



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Caroline Le Couteur MLA (Chair), Brendan Smyth MLA (Deputy Chair), John Hargreaves MLA

Submission by the ACT Standing Committee on Public Accounts

Joint Committee on Public Accounts and Audit
Inquiry into National Funding Agreements

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Introduction and summary

On 9 February 2011 the Joint Committee on Public Accounts and Audit Committee (the JCPAA) resolved to inquire into the operation of funding agreements between the Commonwealth and State and Territory Governments (the Inquiry).¹

The report of the JCPAA inquiring into the Commonwealth *Auditor-General Act 1997* raised issues with regard to national funding agreements, in particular the need to balance flexibility with the requirement for accountability. The Inquiry is aiming to examine these issues in more detail.²

Background

The Australian Constitution which created the Commonwealth and the States—the Australian Nation—specifies under section 96:

Financial assistance to States

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as parliament thinks fit.³

Furthermore, section 96 of the Constitution needs to be considered in the context of section 51(ii) which gives to the Commonwealth Parliament, amongst other things, the power to make laws 'with respect to taxation; but so as not to discriminate between States or parts of the States'.⁴

The concept of fiscal equalisation has been the vehicle by which financial assistance has been distributed to the States, Territories, and local governments, in the form of general revenue grants. In particular, horizontal fiscal equalisation has been the means by which significant financial disparities between the States has been addressed. The process provides for:

...additional financial assistance to those states facing inherent difficulties in raising revenues from their own available tax bases and/or relatively higher costs of providing public services.

...

In Australia, general revenue grants to the States are provided on the basis of per capita relativities assessed by the Commonwealth Grants Commission. This process is designed to provide each State with the capacity to provide services at a standard comparable with those of the other States but without requiring that State to impose a greater burden of taxation.⁵

¹ JCPAA inquiry homepage—; <http://www.aph.gov.au/house/committee/jcpaa/natagree/index.htm>; JCPAA. (2011) Media release: 'Audit committee to scrutinise arrangements for national funding agreements', 11 February.

² JCPAA. (2011) Media release: 'Audit committee to scrutinise arrangements for national funding agreements', 11 February; JCPAA. (2010) Inquiry into the *Auditor-General Act 1997*, Report No. 419, 22 December.

³ The Australian Constitution (1901), section 96.

⁴ The Australian Constitution (1901), section 51(ii); Lane, W.R. (1977) 'The Grants Commission and Equalisation Grants', *Publis*, 7, 3, pp. 66–69.

⁵ James, D. (1997) *Federal and State Taxation: A Comparison of the Australian, German and Canadian Systems*, Parliament of Australia Parliamentary Library, 3 November.

In addition to general revenue assistance, determined using fiscal equalisation, Commonwealth funding to the States and Territories also includes National Specific Purpose Payments (NSPPs) and National Partnership Payments (NPPs).

The Intergovernmental Agreement on Federal Financial Relations (the IGA-FFR) sets out the overarching framework for financial transfers or payments between the Commonwealth and the States and Territories and related collaboration on policy development and service delivery.

The current intergovernmental agreement acknowledges that 'coordinated action is necessary to address many of the economic and social challenges which confront the Australian community'.⁶ In particular, the Agreement provides greater incentive for economic and social reform in the form of NPPs to 'support the delivery of specified outputs or projects, to facilitate reforms or to reward those jurisdictions that deliver on nationally significant reforms or service delivery improvements'.⁷

In accordance with the IGA-FFR, Commonwealth funding as it relates to the Australian Capital Territory (ACT)⁸ takes the form of three types of payments:

- **General revenue assistance**—covers a broad range of payments including Goods and Services Tax (GST) payments and general purpose financial assistance payments in respect of municipal services.⁹

Assistance received by the ACT for municipal services is designed to compensate the Territory for extra costs incurred from its role as the National Capital. A single payment—ACT Municipal Services—is made to provide assistance for water and sewage services attributable to the Territory's open space setting and to provide compensation for a number of national capital influences.¹⁰ A key aspect of this payment is to address what is referred to as a 'rating disability' relating to an inability to tax Commonwealth property/institutions within the ACT.¹¹ The 2009–10 payment is estimated at \$35 million.¹²

⁶ COAG. (2009) Intergovernmental Agreement (IGA) on Federal Financial Relations, p. 5.

⁷ COAG. (2009) Intergovernmental Agreement (IGA) on Federal Financial Relations, p. 5.

⁸ ACT Government. (2011) *2011–12 Budget Paper No. 3*, Budget Overview, p. 251.

⁹ ACT Government. (2011) *2011–12 Budget Paper No. 3*, p. 251; Hawke, A. (2011) *Governing the City State—One ACT Government—One ACT Public Service*, ACTPS Final review, February, pp. 49–50.

¹⁰ ACT Government. (2011) *2011–12 Budget Paper No. 3*, p. 251; Federal Financial Relations (General Purpose Financial Assistance) Determination No. 24, March 2011.

¹¹ ACT Government. (2011) *2011–12 Budget Paper No. 3*, p. 251.

¹² Hawke, A. (2011) *Governing the City State—One ACT Government—One ACT Public Service*, ACTPS Final review, February, pp. 49–50.

Further, as part of GST payments, the Territory is subject to a national capital assessment by the Commonwealth Grants Commission (CGC) which determines the impact of the national capital circumstances on the costs of providing services in the ACT. According to the CGC, National Capital Allowances are designed to:

Recognise the unavoidable extra costs incurred by the ACT because of Canberra's status as the national capital or because of legacies inherited from the Commonwealth at self-government.¹³

As part of its 2010 review on GST Revenue Sharing Relativities, the CGC determined that the Territory should continue to receive compensation in the form of national capital allowances for additional costs attributable to the following national capital influences:

- constraints to planning and development arising from the National Capital Plan
- compensation for lack of policy control over the terms and conditions of Australian Federal Police (AFP) officers employed by ACT Policing, and
- higher road maintenance costs attributable to the road infrastructure inherited from the Commonwealth Government at self-government.¹⁴

The Committee understands that a review of the distribution of revenue from the GST to the States was commissioned by the Commonwealth Government in March of this year. The Committee acknowledges that the Review may bring about improvements to the current GST distribution arrangements, in particular its methodology, and looks forward to the release of the Review's interim report which is expected by February 2012.¹⁵

- **National Specific Purpose Payments (NSPPs)**—these payments are considered to be the main mechanism the Commonwealth Government uses 'to help fund, and to pursue its policy objectives in areas that are constitutionally the responsibility of the States'.¹⁶ In the main, payments under these arrangements have been, and are likely to continue, in the areas of health and education.

NSPPs are distributed to the States and Territories on the basis of their population shares, with the exception of the National Schools SPP, which are distributed on the basis of enrolments (with separate arrangements applying for non-government school funding). Notwithstanding this distribution formula, the ACT receives a lower per

¹³ Commonwealth Grants Commission. (2010) *Report on GST Revenue Sharing Relativities—2010 review*, Volume 2—Assessment of State Fixed Capacities, p. 535.

¹⁴ Commonwealth Grants Commission. (2010) *Report on GST Revenue Sharing Relativities—2010 review*, Volume 2—Assessment of State Fixed Capacities, Chapter 26.

¹⁵ ACT Government. (2011) 2011–12 Budget Paper No. 3, p. 263.

¹⁶ Allen Consulting Group (ACG) (2006) *Governments Working Together? Assessing Specific Purpose Payment Arrangements*, Report to the Department of Premier and Cabinet (Victoria), June, p. 1.

capita share of Commonwealth payments with regard to SPPs included in the CGC's assessment. This is one factor that positively influences the ACT's fiscal capacity, in that it was a consideration that contributed to the ACT receiving an above equal per capita amount of GST funding in 2011–12.¹⁷ However, the Committee understands this positive contribution to the ACT's fiscal capacity will change in the future.¹⁸

- **National Partnership Payments (NPPs)**—these payments are provided by the Commonwealth to support the delivery of specified outputs or projects, facilitate reforms, or reward jurisdictions that deliver on nationally significant reforms.¹⁹

The Committee understands that payments under the NSPPs and NPPs (aside from reward and facilitation payments) can influence GST distribution on the basis that they are considered to provide support for state or territory services. However, the Committee notes that the CGC has discretion to determine the treatment of individual payments consistent with fiscal equalisation.²⁰

Australia's taxation system, as compared with other systems in the world, is considered to be a 'comprehensive fiscal equalisation model'. This is on the basis that the CGC considers both the revenue and expenditure sides of the budget equation. Furthermore, as part of the fiscal equalisation process, the more wealthy states are equalised down to a specified standard and the less wealthy states are equalised up to the specified standard.²¹

Notwithstanding the strength of Australia's taxation system, the Committee advances that, in the case of the ACT, the equalisation and compensatory formulas underpinning Commonwealth funding to the Territory do not fully take account of the unique or special circumstances of the ACT. The unique or special circumstances include: (i) Canberra as the national capital coupled with the legacies acquired from the Commonwealth Government at self-government; (ii) national seat of government influences; (iii) restrictions in the *Australian Capital Territory Self-Government Act 1988*; (iv) regional status and cross-border provision of services; and (v) responsibility for city-state elements.

¹⁷ ACT Government. (2011) *2011–12 Budget Paper No. 3*, pp. 262–263.

¹⁸ ACT Government. (2011) *2011–12 Budget Paper No. 3*, p. 263.

¹⁹ Federal Financial relations (National Partnership Payments) Determination No. 31, March 2011.

²⁰ Commonwealth Grants Commission. (2011) *The Australian Framework for federal financial relations*, accessed 29 June 2011, available at:

http://www.cgc.gov.au/publications2/publications/2011_update/2011Update/contents/Navigable_report_pages/9

²¹ James, D. (1997) *Federal and State Taxation: A Comparison of the Australian, German and Canadian Systems*, Parliament of Australia Parliamentary Library, 3 November.

Response to Terms of Reference

T of R (1)

The changing dynamics of grants to States and Territories, the types of grants that are made and the principles, agreements and legislation governing these grants

T of R (2)

The extent to which the current systems for funding agreements satisfy the requirements of all levels of government, and any suggestions for changes to the process

The Committee makes general comment concerning Terms of Reference 1 and 2 in the context that Commonwealth payments to the Territory do not fully compensate it for its unique or special circumstances.

Special circumstances of the Australian Capital Territory

The Committee acknowledges that every jurisdiction can make claims to unique or special economic and demographic factors which can contribute to differences in their respective capacity to raise revenue and influence expenditure and investment requirements.

Notwithstanding this, the Committee is of the view that the unique circumstances of the ACT attributable to: (i) Canberra as the National Capital coupled with the legacies acquired from the Commonwealth Government at self-government; (ii) national seat of government influences; (iii) restrictions in the *Australian Capital Territory Self-Government Act 1988*; (iv) its regional status and cross border provision of services; and (v) its responsibility for city-state elements all contribute to its capacity to raise revenue and influence its expenditure and infrastructure requirements.

A summary of the special circumstances of the ACT include:

Canberra as the national capital coupled with the legacies acquired from the Commonwealth Government at self-government

In the postwar era, prime ministers took seriously the view that the ACT was the seat of national administration and helped the city develop amenities to match that status. There is little sign of the Federal Government doing that for the ACT now.

Indeed, as the legacy of past investments fades and the increased costs of being a seat of government become more evident, the ACT will face an even more difficult future. We are in a unique situation: neither a city (comparisons with city councils that lack health and education responsibilities are misleading) nor a state. We have a Federal Government that insists on being paternalistic without accepting the financial obligations of a parent.²²

As mentioned previously, the ACT receives 'National Capital Allowances' to compensate it for the additional costs it incurs because of its status as the National Capital. The Allowances recognise that the ACT incurs unavoidable costs attributed to its status as the Nation's Capital along with legacies inherited from the Commonwealth Government when the Territory was granted self-government. These legacies include: (i) limitations arising

²² Bartos, S. (2011) 'Change, and patience, will fix out capital', *Public Sector Informant*, April, p. 3.

from the National Capital Plan on some planning and development decisions which can lead to higher costs; and (ii) that the ACT has to use the AFP to provide its policing services.²³

The ACT is the only jurisdiction that the CGC considers to incur such expenses and accordingly, it makes an assessment that redistributes GST to the ACT from the other states for such expenses.²⁴ Notwithstanding this assessment, the Committee believes that a review of the cost recovery mechanisms used to compensate the ACT for national capital influences which have a material effect on the Territory, i.e., impose additional costs, should be carried out.

The Committee notes that the requirement to account for the special circumstances of the ACT attributable to national capital influences is supported by the *Australian Capital Territory Self-Government Act 1988* and the *Commonwealth Grants Commission Act 1973*. The Self-Government Act:

... establishes the intention of the Commonwealth Parliament to avoid the ACT community incurring costs arising from national capital influences. These costs, by implication, should be shared by the entire Australian population. This intent is supported by section 5 of the *Commonwealth Grants Commission Act 1973*.²⁵

The Committee is of the view that the full impact of national capital influences on ACT Government expenditure continues to be underestimated.

The National Capital Authority (NCA) also has an important role to play with regard to maintaining the status of the National Capital. The NCA, established under the *Australian Capital Territory (Planning and Land Management) Act 1988*, is required to:

...ensure that Canberra and the Territory are planned and developed in accordance with their national significance.²⁶

Amongst other functions, a key function of the NCA is to:

...provide an enduring framework to secure the planning and development of Canberra as the capital; to accommodate the Seat of Government and associated national and cultural requirements...²⁷

The Committee notes the statutory role of the NCA in the strategic, planning, promotion, development and enhancement of Canberra as the National Capital has been the subject of a

²³ Commonwealth Grants Commission. (2010) *Report on GST Revenue Sharing Relativities—2010 review*, Volume 2—Assessment of State Fixed Capacities, Chapter 26.

²⁴ Commonwealth Grants Commission. (2010) *Report on GST Revenue Sharing Relativities—2010 review*, Volume 2—Assessment of State Fixed Capacities, Chapter 26.

²⁵ ACT Government. (2008) *Commonwealth Grants Commission 2010 Review—Australian Capital Territory State Visit*, 10–12 June 2008, p. 18.

²⁶ *Australian Capital Territory (Planning and Land Management) Act 1988*.

²⁷ NCA website—http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=131&Itemid=167, accessed 11 July 2011.

number of inquiries and reviews. This has included: (i) the Commonwealth Parliament's Joint Standing Committee on the National Capital and External Territories' report—*The Way Forward—Inquiry into the role of the National Capital Authority* (reported 16 July 2008); and (ii) an independent review underway by Dr Allan Hawke AC examining the roles and responsibilities of the NCA.²⁸ The Review will make recommendations on the future role and responsibilities of the NCA for consideration by the Commonwealth Government and is expected to report by June 2011.

Furthermore, the NCA has been subject to significant funding reductions over the last few years. According to the Chief Executive of the NCA, as reported by the Australian Broadcasting Commission, '...recent budget cuts...have made the working environment difficult at the NCA'.²⁹ One aspect of reduced funding—the imposition of an ongoing efficiency dividend—was examined by the Commonwealth's JCPAA in its inquiry into the efficiency dividend and its impact on small agencies such as the NCA.³⁰ In its submission to that inquiry, the NCA stated:

Because of the statutory responsibilities of the NCA including ongoing maintenance requirements for the management of more than \$670m in national assets, the impact of the ongoing efficiency dividend has proved to be particularly difficult to absorb while costs, and the number and value of assets managed by the NCA continue to increase. This has created an environment where assets cannot be maintained to obviate risk, and where to mitigate risks management is constantly weighing up unplanned versus planned maintenance priorities.³¹

The Committee acknowledges that ongoing funding constraints faced by the NCA have the potential to impact on the Authority's ability to fulfil its statutory responsibilities including that of providing:

...an enduring framework to secure the planning and development of Canberra as the capital; to accommodate the Seat of Government and associated national and cultural requirements...³²

National seat of government influences

National seat of government influences arising from the presence of the Commonwealth Government have material impacts on the Territory's revenue raising capacity.

The Commonwealth Government receives a Constitutional exemption with regard to the payment of state and territory taxes. This general tax exemption has a significant impact on the Territory's economic base.³³ Preliminary estimates suggest that the impact of this

²⁸ Hon. Simon Crean, Minister for Regional Australia, Regional Development and Local Government, Media release: 'Allan Hawke to head review of National Capital Authority', 2 March 2011.

²⁹ Rake, G. (2011), quoted on ABC on-line news, 'Federal government review of the NCA', 2 March.

³⁰ Commonwealth Joint Committee on Public Accounts and Audit (JCPAA). (2008) *The efficiency dividend and small agencies: Size does matter*, report No. 413, December, Parliament of the Commonwealth of Australia, Canberra.

³¹ NCA. (2008) Submission No. 47, Commonwealth Joint Committee on Public Accounts and Audit (JCPAA), Inquiry into the efficiency dividend and small agencies.

³² NCA website—http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=131&Itemid=167, accessed 11 July 2011.

³³ ACT Government (2010) *Time to talk Canberra 2030—who pays?*—<http://www.canberra2030.org.au/>

exemption for the Territory is that 'approximately 25 per cent of Gross Domestic Product (GDP) in the ACT is relatable to the Commonwealth Government and thus is unable to be taxed, whereas in all other States, except the NT, a comparable amount is estimated to be less than 5 per cent of GDP'.³⁴

Furthermore, the Commonwealth Government is the employer of a significant number of employees in the ACT and also owns a large portfolio of non-residential property. The ACT cannot tax either of these. In the case of payroll tax, the Commonwealth Government is exempt. In addition, growth in private sector payrolls between 2006–07 and 2009–10 in the ACT whilst suggesting an increase in private sector employment and a commensurate increase in payroll tax, this gain was conversely offset by the factoring in of this growth as a contribution to the downward revision in GST distribution to the ACT.³⁵

In addition, the presence of the Commonwealth Government also disadvantages the Territory with regard to the collection of duty on insurance revenue from commercial properties as the Commonwealth is an insurer for a material number of commercial buildings in the Territory.³⁶

The limitations to taxation capacity arising from the influence of the Commonwealth Government are significant when considered in the overall context that taxation is a key revenue source, representing approximately 31 per cent of total revenue in the ACT.³⁷

As noted previously, the ACT receives some assistance to help compensate the Territory for the extra costs attributable to national capital influences. This compensation in the form of a single payment—ACT Municipal Services—is provided by the Commonwealth under general revenue assistance. Amongst other things, a key aspect of this payment is to address what is referred to as a 'rating disability' attributable to a large number of Commonwealth institutions within the ACT that cannot be taxed.³⁸

Notwithstanding that the ACT receives compensation, as outlined above, the Committee understands that amounts received are indicative of an amount that would have been received if the ACT had been able to tax the Commonwealth at the standard rate.

³⁴ ACT Government (2010) *Time to talk Canberra 2030—who pays?*—<http://www.canberra2030.org.au/>

³⁵ Commonwealth Grants Commission. (2011) *2011 Update Report*, available at:
http://www.cgc.gov.au/publications2/publications/2011_update/2011Update/contents/Navigable_report_pages/40

³⁶ ACT Government (2010) *Time to talk Canberra 2030—who pays?*—<http://www.canberra2030.org.au/>

³⁷ ACT Government, *Australian Capital Territory Budget: 2010-2011 – Paper No. 2: A Budget for Our Growing City*, May 2010.

³⁸ ACT Government. (2011) *2011–12 Budget Paper No. 3*, p. 251.

Regional status and cross-border provision of services³⁹

Canberra is considered a regional centre within south-eastern New South Wales (NSW), which results in the cross-border provision of services to non-ACT residents. In a practical effect this means that the ACT has an 'economic footprint' that extends beyond its boundaries.

The unique 'economic footprint' attributable to the regional status of the ACT, whilst responsible for some 'beneficial flows' to the Territory, is also responsible for what is referred to as a cross-border demand for services, for example, in the areas of education and health. This cross-border demand is beyond the control of the ACT Government. Whilst some funding is recouped as part of the CGC's processes, the Territory is not fully compensated. This is because fiscal equalisation calculations provide reimbursement for services based on the Australian average coupled with limited availability of data on service use by non-residents.

Some examples of the cost implications for the ACT of the provision of services to non-residents are discussed below.

Cross-border education services

Cross-border education services are provided by the ACT for an estimated 3 451 non-residents. However, this is not accompanied by any associated funding from the NSW Government. Whilst the CGC recognises that additional costs are incurred, providing approximately \$12.3 million in compensation, the ACT has 'identified a net unrecovered cost of around \$11 million for the delivery of schooling to non-ACT residents'.

Furthermore, the impact on ACT costs will continue to grow as the demand for cross-border education services is expected to increase as the region's school age population grows.⁴⁰

Cross-border justice services

There is also some evidence that growth in ACT justice services can be attributed, in part, to use by non-residents. Cross-border access to corrective services, policing and courts has been estimated at a cost of approximately \$20.7 million per annum.⁴¹ To date, the CGC has not made a provision for costs incurred related to cross-border justice services.

³⁹ Hawke, A. (2011) *Governing the City State—One ACT Government – One ACT Public Service*, ACTPS Review Final Report, February; ACT Government (2010) *Time to talk Canberra 2030—who pays?* — <http://www.canberra2030.org.au/>

⁴⁰ ACT Government (2010) *Time to talk Canberra 2030—who pays?* — <http://www.canberra2030.org.au/>; Hawke, A. (2011) *Governing the City State—One ACT Government – One ACT Public Service*, ACTPS Review Final Report, February, pp. 48–49.

⁴¹ Hawke, A. (2011) *Governing the City State—One ACT Government – One ACT Public Service*, ACTPS Review Final Report, February, p. 48.

The rationale for this is that the CGC is of the view that an equal amount of justice services were provided by NSW to ACT residents.⁴²

Cross-border health services

In relation to cross-border health services, the Territory also incurs significant net costs in providing in-patient services for non-residents. Again, whilst some of the net costs incurred are recovered as part of the NSW/ACT Health Agreement, all capital costs are not fully met.⁴³

A key risk for the ACT is that as the population in its surrounding region continues to grow there will be a commensurate increase in the demand for cross-border services. In the absence of full compensation for the costs incurred this demand will continue to place increasing pressure on the Territory. The Committee is of the view that more appropriate compensatory mechanisms need to be developed that fully capture and recoup the costs incurred in the provision of these services.

The Committee notes the comments by Dr Allan Hawke AC, in his report reviewing the ACT Public Service, with regard to cross-border cost recovery:

...achieving full cost recovery through the equalisation processes pursued by the CGC is almost impossible...⁴⁴

Responsibility for city-state elements

The ACT is a unique jurisdiction, in that the ACT Government is charged with the management of state and territory responsibilities, as well as local government responsibilities. As its administrative structure combines municipal and state functions, the ACT Government is thus responsible for local government non-commercial infrastructure and services.

Financial assistance grants to local governments for specific purposes and services are available under the *Local Government (Financial Assistance) Act 1995*. The grants are distributed among jurisdictions on a per capita basis. Financial assistance grants, however, can only be paid to those jurisdictions that have established local government grant commissions. In the ACT, local government responsibilities are integrated within the ACT Government and there is no role for a grants commission.⁴⁵

⁴² ACT Government (2010) *Time to talk Canberra 2030—who pays?* —<http://www.canberra2030.org.au/>; Hawke, A. (2011) *Governing the City State—One ACT Government – One ACT Public Service*, ACTPS Review Final Report, February, pp. 48–49.

⁴³ ACT Government (2010) *Time to talk Canberra 2030—who pays?* —<http://www.canberra2030.org.au/>; Hawke, A. (2011) *Governing the City State—One ACT Government – One ACT Public Service*, ACTPS Review Final Report, February, pp. 48–49.

⁴⁴ Hawke, A. (2011) *Governing the City State—One ACT Government – One ACT Public Service*, ACTPS Review Final Report, February, p. 48.

⁴⁵ Australian Government—Department of Infrastructure, Transport, Regional Development and Local Government. (2010) *2007–08 Local Government National Report*, pp. 30; 37.

Some argue that the inability of the ACT Government to access financial assistance grants for local government purposes and services, as compared with other jurisdictions, disadvantages the ACT.

As mentioned previously, under general revenue assistance, the ACT receives a payment for municipal services. However, this payment whilst having coverage for municipal type services is primarily to compensate the Territory for the extra cost incurred from its role as the National Capital. A single payment—ACT Municipal Services—is made to provide assistance for water and sewage services attributable to the Territory's open space setting and to provide compensation for a number of national capital influences. A key aspect of this payment is to address what is referred to as a 'rating disability' related to a significant number of Commonwealth institutions within the ACT that cannot be taxed.⁴⁶ The 2009–10 payment is estimated at \$35 million.⁴⁷

Committee comment

The Committee notes that the CGC's assessment indicates that the ACT's expenditure needs are below national average by approximately \$210 per person. However, in 2010–11, the ACT Government's recurrent expenditure was estimated to be 27 per cent above its assessed level of need.⁴⁸ In practice, this disparity in assessment means the ACT receives compensation through the CGC process that does not reflect the costs incurred by the Territory to deliver services and required infrastructure.⁴⁹

T of R (3)

The need to balance the flexibility to allow States and Territories to determine their own priorities with mechanisms for monitoring accountability and ensuring that the objectives of funding agreements are being achieved, noting the role of the COAG Reform Council.

The submission to the Inquiry from the Gilbert + Tobin Centre of Public Law at the University of New South Wales (UNSW) noted:

...concerns expressed by others that the proliferation of the more prescriptive National Partnership Payments has increased Commonwealth influence at the expense of State flexibility, contrary to the spirit of the National Agreements.⁵⁰

In the spirit of this observation, the Committee makes general comment with regard to T of R (3) in the context of reform to the National SPPs. A review of these payment arrangements in 2006 recommended that the whole structure in which SPP funds are provided should be reformed. This was on the basis that the SPP arrangements:

⁴⁶ ACT Government. (2011) *2011–12 Budget Paper No. 3*, p. 251.

⁴⁷ Hawke, A. (2011) *Governing the City State—One ACT Government – One ACT Public Service*, ACTPS Review Final Report, February, p. 50.

⁴⁸ ACT Government, *ACT Budget Consultation: 2010-11*, 2009, p. 59.

⁴⁹ ACT Government. (2010) *Time to talk Canberra 2030—who pays?*—<http://www.canberra2030.org.au/>

⁵⁰ Gilbert+Tobin Centre of Public Law, University of NSW, Submission No. 2, JCPAA Inquiry into National Funding Agreements, 7 April 2011.

- rather than focusing on achieving agreed outcomes, in many cases were concerned with inputs and bureaucratic administrative processes or controls
- were characteristically burdensome and hindered efficiency
- have generated tension between governments instead of promoting collaboration or partnership, and
- have limited incentives or structured focus for driving improvement.⁵¹

Any reform to the structure of SPP arrangements that would improve their focus on outcomes, broaden the scope of the delivery services in diverse and innovative ways, and promote collaboration and partnership, is supported by the Committee.

The Committee notes the finding of the Joint Committee on Public Accounts in its report on the *Administration of Specific Purpose Payments: A Focus on Outcomes* emphasising the importance of an outcome focus for SPP arrangements, in that the Commonwealth:

...should progressively disengage from SPP micro-management, leaving this task to State governments and the other non-Commonwealth parties to SPP arrangements. Primary accountability to the Commonwealth should increasingly be for outcomes achieved rather than for inputs and processes. In turn, this will require the state governments and non-Commonwealth parties to justify expenditure of Commonwealth funds in terms of their performance towards agreed objectives.⁵²

The National Commission of Audit in 1996 was of a similar view to the JCPA and recommended the establishment of best practice—'outcome focused' and 'input efficient' arrangements for SPPs within a performance management framework.⁵³

The Committee is aware that the Council of Australian Government (COAG) Reform Council has had an evolving role with regard to assessing and reporting on the performance of governments party to Commonwealth funding agreements. A new iteration of the Council's role in assessment and reporting on performance was articulated in the COAG communiqués of 26 March 2008 and 3 July 2008 and is prescribed in the IGA-FFR (2009).⁵⁴ The enhanced role aligns with one of the key objectives of the IGA-FFR framework, that of enhancing:

...public accountability through simpler, standardised and more transparent performance reporting by all jurisdictions with a focus on the achievement of outcomes, efficient service delivery and timely public reporting.⁵⁵

⁵¹ Allen Consulting Group (ACG) (2006) *Governments Working Together? Assessing Specific Purpose Payment Arrangements*, Report to the Department of Premier and Cabinet (Victoria), June, pp. 1–6; 19–24; National Commission of Audit. (1996) *Report to the Commonwealth Government*, AGPS, Canberra, pp. x–xi; Joint Committee of Public Accounts (1995), *The Administration of Specific Purpose Payments: A Focus on Outcomes*, Parliament of the Commonwealth of Australia, Report No. 342, November.

⁵² Joint Committee of Public Accounts. (1995) *The Administration of Specific Purpose Payments: A Focus on Outcomes*, Parliament of the Commonwealth of Australia, Report No. 342, November, pp. xi–xii.

⁵³ National Commission of Audit. (1996) *Report to the Commonwealth Government*, AGPS, Canberra, pp. xv.

⁵⁴ COAG Reform Council. (2010) Charter, 30 June, pp. 1–19.

⁵⁵ COAG. (2009) Intergovernmental Agreement on Federal Financial Relations.

The Committee acknowledges that it is not in a position to comment on whether the COAG Reform Council's enhanced role may have addressed some of the issues outlined previously in this section concerning flexibility for state and territory stakeholders and assessment and reporting on performance under funding agreements.

T of R (4) – *The adequacy of parliamentary scrutiny of funding agreements, noting that such agreements are typically negotiated at executive-to-executive level.*

The Committee is of the view that the current level of scrutiny of funding agreements do not provide for adequate parliamentary scrutiny. In the case of agreements by COAG, there is no requirement that they be provided to Parliament. Whilst they may become the subject of committee inquiries or parliamentary questions, for example, during estimates hearings, there is no requirement that they be routinely examined by Parliament.

This situation could be regarded as contrary to the notion of responsible government. Where Commonwealth, State and Territory heads determine and agree to joint action that affects the residents of their respective jurisdictions, such agreements should be tabled in Parliament. Furthermore, significant agreements should be referred to appropriate parliamentary standing committees in each jurisdiction for review. This would enhance transparency and accountability along with a more comprehensive approach to COAG's decision making.

The Committee notes the suggestions to address shortcomings in parliamentary scrutiny as submitted to the Inquiry by the Gilbert + Tobin Centre of Public Law at the UNSW.⁵⁶ These suggestions included:

- that a complete register of funding agreements be publicly available
- that all funding agreements be tabled in parliaments of affected jurisdictions, and
- reference of funding agreements to joint parliamentary committees for review and report.

The Committee is aware that the sixth ACT Legislative Assembly's Standing Committee on Planning and Environment recommended in 2008 that there be dual sittings of parliamentary standing committees, in that Territory committees should sit with their Federal counterparts where there are issues of common interest and importance.⁵⁷ This recommendation may merit further exploration, in addition to the suggestions for reform as outlined above, by the Gilbert + Tobin Centre of Public Law at the UNSW, as a means for improving or enhancing parliamentary scrutiny of national funding agreements.

⁵⁶ Gilbert+Tobin Centre of Public Law, University of NSW, Submission No. 2, JCPAA Inquiry into National Funding Agreements, 7 April 2011.

⁵⁷ ACT Legislative Assembly. (2009) 20th Anniversary of Self-Government in the Australian Capital Territory (10–12 May 2009), Transcript of proceedings, pp. 67–68.