

Dear Senator Cormann,

Please accept my congratulations on your chairmanship and your questioning of Dr Henry and Mr Parker at this morning's hearing.

Dr Henry said '*the appropriation power gives the Commonwealth a fair amount of leverage*'. I suggest that ended on 7 July 2009 when the High Court unanimously rejected that proposition in *Pape v Commonwealth* (2009) 238 CLR 1.

As to Mr Parker's explanation of the working of uplift factor, there seems to be some confusion as to whether it is to be applied only to carried forward losses or to the total assets of the mining activity on an annual basis. In my view Treasury needs to produce a reconciliation between the deductibility attributable to the uplift factor and the total interest charged. They seem to be more interested in using the uplift factor as vehicle to overcome an objection to thin capitalization of the company. The financing of most mining projects are through borrowing against the security of long term sales contracts. It needs to be established, that the so called uplift factor is a reasonable proxy for the weighted average cost of capital.

Disappointingly this morning's evidence showed little regard for the Australian Constitution. Just because something might be in the so called national interest doesn't mean it attracts Commonwealth legislative power.

Yours sincerely,

Bryan Pape,
Senior Lecturer,
School of Law,
University of New England.