

Audit Report No. 15, 2004-2005

Financial Management of Special Appropriations

Background

- 10.1 The Australian Constitution provides for a Consolidated Revenue Fund (CRF), formed from all revenues and moneys raised or received by the Government. Payments from the CRF are required to be authorised by an appropriation, made by law.
- 10.2 Special appropriations are made in Acts that deal with particular purposes of spending. In 2002-03, more than \$223 billion was spent from the CRF under the authority of special appropriations. This represented more than 80 per cent of all appropriation drawings for the year.
- 10.3 The Department of Finance and Administration (Finance) is responsible for developing and maintaining the financial framework for the Commonwealth public sector. However, individual Commonwealth entities are responsible for managing particular special appropriations. This management responsibility includes: adherence to the requirements of the financial framework and

relevant laws; maintaining proper accounts and records on each special appropriation; financial reporting on the use of special appropriations; and, as appropriate, performance information in annual reports.¹

Audit objectives

10.4 The ANAO performance audit objectives were to:

- identify all special appropriations and ascertain which entities were responsible for their financial management and reporting; and
- assess entities' financial management and reporting of special appropriations against the Commonwealth's financial management and reporting frameworks.

ANAO's overall conclusion

10.5 Overall, the ANAO considered that there were significant shortcomings in the financial management of various special appropriations. The sound governance, management and reporting of appropriations requires certainty, clarity and consistency in the application of the Commonwealth's financial management framework. The ANAO findings indicated that the manner in which the financial framework had been interpreted and implemented was not consistent with those characteristics. While many of the issues were quite technical, in a legal sense there were important considerations of appropriate accountability, including transparency, in relation to the Parliament.

10.6 Given the fundamental importance of appropriations to Parliamentary control over expenditure, the ANAO suggested that changes were required to secure proper appropriation management in the Commonwealth. In particular, there was inadequate attention by a number of entities, with the responsibility to ensure that a correct, valid appropriation to support a particular payment had been identified before spending funds from the CRF, and to accurately disclose their use of special appropriations.

10.7 The ANAO concluded that in order to achieve the necessary improvements to the management of special appropriations, a greater

1 ANAO Audit Report no. 15, 2004-2005, *Financial Management of Special Appropriations*, Commonwealth of Australia, November 2004, p. 11.

understanding of and increased care and attention to legislative requirements and appropriation management practices were required. In that respect, there was evidence that, in response to the ANAO's audit activities, entities have increased their focus on those obligations. In addition, during the course of the audit, Finance issued guidance to Chief Financial Officers and provided four Circulars to *Financial Management and Accountability Act 1997* (FMA Act) agencies relating to particular aspects of appropriation management by agencies subject to the FMA Act.

- 10.8 Furthermore, the ANAO commented that the provision of additional guidance on appropriation management and disclosure, would assist entities to manage and report appropriations in a better and more consistent manner across the Commonwealth.

ANAO recommendations

- 10.9 The ANAO made six recommendations in total:

Table 9.1 ANAO Recommendations, Audit Report no. 15, 2004-05

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| 1. | ANAO recommends that relevant entities consult with the Department of Finance and Administration on the need to liaise with the Senate Appropriations and Staffing Committee about which Annual Appropriation Bill should be used where it is proposed to move funding for particular payments from Special Appropriations to Annual Appropriations.
All responding agencies agreed. |
| 2. | ANAO recommends that Portfolio Departments review their processes for providing information to the Department of the Prime Minister and Cabinet for the purpose of updating, consolidating or amending the Administrative Arrangements Order, in order to confirm that the information provided is accurate and includes all relevant legislation administered by their Ministers.
All responding agencies agreed. |
| 3. | ANAO recommends that accountability for Special Appropriations be improved by the Department of Finance and Administration reviewing financial reporting requirements and related guidance to provide entities with greater clarity about: <ul style="list-style-type: none"> (a) the disclosure requirements for Special Appropriations that have not been used in a given financial year and/or have been exhausted; (b) the disclosure obligations that apply where entities access Special Appropriations that are the administrative responsibility of another entity; and (c) the approach to be taken to achieving a clear read between budgeted and actual use of Special Appropriations. All responding agencies agreed. |
| 4. | ANAO recommends that the Department of Finance and Administration promulgate advice on the management and disclosure of Special Appropriations used by, or paid to, entities subject to the <i>Commonwealth Authorities and Companies Act 1997</i> . This should include advice on the particular roles and responsibilities of Finance, Portfolio Departments and the CAC Act entities. |

All responding agencies agreed.

5. ANAO recommends that:
- (a) the Department of Finance and Administration examine options for promoting greater consistency across Commonwealth entities in the management of Special Appropriations;
 - (b) where more than one entity draws on a Special Appropriation, relevant entities agree on appropriate arrangements to effectively coordinate the administration and disclosure of its use.

All responding agencies agreed.

6. ANAO recommends that, to meet their accountability obligations in respect of Section 83 of the Constitution, entities that draw amounts from the Consolidated Revenue Fund establish and maintain accounts and records that accurately link expenditure with a specific valid appropriation.

All responding agencies agreed.

The Committee's review

- 10.10 The Committee held a public hearing in Canberra on 5 April 2005 to review the progress made against the audit's recommendations.

Witnesses from the following agencies attended the public hearing:

- The ANAO;
- Attorney-General's Department (AGD);
- Department of Veterans' Affairs (DVA);
- Department of Finance and Administration (FINANCE);
- Aboriginal and Torres Strait Islander Services (ATSIS); and
- Australian Taxation Office (ATO).

- 10.11 At the public hearing the main issues addressed by the Committee included: management and reporting of special appropriations, training and guidance from Finance, and processes in place for better management of special appropriations. The Committee also discussed the progress that had been made on the implementation of the recommendations from the audit report.

Management of special appropriations by Commonwealth entities

- 10.12 The commencement on 1 January 1998 of the FMA Act and related Acts resulted in important changes in Finance's appropriation

management role. Under the revised financial framework, individual agencies became responsible for the control and management of their own finances, including the management of special appropriations.

- 10.13 Such responsibilities for Government entities include the management of records to ensure moneys are expended correctly without exceeding limits of the appropriation. Entities are also responsible for disclosing appropriations they are responsible for and disclosing the payments made against the appropriations in their annual financial statements.
- 10.14 The Committee was deeply concerned by the ANAO's findings which revealed that only one agency out of the 43 audited was able to satisfy all the audit objectives for the financial management of special appropriations. This agency was the Australian Industrial Registry, which only had to manage one special appropriation.
- 10.15 The main finding from the ANAO report revealed widespread non-compliance with legislative requirements. The ANAO explained to the Committee its concern that Commonwealth agencies were not paying enough attention to make sure there was adequate knowledge of legislative requirements.²
- 10.16 During the public hearing the Committee heard evidence from a number of agencies in relation to their incorrect reporting and or use of special appropriations and asked them to comment on what action they had taken to remedy the situation.
- 10.17 The Attorney-General's Department (AGD) told the Committee:
- The issues for the department were that we had not reported our expenditures against the correct appropriation...With regard to the ongoing issue – reporting the special appropriations with regard to former solicitors general – an oral report was provided to the department's audit committee. The report explained what action had been taken in order to remedy that particular reporting issue. The action advice was that a separate ledger code had been established and that all expenditures were being reviewed monthly.³
- 10.18 The Department of Veterans' Affairs (DVA) told the Committee that the points raised in the ANAO report were immediately looked at by its national audit and fraud control committee.

2 ANAO, *Transcript of Evidence*, 5 April 2005, p. 6.

3 AGD, *Transcript of Evidence*, 5 April 2005, p. 5.

We sought legal advice and immediately commenced discussions with Finance about the quantum of any amount that may have been inappropriately used by the department and, as I mentioned earlier, we have since repaid \$250,000 of the \$1.5 million total amount that was in dispute. On the overdrawn bank accounts, we have instituted measures within the department. I believe there is a Finance circular that has just come out which is drawing agencies' attention to this, and I think that accords with the actions we have already taken within the department. The DSH Insurance matter has now been fully rectified and the department is very aware of the requirements for reporting.⁴

- 10.19 Whilst the Aboriginal and Torres Strait Islander Commission (ATSIC) no longer exists, two representatives from Aboriginal and Torres Strait Islander Services (ATSIS), which is now situated within the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), attended the public hearing. The Committee heard the following evidence from ATSIS in relation to the incorrect drawing arrangements made over a period of nine years.

On the actions taken to rectify the situation, firstly ATSIS determined what were the correct indexation factors to have been used across the term of that nine years. We worked out what the correct indexation factors were and from that flows the amount of money which was then overcredited to the land fund and passed on to the Indigenous Land Corporation. ... in total, it is approximately \$21 million in aggregate between the land fund itself, ATSIC and the Indigenous Land Corporation. Having determined what we believe was the correct indexation factor and therefore the correct amount of money, we then agreed, with the Department of Finance and Administration, as to the amount, and that amount was repaid in full.⁵

- 10.20 ATSIS moved from ATSIC to DIMIA which resulted in ATSIS shifting its financial management obligations away from the *Commonwealth Authorities and Companies Act 1997*, (CAC Act) to the FMA Act.⁶

4 DVA, *Transcript of Evidence*, 5 April 2005, p. 5.

5 ATSIS (DIMIA), *Transcript of Evidence*, 5 April 2005, pp. 5-6.

6 The CAC Act sets out the financial management, accountability and audit obligations on Commonwealth statutory authorities and companies in which the Commonwealth has at least a direct controlling interest. The FMA Act provides the framework for the proper management of public money and public property by the Executive arm of the

Following this change, DIMIA informed the Committee that the following measures were underway to ensure a smooth transition:

DIMIA has commissioned an accounting firm to do a due diligence on the whole governance arrangements around the land fund to ensure that it complies with the FMA and so that any subsequent uses of indexation factors, albeit not for drawing down into the land fund but for on-paying to the Indigenous Land Corporation, are then done correctly.⁷

10.21 Finance informed the Committee that 'The errors identified for the Department of Finance and Administration in the report were errors in reporting, and those errors have now been corrected.'⁸

10.22 The Australian Taxation Office (ATO) told the Committee that:

A number of the errors in reporting by the ATO were fixed in the 2003-04 financial statements, because clearly we had information from the Audit Office about those issues before the report was published. The problem around one of the appropriations was related to our disclosure in the budget papers which we then used in our financial statements. That was fixed in the 2004-05 budget, and therefore the comparison of budget estimate and actual in the 2004-05 financial statements will now be appropriate. To the extent that we needed delegations and drawing right authority from the Department of Family and Community Services, that was received in 2004, and appropriate delegations issued in the tax office related to that authority from FaCS.⁹

Incorrect drawings from the Consolidated Revenue Fund (CRF)

10.23 Appropriation laws must specify the purpose for which the money is to be spent. Spending money contrary to the purpose of an appropriation, or in excess of the amount appropriated, contravenes Section 83 of the Constitution. The ANAO identified in its audit one instance where funds had been drawn from the CRF for a purpose that was contrary to the purpose of the special appropriation that was

Commonwealth. Public money and public property is defined in the Act as money and property in the custody or control of the Commonwealth.

7 DIMIA, *Transcript of Evidence*, 5 April 2005, p. 6.

8 Finance, *Transcript of Evidence*, 5 April 2005, p. 6.

9 ATO, *Transcript of Evidence*, 5 April 2005, p. 6.

debited. This involved the *Compensation (Japanese Internment) Act 2001* (Compensation Act) administered by DVA.

10.24 As a result, DVA drew \$1.5 million from the CRF under the Compensation Act special appropriation for the purpose of meeting its estimated departmental costs for the future administration of the compensation payments. The ANAO was advised that the component of that drawing that was expected to relate to administration of compensation payments made under the *Veterans' Entitlements Act 1986* (VEA Act) could have been paid using the VEA special appropriation. Therefore, the balance was not within the purposes of either special appropriation, thereby representing a contravention of Section 83 of the Constitution.¹⁰

10.25 The Committee invited the DVA to comment on this finding during the public hearing. DVA advised the Committee on the following:

The ANAO report reported on the use of funds for payments to prisoners of war of the Japanese. We drew down \$1.5 million from consolidated revenue under the CJI special appropriation. At the time, we understood that that was appropriately used for departmental expenses, including promoting the availability of the payments, assessing claims and making system changes to expedite those payments. The audit report subsequently took a different view. We have since had discussions with both A-G's and DOFA and an amount of \$250,000 has been repaid as the sum total of the amount that was in dispute.¹¹

10.26 It was apparent to the Committee that there was a lack of understanding of the legislation which had caused DVA to contravene Section 83 of the Constitution despite the fact that DVA was responsible for drawing up the legislation. The Committee questioned DVA as to how this lack of understanding of the legislation could occur. DVA replied 'At the time we felt that it was correct legislation and that it gave us the authority to do what we needed to do.'¹²

10.27 The main problem was that the Act did not split the administered money from the departmental funding – it just had one figure which included both. During the public hearing, DVA conceded that:

10 ANAO Audit Report no. 15, 2004-2005, p. 86.

11 DVA, *Transcript of Evidence*, 5 April 2005, p. 2.

12 DVA, *Transcript of Evidence*, 5 April 2005, p. 9.

The legislation was not explicit enough so, yes, that is correct. It was a section 83 breach because the legislation did not provide the authority to draw down the money. The money was not the full \$1.5 million.¹³

10.28 The Committee was interested to know whether an incorrect drawing down from the CRF consequently meant a loss of interest to the Commonwealth on that fund.

10.29 Finance replied:

If money is incorrectly drawn from the consolidated revenue fund – that is, it is drawn without an appropriation – does that involve loss of interest? Potentially, yes, it does involve loss of interest. But frequently there are other valid appropriations which are available to meet the requirements of section 83.¹⁴

Disclosing refunds as special appropriations to the Consolidated Revenue Fund

10.30 The ANAO identified 12 entities that had been making refunds of taxes, levies and charges without disclosing those refunds as a use of relevant special appropriations. In total they amounted to \$1.25 billion.

10.31 As a result of the ANAO audit, the ANAO was pleased to inform the Committee that improvements had been made in relation to the correct disclosure of special appropriations for refunds to the CRF. At the hearing the ANAO commented:

We certainly found that in the 2003-04 financial statements there was a great deal more reporting of the use of the refund appropriation provided by the FMA Act.¹⁵

10.32 The Committee asked the ATO to comment on changes they had implemented since the ANAO report identified them as having not disclosed \$19.525 million correctly in 2002-03. The ATO advised the Committee:

Certainly we made changes in the 2003-04 financial statements and we got legal advice from the Australian Government Solicitor that confirmed that section 28 of the

13 DVA, *Transcript of Evidence*, 5 April 2005, p. 10.

14 Finance, *Transcript of Evidence*, 5 April 2005, p. 12.

15 ANAO, *Transcript of Evidence*, 5 April 2005, p. 30.

FMA Act was the appropriate power under which to make those refunds. That is now reported as such in note 25(c) of the ATO's annual financial statements.¹⁶

- 10.33 The AGD, which had not disclosed \$4.014 million between 1998-99 to 2002-03 told the Committee 'We have similarly made changes to our process to ensure that they are properly recorded.'¹⁷

Non-disclosure of special appropriations

- 10.34 Section 39 of the FMA Act provides the authority for the investment of public money by the Finance Minister and the Treasurer (for debt management purposes only). A special appropriation authorising the drawing of money from the CRF for the purposes of Section 39 investments is provided by sub-Section 39(9) of the Act.
- 10.35 Each investment made under Section 39 of the FMA Act involves a separate use of the sub-section 39(9) special appropriation. This was confirmed in legal advice provided to Finance in July 2003. The ANAO found that there had been widespread non-disclosure of the use, and non-use, of the Section 39 special appropriation. In total, over the period examined by this performance audit, eleven entities did not report their use of the Section 39 special appropriation, involving drawings of more than \$36.8 billion.¹⁸
- 10.36 During the public hearing Finance admitted that an error had occurred in terms of not disclosing investments under section 39 of the FMA Act. The ANAO reported that Finance had failed to disclose \$95 098 million during the period 2001-02 to 2002-03.¹⁹
- 10.37 Finance informed the Committee that:

Regarding those special appropriations that were drawn on which were not reported in the financial statements at the time, the department no longer draws on section 39 of the FMA Act. If you like, it is analogous in one sense to ATSI's experience where the practice of drawing on that special appropriation to make investments is no longer undertaken by the department. So, going forward, there is nothing to

16 ATO, *Transcript of Evidence*, 5 April 2005, p. 30.

17 AGD, *Transcript of Evidence*, 5 April 2005, p. 30.

18 ANAO Audit Report no. 15, 2004-05. pp. 34-35

19 ANAO Audit Report no. 15, 2004-05. pp. 34-35

report against the appropriations. The issue has been drawn.²⁰

- 10.38 The ANAO reported that ATSIC had failed to disclose \$4 888 million during the period 1998-99 to 2002-03. ATSI confirmed at the public hearing that the full sum of money owed, including interest had been repaid.

The amounts have been determined as to how much was overdrawn. Those have been repaid. In addition, a calculation was made as to how much interest was earned on those overcreditings and that has also been repaid.²¹

- 10.39 The DVA informed the Committee that in relation to:

the nondisclosure of the use of section 39(9) in relation to Defence Service Homes Insurance, there was reporting disclosure in our financial statements under special accounts. But they were not disclosed in the manner required and this has since been rectified in the 2003-04 financial statements.²²

Debit balance

- 10.40 The FMA Act envisaged agencies entering into overdrafts for short periods. That is, agencies were prohibited from entering into overdraft arrangements unless the arrangements provided for each drawing to be repaid within 30 days. Under changes to the financial framework effective from October 2003, agencies are required to estimate all their funding requirements in accordance with the Finance Minister's delegation to Chief Executives. Overdrafts remain available where, despite agencies' best endeavours, estimates prove to be incorrect or cheques are dishonoured. However, data supplied to the ANAO by Finance showed FMA Act agencies with overdrafts on 448 occasions in the six months from October 2003 to February 2004 inclusive.
- 10.41 The DVA administers special appropriations that provide services to entitled members of the veteran and defence force communities, including Section 199 of the *Veterans' Entitlement Act 1986* and Section 41 of the *Defence Services Homes Act 1918*. The Department operates a number of bank accounts to support its activities. In the course of this audit, the ANAO identified that the DVA's official administered

20 Finance, *Transcript of Evidence*, 5 April 2005, p. 16.

21 DIMIA, *Transcript of Evidence*, 5 April 2005, p. 16.

22 DVA, *Transcript of Evidence*, 5 April 2005, p. 3.

payments 'head account', as well as various other official administered payments accounts, entered into debit balance inter-day during the 2002–03 financial year. The DVA's contract with its transactional banker, the Reserve Bank, does not provide DVA with overdraft facilities.

10.42 The DVA advised Finance in August 2004 that the overdrafts arose from automated payment processes established in July 1999 and that, if Finance had agreed suitable arrangements prior to October 2003, breaches of Section 8(3) of the FMA Act could have been avoided. Finance advised the ANAO in November 2004 that the requirements on agencies to estimate payments from special appropriations have existed since July 1999. The adherence to this requirement should have minimised the frequency of debit balances on agencies' bank accounts.

10.43 The DVA informed the Committee:

Our head account inadvertently went into debit balance between 27 and 29 December 2002 as a result of a request for a draw-down on 24 December not being processed until 30 December by DOFA. There was no cost to the Commonwealth because of that inadvertent breach and no breach of our transactional banking arrangements. We now have measures in place to address any future occurrences of that.²³

Committee comment

10.44 The Committee was disappointed to learn that the majority of Commonwealth entities were not managing and reporting correctly their special appropriations. Given that special appropriations are part of the legislation for financial management, the Committee was alarmed to discover that it took an ANAO performance audit to bring to light these discrepancies.

10.45 On a more positive note, the Committee was pleased to learn that most agencies have resolved the errors that had occurred and now have processes in place to better manage and report on special appropriations.

23 DVA, *Transcript of Evidence*, 5 April 2005, pp. 2-3.

Special appropriations stocktake

- 10.46 Special appropriations are usually distinguished by the form of words used in their parent Act to create them. The appropriating clause signals Parliament's clear intention that the Act authorises money to be drawn from the CRF for the purpose described in the Act.
- 10.47 The ANAO audit focussed on agencies' financial management of provisions in Acts that directly provided funding from the CRF (except where the law is an annual appropriation). The ANAO found that in 2002-2003 there was a total of 414 special appropriations in existence.²⁴
- 10.48 The ANAO's audit identified instances of multiple appropriations existing for the same purpose. For example, the ANAO found that in a number of instances, a special appropriation for the payment of the salary and allowances of a statutory office holder existed in two Acts. Advice from the AGS shed light on this issue:

Where there is a standing appropriation in respect of particular expenditure and Parliament later provides a further appropriation in respect of the same expenditure, for example, on an annual basis, there is an issue whether the standing appropriation has been impliedly repealed or at least suspended by the later appropriation. In such a case, it may not be correct to say that [AGD] remain 'responsible' for the standing appropriation within the meaning of the [*Finance Minister's Orders*], at least while the later appropriation is in place. Ultimately, however, this question can only be resolved on a case by case basis, having regard to whether Parliament intended to repeal or suspend the earlier standing appropriation or to provide two appropriations, either of which could be used.²⁵

Inconsistent management of special appropriations

- 10.49 The ANAO found significant inconsistencies between agencies' disclosure of special appropriations. For example, some agencies did not disclose the use of their special appropriations at all whilst other agencies incorrectly reported the special appropriation as being unlimited in nature.

24 ANAO Audit Report no. 15, 2004-2005, pp. 46-47.

25 ANAO Audit Report no. 15, 2004-2005, p. 48.

10.50 The ANAO also found that significant differences of view emerged in terms of whether the special appropriations 'in respect of' each year actually lapse at the end of the relevant financial year. Some agencies received legal advice which was not consistent with the advice being received from Finance.

10.51 During the public hearing the ANAO explained to the Committee how the AGO had doubled up on appropriations due to incorrect advice.

...take the example of the Australian Greenhouse Office, which was told that its share of the special appropriations does lapse, in the sense that if it is not used in this financial year it is not available next year. The Australian Greenhouse Office then went and obtained additional annual appropriations so that it could continue to pay the programs. As it now transpires, the most recent advice is that the special appropriations do not lapse. Effectively, what has happened is that the parliament has, through no fault of its own, appropriated the same money for the same programs on two different occasions.²⁶

10.52 The Committee agrees with the following statement made by the ANAO.

The ANAO considers that there would have been benefit, and reduced overall administrative costs to the Commonwealth, had an effective coordination arrangement been established for the management of these special appropriations within the context of the overarching financial management framework.²⁷

Committee comment

10.53 The Committee notes that Finance is responsible for developing and maintaining the financial framework for the Commonwealth public sector. This includes ensuring that agencies are aware of the correct management of each relevant special appropriation.

10.54 The Committee urges Finance to continue to update circulars that refer to special appropriations and ensure that the advice being

26 ANAO, *Transcript of Evidence*, 5 April 2005, p. 15.

27 ANAO Audit Report no. 15, 2004-2005, p. 74.

provided to agencies on special appropriations is accurate and consistent.

Recommendation 32

- 10.55 **The Committee recommends that the Department of Finance and Administration continues to provide ongoing advice to all Commonwealth agencies in relation to the accurate management and reporting of special appropriations.**

Mirror taxes

10.56 The majority of revenue or money raised, or received, by the Commonwealth is reflected in the Official Public Account (a group of bank accounts maintained by Finance) and individual entities' official bank accounts. However, there are some amounts that form part of the CRF that are not dealt with through official bank accounts. This is the case in relation to three Acts that validate certain State and Territory taxes, fees and charges that would otherwise be constitutionally invalid. These are:

- the *Commonwealth Places (Mirror Taxes) Act 1998* (Mirror Taxes Act), allocated to Treasury. In relation to this Act, Finance was advised as follows by Australian Government Solicitor (AGS) in May 2003:

Under the Mirror Taxes Act, State authorities collect various taxes that have been levied by the Commonwealth in relation to Commonwealth places. This legislation merely picks up and applies as Commonwealth law State taxes that had been declared invalid by the High Court in 1997 because they impermissibly intruded into the Commonwealth's exclusive Constitutional power with respect to places owned by the Commonwealth.
- the *Commonwealth Places (Application of Laws) Act 1970* (Application of Laws Act), allocated to the Attorney-General's Department (AGD). Similar in its provisions to the Mirror Taxes Act, since 17 April 1998, this Act has applied only to those State laws not scheduled under the Mirror Taxes Act; and

- the *Gas Pipelines Access (Commonwealth) Act 1998* (Gas Pipelines Act), allocated to the Department of Industry, Tourism and Resources (DITR). This is the lead legislation for the national scheme for third party access to natural gas pipelines. In certain circumstances, the Act provides for payments to be collected by the States and Territories on behalf of the Commonwealth, which are then returned to the relevant State or Territory by the Commonwealth.
- 10.57 The revenue collected by the States and Territories in each case automatically forms part of the CRF, reflecting its self-executing nature. Each Act provides, therefore, a Special Appropriation permitting this revenue to then be paid from the CRF back to the collecting State or Territory. However, the ANAO found that none of the relevant departments disclosed the use, if any, made of these Special appropriations in the audit period of 1998–99 to 2002–03.
- 10.58 In August 2004, the Attorney General’s Department (AGD) advised the ANAO that it did not, and is not ever likely to, receive monies or make drawings against the Special Appropriation provided by the Application of Laws Act. The AGD further advised that there are likely to be a number of agencies that apply this Act in a wide range of locations in Australia and that AGD had no information, and has never collected information, on which agencies may receive monies into the CRF and/or make drawings against the Special Appropriation.
- 10.59 The AGD raised concerns with the ANAO about the potential inefficiencies and duplication of administrative effort that would arise, together with the need for additional resources, should the AGD be held responsible for reporting revenues and expenditures against this Act. The Department suggested that it might be more appropriate for the Act to be made the responsibility of a central agency, such as Finance. On this point, matters dealt with by a Department of State, including the legislation it administers, are set out in the Administrative Arrangements Order (AAO).
- 10.60 At the public hearing the Committee asked AGD to update them on this piece of legislation. The AGD commented:
- the department does not draw down on itself. We really are not in any position at all to know how widely spread that particular special appropriation is. It was a suggestion I had made at the time that it could be better managed perhaps on a centralised basis where agencies might feed into a central

point and where there may be more capacity than there is in the Attorney-General's Department to actually administer that across what could be a wide number of agencies.²⁸

10.61 In response to the AGD's above comments, Finance told the Committee that:

we might need to enter into some further discussions with our colleagues in the Attorney-General's Department. The bottom line is that the administrative arrangements orders allocate responsibility for legislation to portfolios. That is where the responsibility lies and that is the way the system runs.²⁹

10.62 In relation to this point the ANAO commented that:

I think we are very much in Finance's camp at the moment. It is clear through the AAOs that the departments and agencies have responsibility. I will say that mirror taxes legislation is hard to administer unless you are actually thinking about it and planning it. It is not an easy piece of legislation. But we have to recognise that underlying it is that the CRF is actually self-executing – we are using a Commonwealth power in place of a state power to raise money and, in effect, it is an automatic in and out of CRF.³⁰

10.63 The AGD added:

It is the case that the department administers that piece of legislation, but any moneys drawn down against that special appropriation would be made by other agencies. The department had not included that special appropriation in its financial statements but it is not in a position to actually know – or it had not been in a position to know – what had been drawn down by other agencies against that special appropriation.³¹

Committee comment

10.64 The Committee agrees that the AGD and Finance should discuss this issue further, as suggested by Finance at the public hearing, to resolve

28 AGD, *Transcript of Evidence*, 5 April 2005, p. 24.

29 Finance, *Transcript of Evidence*, 5 April 2005, p. 24.

30 ANAO, *Transcript of Evidence*, 5 April 2005, p. 25.

31 AGD, *Transcript of Evidence*, 5 April 2005, p. 4.

this issue of responsibility for the Special Appropriation to ensure that correct administrative reporting is carried out by the responsible agency.

Recommendation 33

- 10.65 **The Committee recommends that the Attorney-General's Department and the Department of Finance and Administration resolve which agency is best equipped to administer the Special Appropriation in relation to Mirror Taxes.**

Responsibility for special appropriations

- 10.66 As stated at the beginning of the chapter, each entity is responsible for correctly managing and reporting on its relevant special appropriations.
- 10.67 Finance reinforced this responsibility at the public hearing with the following comment:

The primary responsibility for the financial management of an agency rests with the chief executive. That is pretty clearly set out in the FMA Act, which provides that the chief executive is to provide for the proper control of Commonwealth resources.³²

- 10.68 During the public hearing, the Committee asked Finance who has the ultimate responsibility for ensuring that the special appropriations are dealt with correctly. Finance commented:

I suggest that it is the role of the chief executive of each agency to make an assessment as to whether their chief financial officer has the capacity to do the job expected of them.³³

32 Finance, *Transcript of Evidence*, 5 April 2005, p. 11. *Note:* The FMA Act 1997, s. 48 (1) states that a Chief Executive must ensure that accounts and records of the Agency are kept as required by the Finance Minister's Orders.

33 Finance, *Transcript of Evidence*, 5 April 2005, p. 22.

Performance bonuses

- 10.69 The Committee was interested to hear at the public hearing how many of the Chief Financial Officers (CFOs) and their counterparts were paid performance bonuses in the last five financial years. All of the agencies present at the public hearing commented that it was most probable that each of their respective CFOs were paid performance bonuses in the last five years.
- 10.70 The Committee raised the issue of performance bonuses as it wanted to highlight the point that whilst many highly paid public servants were being paid performance bonuses for their financial management skills they were also breaching Section 83 of the constitution, or were not appropriately reporting on and/or disclosing significant financial management issues.
- 10.71 The ATO defended the fact that performance bonuses were given to CFOs for carrying out a broad range of tasks. The ATO commented that performance bonuses 'for any executive relates to a range of activities that are undertaken in an agency. Particularly, for most of the CFOs, that also involves budget management and other administrative stuff.'³⁴

Committee comment

- 10.72 The Committee understands that the ultimate responsibility rests with each department, namely the CEO and the CFO for correct management and reporting of special appropriations. Therefore, the Committee urges all CFOs to acquire a more comprehensive understanding of all relevant special appropriations that exist within their specific legislation.
- 10.73 The Committee recommends that CFO performance bonuses should be linked to a proven knowledge of and understanding of correct procedures for the management and reporting of all relevant special appropriations.

34 ATO, *Transcript of Evidence*, 5 April 2005, 05-04-05, p. 13.

Recommendation 34

- 10.74 **The Committee recommends that all Chief Financial Officers' performance bonuses should be linked to a proven understanding and application of correct procedures for the management and reporting of all relevant special appropriations.**

Finance guidance and training

- 10.75 The Committee was interested in finding out what action Finance had taken to assist agencies to achieve a sound understanding of the management and reporting of special appropriations. Finance commented that 'We have a publication entitled "The role of the chief finance officer" for departments, which indicates the sorts of things that agencies might take into account.'³⁵

- 10.76 In respect of this publication the Committee asked Finance when it was developed and whether Finance had consulted with other agencies. Finance responded:

...a CFO guidelines reference group was established in November 2002. The group was chaired by Finance, and included representatives from the Departments of Agriculture, Fisheries and Forestry (AFFA), Employment and Workplace Relations (DEWR) and Foreign Affairs and Trade (DFAT). Between November 2002 and February 2003 the group developed a set of guidelines detailing the role of the CFO in Commonwealth agencies. The ANAO was consulted and provided comments on the draft guidelines.³⁶

- 10.77 In addition, Finance informed the Committee:

In regard to raising the profile of the chief financial officer in departments and raising, if you like, the professional qualifications of those people, there is not only the best practice guidance issued by the department of finance but also for a number of years we have every so often issued a

35 ANAO, *Transcript of Evidence*, 5 April 2005, p. 21.

36 Finance, Submission 2.1, p.2.

survey of the departments to see whether the general standard has been improving.³⁷

- 10.78 Finance told the Committee it has produced quite a lot of guidance in the last few years to assist agencies in meeting their obligations under the compliance framework.³⁸

First of all we have a series of finance circulars, many of which are listed in our submission. More broadly than that, we have now produced 15 booklets in our financial management guidance series to advise agencies about how they should conduct themselves on various matters concerning the financial framework. We also have estimates memorandums and there are additional ones in preparation on a variety of issues that will come out in due course.³⁹

- 10.79 The Committee asked whether there were any opportunities for the CFOs to group together to share information. Finance commented:

We do have a CFO forum which meets once a month and addresses issues of current interest in the financial management of the Commonwealth, which goes beyond special appropriations to budget issues and various other matters that emerge.⁴⁰

Processes in place for a better understanding on the drawings of special appropriations

- 10.80 The Committee was interested in hearing from each of the appearing agencies about what processes they had implemented to give them a clear understanding of the full amount drawn under each appropriation.
- 10.81 The Committee appreciated the ATO's honesty in admitting that mistakes had been made in the past in relation to special appropriations. During the public hearing the ATO commented that the audit report:

37 Finance, *Transcript of Evidence*, 5 April 2005, p. 21.

38 Finance, *Transcript of Evidence*, 5 April 2005, p. 10.

39 A list of Finance guidance to agencies to assist them with the management of appropriations was attached to the Finance submission to the inquiry (submission no. 2). Finance, *Transcript of Evidence*, 5 April 2005, p. 11.

40 Finance, *Transcript of Evidence*, 5 April 2005, p. 23.

...has shown us a couple of things that perhaps we were not as conscious of before. You could argue that we should have been – and we certainly are now – particularly around the interaction of the tax acts and the FMA Act. We are much more conscious and we explore that more actively now, whereas before we tended to think more in terms of what the powers under the tax act were. But there are interactions between those acts, and some of those issues where we did not do so well are actually about that interaction and understanding that.⁴¹

10.82 The ATO also commented:

The tax office accept that we have not paid enough attention to some of the details, particularly around the reporting of how that money is spent. I suspect that, again, some of that is buried in history. Some of the newer ones deal with the complexity of making one payment to a taxpayer that will contain money that comes from a number of special appropriations. We have not necessarily focused to the extent that we should – and I might say that we have now, and those things have been fixed – on making sure that the reporting of that payment appears in the appropriate places.⁴²

10.83 In terms of changes that had been made the ATO informed the Committee:

As I mentioned previously, we sorted out most of our reporting issues in the 2003-04 financial statements, with a flow-on into how we disclosed some estimates in the 2004-05 budget. We are also putting in place special appropriation ledgers, which will be in place by the end of April, but we already have processes in place that allow us to report against those different special appropriations. As part of that, we have developed allocation rules so that, when we make a single cash payment and we then need to split that in cash terms back to the different appropriations, we have agreement with the ANAO about how we will go about that.

We are also putting in place processes around new policies so that, as new policy comes up, we are actively exploring both the appropriation and the drawing rights issues at the time

41 ATO, *Transcript of Evidence*, 5 April 2005, p. 12.

42 ATO, *Transcript of Evidence*, 5 April 2005, p. 4.

that the new policy is being developed, to ensure that we understand both the accounting reporting and payment responsibilities that occur as that is being developed rather than when payments are suddenly being made at the end of the process.⁴³

- 10.84 The AGD explained to the Committee the changes that had been implemented since the ANAO audit:

We currently draw down against three special appropriations. We have separate ledger codes for those appropriations. We have a procedure with our HR area, which makes some of those payments, to advise us if there are any new payees or any changes to the current payment arrangements. The hand gun buyback program is administered by a separate area in the department. Again, there is a full set of separate ledger codes set up for that area to use. Those expenditures are reviewed both by the area itself against the requirements of the legislation and by people in my branch.⁴⁴

- 10.85 The DVA informed the Committee of procedures in place to allow for a clear understanding of its special appropriations:

We have a number of special appropriations to pay pensions and provide health care and other benefits to eligible veterans and their dependants. We have separate ledger codes for these appropriations. Expenditure against those appropriations is reported on a monthly basis to the executive of the department. We have full reporting of expenditure against those special appropriations in all of our financial statements. We have a drawing rights register which records the officers who have the authority to draw down money. Our expenditure against special appropriations is very closely monitored by the Department of Finance and Administration.⁴⁵

- 10.86 The Committee was pleased to note the following comment from one of the DVA's officers present at the hearing – 'I can assure the

43 ATO, *Transcript of Evidence*, 5 April 2005, pp. 19-20.

44 AGD, *Transcript of Evidence*, 5 April 2005, p. 16.

45 DVA, *Transcript of Evidence*, 5 April 2005, p. 17.

chairman that we have learnt some lessons from this particular audit report.’⁴⁶

- 10.87 Finance informed the Committee on the changes that had been implemented since the audit report:

Our areas for the department were primarily reporting, and those areas have now been corrected – which was the story that you heard before. More generally, now we have a complete list of the special appropriations, we have got to the point where we have been able to allocate almost all of them to a particular department. We expect to complete that work of allocating the special appropriations by the end of this year, so that agencies are able to accurately report on their special appropriation.⁴⁷

- 10.88 In a supplementary submission, Finance advised the Committee that extensive work had been carried out in terms of compiling a list of all special appropriations and allocating responsibility of these appropriations with the relevant agencies. Finance stated:

Extensive work has been done by Finance and it is expected that the list will be completed before the end of July 2005. Discussions with agencies will then occur over the next quarter to ensure allocations are correct and agreed. We will advise the Committee once this work has been completed.⁴⁸

- 10.89 Finance also outlined to the Committee the system which is used to allow agencies to draw funds against special appropriations.

Finance has a thing we call the CAMM system, which is basically our cash management system for handing out cash to agencies. Under that system there are estimates provided against each of the authorities. But when it comes down to the question of drawing against those authorities, whether or not that is the correct drawing against the authority is really a matter for the department concerned.⁴⁹

- 10.90 Finance continued to explain to the Committee that :

When agencies draw down funds through system finance, if it is an annual appropriation, we check to make sure there is

46 DVA, *Transcript of Evidence*, 5 April 2005, p. 18.

47 Finance, *Transcript of Evidence*, 5 April 2005, p. 19.

48 Finance, Submission no. 2.1, p. 1.

49 Finance, *Transcript of Evidence*, 5 April 2005, p. 18.

still appropriation available. Where it is a special appropriation, if the agency has made an estimate and the draw down would exceed that estimate, we then refer it back to them to talk to the relevant area in Finance to agree a new estimate, and we are notified of that before we proceed with the draw-down. However, it is the agency's responsibility to choose the right special appropriation for the payment they are about to make.⁵⁰

- 10.91 In a submission to the Committee, Finance commented that agencies are more aware of their responsibilities and are responding to both the enhanced guidance available and the recommendations of the audit report. Finance believed that:

The additional guidance already made available by Finance and the work still underway should further assist agencies to implement internal controls that will allow proper management of special appropriations.⁵¹

Committee comment

- 10.92 The Committee's review of this Audit Report on the financial management of special appropriations is one of a series of reviews the Committee is undertaking into aspects of financial management within the public sector. In the previous Parliament the Committee looked at the management of special accounts, and in September 2005 we have begun a review into the investment of public funds.
- 10.93 A theme emerging from each of these reviews is that managers at quite senior levels within the public sector are either not fully aware of their responsibilities under the FMA Act, or are not discharging them appropriately. The Committee is most concerned to note this pattern across a number of Audit Reports. The Committee wishes to place all public agencies on notice that this is a matter we will continue to investigate throughout the 41st Parliament.

50 Finance, *Transcript of Evidence*, 5 April 2005, p. 19.

51 Finance, Submission no. 2, p. 3.

