_PBS_04_Outcome_2.pdf)

<sup>15</sup> 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. *Report to the Australian Government: Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra, page 13.

<sup>16</sup> *Journals of the Senate*, No. 91, 16 September 2009, page 2511, [http://www.aph.gov.au/senate/work/journals/2009/jnlp\\_091.pdf](http://www.aph.gov.au/senate/work/journals/2009/jnlp_091.pdf).

Tanner indicated that the government saw 'no need to change the Executive's interpretation of the Compact'.<sup>17</sup>

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 wages<sup>18</sup> 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 and the Senate Appropriations and Staffing Committees 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.

Supporters of a genuine separation of powers argue that a strong, well resourced, properly funded, independently-minded and fully effective parliament needs financial independence.

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<sup>17</sup> Senate Appropriations and Staffing Committee, *Ordinary Annual Services of the Government*, 50<sup>th</sup> Report, June 2010, page 6: [http://www.aph.gov.au/senate/committee/app\\_ctte/50th\\_report/report.pdf](http://www.aph.gov.au/senate/committee/app_ctte/50th_report/report.pdf).

<sup>18</sup> 2011-12 Budget Paper No 4 Agency Resourcing, pages 7-9, describes Appropriation Bill (No 1) that covers the ordinary annual services of the Government.

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.<sup>19</sup> 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 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 parliament than control over its resources.*<sup>20</sup>

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 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.

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<sup>19</sup> Senate Appropriations and Staffing Committee, *Estimates for the Department of the Senate 2011–12*, 52<sup>nd</sup> Report, May 2011, page 1, [http://www.aph.gov.au/Senate/committee/app\\_ctte/52nd\\_report/report.pdf](http://www.aph.gov.au/Senate/committee/app_ctte/52nd_report/report.pdf).

<sup>20</sup> *Funding arrangements for Parliament of Australia – a view to the future*; 37<sup>th</sup> Presiding Officers and Clerks Conference Perth July 2006; Hon David Hawker MP, Speaker of the House of Representative, Parliament of Australia.

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.<sup>21</sup>

#### *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.<sup>22</sup>

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 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.*<sup>23</sup>

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...*<sup>24</sup> and considered several

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<sup>21</sup> There is extensive commentary on this topic in the Report to the Australian Government: *Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra.

<sup>22</sup> These observations were also made in the Report to the Australian Government: *Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra.

<sup>23</sup> Joint Select Committee on the Parliamentary Budget Office: *Inquiry into the proposed Parliamentary Budget Office*, Canberra, March 2011, page vii.

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 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 MOUs, the committee recommended that the PBO should be entitled to use the formal FOI 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.<sup>25</sup>

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.*<sup>26</sup>

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 Report 419<sup>27</sup> and Mr Oakeshott's consequent bill,<sup>28</sup> 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.<sup>29</sup> That the Auditor-General's budget should be the responsibility of the parliament and not the executive is not.<sup>30</sup>

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<sup>24</sup> Joint Select Committee on the Parliamentary Budget Office: *Inquiry into the Proposed Parliamentary Budget Office*, Canberra, March 2011, page 75: <http://www.aph.gov.au/house/committee/jscpbo/report/fullreport.pdf>.

<sup>25</sup> Joint Select Committee on the Parliamentary Budget Office: *Inquiry into the Proposed Parliamentary Budget Office*, Canberra, March 2011, page 76.

<sup>26</sup> Rosemary Laing, Clerk of the Senate, *Committee Hansard*, Joint Select Committee on the Parliamentary Budget Office, 1 February 2011, page 32, <http://www.aph.gov.au/hansard/joint/commtee/J13557.pdf>.

<sup>27</sup> Joint Committee of Public Accounts and Audit *Inquiry into the Auditor-General Act 1997*, Canberra December 2010.

<sup>28</sup> *Auditor-General Amendment Bill 2011*.

<sup>29</sup> The Auditor-General is an independent officer of the Parliament: *Auditor-General Act 1997* Section 8(1).

<sup>30</sup> 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

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

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.<sup>31</sup>

*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 pre-selection 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 elsewhere<sup>32</sup> I have proposed a focus on three areas:

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ANAO was not successful in receiving additional supplementation in the 2009-10 and 2010-11 budgets to offset these costs.’ (Mr Oakeshott, *Proof House of Representatives Hansard*, 10 May 2011, p. 26, <http://www.aph.gov.au/hansard/rep/dailys/dr100511.pdf>).

<sup>31</sup> Senate Finance and Public Administration Committee Estimates Hansard Tuesday 24 May 2011 pages 35-37.

- 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 inquiry<sup>33</sup> 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 uniform accounting or reporting standards.<sup>34</sup> Third Sector law regulation and reporting is a mess.<sup>35</sup>

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?*<sup>36</sup> but I did say there that

*Australians are demanding higher standards and better performance from their governments and politicians. Better political governance will help ... 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 pre-selection 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.

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<sup>32</sup> Submission No 3 by Andrew Murray January 2011 to the Joint Standing Committee on Electoral Matters’ Inquiry into the Conduct of the 2010 Federal Election.

<sup>33</sup> Senate Economics Standing Committee *Disclosure regimes for charities and not-for-profit organisations* report, Canberra, December 2008.

<sup>34</sup> See also the public submission by Andrew Murray February 2009 in response to the Australian Government’s December 2008 Electoral Reform Green Paper DONATIONS FUNDING AND EXPENDITURE.

<sup>35</sup> See for instance ONE REGULATOR ONE SYSTEM ONE LAW, The Case for Introducing a New Regulatory System for the Not for Profit Sector, Senator Andrew Murray, Canberra, July 2006, available from the Parliamentary Library Canberra.

<sup>36</sup> The Australian National University’s Faculty of Economics and Commerce publishes *Agenda: A Journal of Policy Analysis and Reform*. Andrew Murray’s article in Volume 16 Issue 3 (2009) was *Can Better Political Governance Give Australia an Improved Political Class?*

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 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,<sup>37</sup> reinforced by periodic professional development.

### **Improving the states performance**

Appendix A of Budget Paper No 3<sup>38</sup> 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,<sup>39</sup> and will only comment on tax expenditures, the Commonwealth Grants Commission, and the 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.<sup>40</sup>

Tax expenditures have been called the ‘twilight zone of government spending’.<sup>41</sup> 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.<sup>42</sup>

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<sup>37</sup> 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.

<sup>38</sup> 2011-12 Budget Paper No 3 Australia’s Federal Relations.

<sup>39</sup> However, see my evidence to the Senate Select Committee on the Reform of the Australian Federation; Reference: Relations between federal, state and local governments; Hansard Wednesday 9 March 2011 Perth.

<sup>40</sup> 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, page 13.  
[http://www.treasury.gov.au/documents/1950/PDF/2010\\_TES\\_consolidated.pdf](http://www.treasury.gov.au/documents/1950/PDF/2010_TES_consolidated.pdf).

<sup>41</sup> 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>.

<sup>42</sup> Andrew Murray, *Review of Operation Sunlight: Overhauling Budgetary Transparency*, June 2008, page 47, <http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/operation-sunlight/docs/budget-transparency-report.pdf>.

In a 244 page report the Commonwealth lists 349 tax expenditures for 2010-11 estimated at \$117 billion.<sup>43</sup> When I looked at the Queensland tax expenditure report in 2011 it totalled 7 pages, and it was one of the better ones.<sup>44</sup>

On the analysis and reporting side, there is very poor tax expenditure analysis and reporting by the states.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup> Western Australia reports a tax expenditure for payroll tax of \$1.642 billion in 2010–11, which would reduce to \$29.9 million if the small business exemption were not considered a tax expenditure.<sup>50</sup>

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

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<sup>43</sup> The Australian Government Tax Expenditures Statement 2010 Canberra January 2011 lists 349 tax expenditures projected at \$117 billion for 2010-11, constituting 8.3% of GDP.

<sup>44</sup> <http://www.budget.qld.gov.au/budget-papers/2010-11/bp2-appendix-a-2010-11.pdf>.

<sup>45</sup> See pages 43-48 Report to the Australian Government: *Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra.

<sup>46</sup> The Henry Review recommended simplifying and rationalising many Commonwealth tax expenditures; *Australia's future tax system: Report to the Treasurer*; Canberra December 2009.

<sup>47</sup> 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](http://anao.gov.au/~media/Uploads/Documents/2007%2008_audit_report_32.pdf).

<sup>48</sup> The Treasury, *Architecture of Australia's Tax and Transfer System*, August 2008, pages 34–36, [http://www.taxreview.treasury.gov.au/content/downloads/report/Architecture\\_of\\_Australias\\_Tax\\_and\\_Transfer\\_System\\_Revised.pdf](http://www.taxreview.treasury.gov.au/content/downloads/report/Architecture_of_Australias_Tax_and_Transfer_System_Revised.pdf).

<sup>49</sup> Victorian Department of Treasury and Finance, *Victorian Budget 2011–12: Statement of Finances*, Budget Paper No. 5, pages 175–177, [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).

<sup>50</sup> Western Australian Department of Treasury and Finance *2011–12 Budget: Economic and Fiscal Outlook*; Budget Paper No 3, page 97, [http://www.dtf.wa.gov.au/cms/uploadedFiles/State\\_Budget/Budget\\_2011\\_12/2011-12\\_bp3.pdf](http://www.dtf.wa.gov.au/cms/uploadedFiles/State_Budget/Budget_2011_12/2011-12_bp3.pdf).

basis as agreed through 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 cossets 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,<sup>51</sup> 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.<sup>52</sup>

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,<sup>53</sup> it is pilloried, threatened and could well be penalised.

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.<sup>54</sup>

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<sup>51</sup> The Commonwealth Grants Commission is an independent statutory authority which was established in 1933 to assess claims made by States for financial assistance.

<sup>52</sup> The Hon Wayne Swan MP, Deputy Prime Minister and Treasurer, *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>.

<sup>53</sup> Western Australia has shifted to a projected net debt of \$22.4 billion by 2015 - Hon Christian Porter MLA, Western Australian Treasurer, *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>.

<sup>54</sup> Commonwealth Budget Paper No 1 2011-12 Budget Strategy and Outlook Statement 5: Revenue page 5-35.

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.<sup>55</sup>

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.<sup>56</sup> 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. West Australian mineral resources belong to West 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,<sup>57</sup> 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.

### **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-

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<sup>55</sup> Hon Colin Barnett MLA, Premier of Western Australia, *Premier's Statement*, Media Statement, 15 February 2011, <http://www.mediastatements.wa.gov.au/Pages/Results.aspx?ItemId=136383>.

<sup>56</sup> *Gambling: Productivity Commission Inquiry Report No 50* 26 February 2010; Overview page 6.

<sup>57</sup> Peter Urban, 'Simplified GST sharing formula is simply wrong', *The Australian*, 18 November 2010, page 14.

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.<sup>58</sup>

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.<sup>59</sup>

#### *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.

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.*<sup>60</sup>

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<sup>58</sup> <http://treasury.govt.nz/budget/2010/is>

<sup>59</sup> *Public Sector Accountability* Ian McPhee Auditor General for Australia CPA Australia International Public Sector Convention Melbourne 11 March 2011, page 2.

<sup>60</sup> Joint Committee of Public Accounts and Audit: Report 419 Inquiry into the *Auditor General Act 1997* December 2010 Canberra, page 25.

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 VFM is to assess – 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.<sup>61</sup>

The gap between expectation and performance has to be addressed.<sup>62</sup>

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.<sup>63</sup>

He has provided advice to the Finance Minister on a range of considerations that would contribute to better government.<sup>64</sup>

Hopefully she is not only listening but 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.

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<sup>61</sup> *Public Sector Accountability* Ian McPhee Auditor General for Australia CPA Australia International Public Sector Convention Melbourne 11 March 2011, page 14.

<sup>62</sup> See also Andrew Murray's 17 February 2009 public lecture given in Brisbane for the Australia & New Zealand School of Government: *Essential Linkages – Situating Political Governance Transparency and Accountability in the Broader Reform Agenda*.

<sup>63</sup> *Public Sector Accountability* Ian McPhee Auditor General for Australia CPA Australia International Public Sector Convention Melbourne 11 March 2011, pages 4-5.

<sup>64</sup> *Public Sector Accountability* Ian McPhee Auditor General for Australia CPA Australia International Public Sector Convention Melbourne 11 March 2011, page 8.