

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Finance and Administration Portfolio

Department of Finance and Administration

February Additional Estimates Hearings 2003-04 – 17 February 2004

Question: F26

Outcome 1, Output 1.1.1

Topic: Department of Finance and Administration's Review of Special Accounts

Hansard Page: F&PA 86

Senator Conroy asked:

What I am asking is; did you review any issues about legal authority for transferring funds? We have had a bit of a discussion about this issue. I am wondering whether or not you looked at it.

....

I understand that you were looking at whether or not they were really legally established under the Constitution.

Answer:

Sections 20 and 21 of the *Financial Management and Accountability Act 1997* (FMA Act) provide an authority that, subject to the purposes of the individual Special Accounts, allows amounts to be debited from one Special Account and credited to another. A transaction such as this could be regarded as a transfer between Special Accounts. This issue was not considered explicitly as part of the Department's internal review. Rather, the review recommended existing guidance to agencies be enhanced. In that context, the Department developed the Guidelines for the Management of Special Accounts. This issue was considered in the context of developing the Guidelines and those Guidelines set out the circumstances under which such transactions may take place.

Finance has also examined the issue of whether Special Accounts were constitutionally valid. In its second submission to the Joint Committee of Public Accounts and Audit (JCPAA) inquiry into the draft Financial Framework Legislation Amendment Bill, Finance stated that it had sought the advice of the Australian Government Solicitor (AGS) on the constitutionality of Special Accounts. Paragraph 4.8 of the JCPAA report (No.395) records excerpts from Finance's submission. Part of that excerpt is as follows:

The only issue in relation to the validity of the Special Account regime would relate to the standing appropriation provided by subsection 20(4) [of the FMA Act] of amounts in relation to Accounts established by the Finance Minister.

AGS advised that there are substantial grounds for arguing that there is no prohibition on the Parliament delegating to the Executive the power to determine

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Finance and Administration Portfolio

Department of Finance and Administration

February Additional Estimates Hearings 2003-04 – 17 February 2004

the purposes for which money may be drawn out of the Treasury where the relevant legislation reserves to each House of Parliament the right to scrutinise and reject any purpose which is proposed by the Executive before it can take effect. ... AGS concludes that a court would find the appropriation provided by subsection 20(4) of the FMA Act to be constitutionally valid.

Date: 19 March 2004

Cleared by (SES): Ian McPhee

Group/Branch: Financial Management Group, Finance and Banking Branch,

Contact Officer: Ed Lekawski

Telephone No: 6215 3340