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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Monday, 21 June 2004

Members: Mr Charles (*Chair*), Ms Plibersek (*Deputy Chairman*), Senators Hogg, Humphries, Moore, Murray, Scullion and Watson and Mr Ciobo, Mr Cobb, Mr Georgiou, Ms Grierson, Mr Griffin, Ms Catherine King, Mr Peter King and Mr Somlyay

Senators and members in attendance: Senaotr Watson and Mr Charles, Ms Grierson and Ms Plibersek

Terms of reference for the inquiry:

Review of Auditor-General's report, second quarter 2003-2004.

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Committee met at 10.53 a.m.

ANDERSON, Mr David Ronald, First Assistant Secretary, Corporate Strategies Division, Department of the Environment and Heritage

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HUTSON, Mr Jonathan, Division Manager, Financial Framework Division, Department of Finance and Administration

MURCUTT, Mr Tony, Chief Financial Officer, Department of the Treasury

CHAIRMAN—I declare open today's public hearing, which is the sixth in a series of hearings to examine reports tabled by the Auditor-General in the financial year 2003-04. This morning we will be taking evidence on Audit report No. 24 *Agency Management of Special Accounts*. We will be running today's session using a roundtable format. I ask participants to observe strictly a number of procedural rules. First, only members of the committee may put questions to witnesses if this hearing is to constitute formal proceedings of the parliament and attract parliamentary privilege. If other participants wish to raise issues for discussion, I ask them to direct their comments to me and the committee will decide if it wishes to pursue the matter. It will not be possible for participants directly to respond to each other.

Second, given the length of the program, statements and comments by witnesses should be relevant and succinct—and I emphasise the second word. Third, I remind witnesses that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the house itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Evidence given today will be recorded by Hansard and will attract parliamentary privilege. The evidence given today will be recorded by Hansard and will attract parliamentary privilege.

Finally, I refer any members of the press who are present to the committee statement about the broadcasting of proceedings. In particular I draw the media's attention to the need to report fairly and accurately the proceedings of the committee. Copies of the committee statement are available for secretariat staff.

Welcome to representatives of the Australian National Audit Office, the Department of Finance and Administration, the Department of Transport and Regional Services, the Department of Environment and Heritage, the Department of Agriculture, Fisheries and Forestry, the Department of the Treasury, the Department of Communications, Information Technology and the Arts to today's hearing. Thank you for coming to this hearing and for providing the information for us as we requested. Do any of you have an extremely brief opening statement? If not, we will proceed to questions. This audit report took place at about the same time our public hearings took place into the draft Financial Framework Legislation Amendment Bill, which we tabled in August 2003. This audit report was tabled in January 2004. I have a question for finance. I understand that when we did that work on the draft report that it was pretty unique. Nobody can remember whenever before this committee was asked to work on a draft bill. Where is the legislation?

Mr Hutson—The legislation is very close to nearing finality. It is getting ready for introduction into the parliament. It has taken longer than we anticipated.

CHAIRMAN—Would you like to tell me how our recommendations fared?

Mr Hutson—I understand that the minister wrote to you last Friday and indicated that the government had agreed to all of the report's recommendations apart from recommendation 2, which is the recommendation about the appropriate title of special accounts.

CHAIRMAN—That is a shame. Having said that, would you tell me why our recommendation 2 was not accepted?

Mr Hutson—I will read from bits of the minister's letter, which explained the rationale. The letter states that it was the government's view that it was important to maintain stability and to avoid frequent changes to the financial framework that do not significantly contribute to the improvement of the framework. While it supported clarifying the role and operation of special accounts, its view was that a change of name would not necessarily contribute to that outcome.

CHAIRMAN—It is my understanding that this audit report came to a view that, once the FMA Act came into existence on 1 January 1998, along with the CAC Act, the Auditor-General Act and revisions of our act, Finance and Treasury lost their central oversight of what we now call special accounts. What we have had is a hodgepodge of legal and accounting adherence to

the requirements of special accounts—whether they are simply accounts established by legislation representing a hypothecation of some funding or whether they are really trust accounts. I understand that some of the existing special accounts are trust accounts. Could each of the groups please tell us if they have done anything at all to try to regularise their use of special accounts to make sure that, firstly, you do not establish special accounts just as a slush fund and, secondly, that you account for them properly in both an administrative and accounting sense. We will start with Fisheries and Forestry and go around the table.

Mr Gaukroger—In terms of regularising the use of special accounts, we have a central area in the department where any part of the organisation that wishes to set up a special account has to go through that bidding process to start with. We look at whether there is a real need for the special account and whether there are any other appropriate mechanisms that might suffice instead. Following that, we would make representations to the Department of Finance and Administration, applying for it if it is under section 20 of the FMA Act or if it is actually specific legislation—which we have not had any of for some time.

In terms of whether the existing ones are still appropriate, we have a register set up that is part of the audit that was completed last year. We have that in place now. We look at that every 12 months to make sure, one, that the legislation is valid and, two, to determine whether there is still a need for the ongoing use of that special account. We have documented policies and procedures in relation to our special accounts to ensure that people are aware of what their responsibilities are in administering special accounts and to ensure that chief executive instructions are put in, such as the payment of claims, the appropriation framework and the like. We do acknowledge the importance of ensuring the proper administration of special accounts and we have taken those steps to do that.

Mr Hutson—I will speak about the overall monitoring of special accounts more broadly. We provided a submission to this inquiry which set out some of the steps which Finance have taken, including providing comprehensive guidelines for agencies to manage special accounts. We have increased the transparency by requiring them to be reported in portfolio budget statements and also in the agency financial statements. In addition, we are now reporting a complete list of all the special accounts in the consolidated financial statements. So it is a whole of government approach.

Mr Anderson—The majority of our accounts are set up by legislation. The largest item is the Natural Heritage Trust, so it is underpinned by legislation. As a consequence of the audit we have had a fundamental look at our procedures, tightened up our chief executive instructions and looked at the way we report in terms of financial statements and annual reporting. So we have used that report as a catalyst to have a fundamental look at our procedures and at the essential nature of the trust accounts that we have.

Mr Chandler—Our special accounts are similarly legislatively based. They are created under special appropriations rather than under the FMA Act, with the exception of the other trust moneys account. We have reviewed the operation of the accounts since the audit. The issues that were identified in the audit in relation to the ALTD account and the Rural Transaction Centres account were important but nevertheless of a minor technical nature and corrective action has been taken with respect to both of those accounts and were identified in the financial statements

at the end of last year. We are keeping those accounts under review as part of the annual financial statements process.

Mr Murcutt—We have centralised the function of all special accounts; they are all agreed and approved in one area. Our chief executive instructions, CEIs, have been updated to reflect all the items addressed in the report. All staff have been made aware of all the responsibilities under the CEIs and we are making sure everything works well from now on.

Ms Holthuyzen—Similarly to others, we have looked at these issues since the report. The budgets and finance area oversights that the CEIs have the procedural rules in them and we obviously consult DOFA. We have a mixture of legislative accounts and others. We have a special register of our special accounts, we have separate general ledgers for each of the accounts and we have internal management procedures whereby internal monthly reconciliations are done by divisions and we review all of those quarterly.

CHAIRMAN—Mr Cochrane, you have heard the responses of the departments around the table. Considering the fact that in your report you made 13 recommendations, do you have enough current knowledge to be satisfied that the departments are getting better in terms of: (1) their understanding of their requirements; and (2), their administration—financial as well as practical—of the moneys associated with special accounts?

Mr Cochrane—The first point is that most agencies were very responsive to us during the audit, recognising that they had some problems and issues. They focused on what needed to be done to correct the problems that we had noted during the audit. So I am fairly confident that, as a result, the errors noted there were corrected. Additionally, the action by Finance has been important to the ongoing administration in terms of now producing a list of special accounts and keeping it up to date and producing the special account guidelines. Currently, we are in the process of doing the financial statement audits for 30 June. During that process we will have a better view of whether some of the changes are being sustained in the administration of those accounts. It will only be over a short period of time that we can ascertain whether there is enough retention of that corporate knowledge and retention of the skills to ensure that these accounts are being administered properly. We will certainly be encouraging that and looking for that in our continuing financial statement audit processes.

CHAIRMAN—I do not know who to ask this. I suppose Finance will do. A cynical person may well ask if special accounts, other than those that are genuine trust accounts—that is a category that I think all of us around this table accept have a legitimate purpose—could in fact just be slush funds to allow government to spend money without the appropriate accountability checks and balances. It is a big question.

Mr Hutson—That is a fair question, which you will not be surprised I answer in the negative. I do not think that is a correct characterisation of special accounts at all. Special accounts are established as an hypothecation of the consolidated revenue fund. They provide a mechanism by which, within the very tight constraints of the purposes for which those accounts are established, money can be set aside, if you like, for those particular purposes. That is particularly important when governments across financial years or across jurisdictions want to be able to demonstrate that funds are being set aside for those purposes and are not being sent off for other purposes.

A good example would be a type of special account, which is not uncommon, where both states and the Commonwealth contribute funds to that account for the purposes of whatever the states and the Commonwealth have agreed. That money is then hypothecated and is then available for that purpose. That gives the states some confidence as they are paying the funds to the Commonwealth that those funds are going to be used for that purpose and are not going to be diverted to some other purpose. I think the term slush fund is unfortunate and very much an incorrect characterisation of special accounts, because the purpose of the special accounts is what is important and keeping those defined rather tightly is important.

One of the things the audit found is that there is some uncertainty regarding some of the purposes of special accounts. We are now moving to go through a review of the special accounts themselves to make sure that those purposes are appropriately tightly defined. One finding that they made a recommendation on concerned the property special account of finance. At the moment, there is a determination before the parliament during this disallowance period which really tightens that up, makes it pretty clear and makes sure that the funds which are being drawn from that account are in fact appropriately designated.

Senator WATSON—I cannot accept the fact that balances have been understated for quite some time due to the fact that credits have not been recorded and reported. Surely there must be a financial requirement that, when moneys come out of a consolidated revenue fund or are appropriated by the parliament, somebody must have an authority to provide a record of transaction of that amount of money. If there was a record of transaction provided by the issuing person, whether it be the Commonwealth through consolidated revenue or whether it be a state, there should be a transaction record of an amount that is put into a special account. This does not appear to be the case.

As an accountant, I cannot believe that moneys are transferred without a letter, without an advice or without some sort of record being made. We have a situation where the audit department have found that credits have not been recorded. Obviously, this is a matter of fundamental accounting. Because parliament has passed an act, you automatically send across an amount of money without somebody providing an advice of that happening. I cannot believe that that has happened and I do not think it spells well either for the Treasury or for Finance. To say you did not have that authority to keep a track of it is, as far as I am concerned, just unacceptable. Are there moneys being put into special accounts without any transaction authority, without any letter or without any sort of documentation? What is Treasury there for? What is the Department of Finance and administration there for?

Mr Hutson—There are two things potentially happening here. The first is that special accounts do not of themselves refer specifically to cash. A special account does not have to be matched by cash. It is an appropriation authorisation rather than a matching of cash. I want to separate those two issues.

Senator WATSON—There must be a piece of paper going from one person to another with regard to the cash to record the event. It does not seem to make sense to me.

Mr Hutson—With regard to the reporting and recording of the special accounts themselves, the responsibility for that clearly rests with agencies. The Audit Office found that it was a primary responsibility of agencies to appropriately record that.

Senator WATSON—It is all very well to blame the agency but not if the agency is not told what is happening by something that is not even cash. It is all very well to say the agency should know. There has to be some sort of advice with regard to that transaction or that authorisation so that you have an audit trail. I cannot see how you can blame the agency itself.

Mr Culhane—These accounts are ledgers. In respect of the underreporting of balances in those ledgers I suspect that, in the gross majority of cases, there was not necessarily any financial transaction that took place to record it. All there was to record it was a law or a piece of legislation that said an account would be credited by, say, \$70 million. That law was not recorded administratively correctly in the ledger. There was no flow of financial money there to record.

Senator WATSON—But Treasury or somebody in authority must have overall responsibility for ensuring the legislative intent. Obviously, if you have an agency out in the backblocks you cannot really expect it to know the intricacies. There must be some sort of advice that flows from a central authority, be it Treasury or Finance, to say, ‘This is what the parliament has authorised and this is what will happen in terms of the sequence of events.’ I just cannot accept that there has been no flow of advice from a central coordinating authority. And if that is the case, we will have to change it and make sure it is changed pretty quickly. I think it is a reflection of a lack of accountability by the central coordinating authority. Let us have an answer to it.

CHAIRMAN—Mr Cochrane, could you answer the senator’s question in terms of your knowledge of the FMA Act.

Mr Cochrane—Basically, it goes back to the fact that the accountability, requirement and responsibility for keeping the accounting record have been delegated to the agency. That is the existing system.

Senator WATSON—Obviously, there is a flaw in it.

Mr Cochrane—The agency is responsible for administering the legislation that it has been given responsibility to administer.

Senator WATSON—But how would the agency automatically know the timing of those advices? They are getting, effectively, a double drawing.

Mr Cochrane—It is usually specified in the act when it is an automatic transfer.

Mr Hutson—I will talk about specific examples. You referred to a particular piece of legislation that provided authorisation for the special account to be credited with money. That legislation is not Finance’s legislation. That legislation is legislation which is introduced and marshalled. The responsibility for that legislation clearly falls to the agency concerned with that portfolio. Finance’s obligations relate to the financial legislation of the Commonwealth. But there are of course a very large number of pieces of legislation that have financial consequences, including this particular one, which has resulted in some confusion to the agency concerned about how the funds should be appropriately credited.

Ms PLIBERSEK—I have a question for Environment. The \$485 million mistake in the Natural Heritage Trust: do you think that would have been picked up without this audit?

Mr Anderson—That is a good question. Certainly, for a number of years we have been crediting interest and the second tranche of Telstra—the \$250 million—was credited. We assumed at the time that we needed an annual appropriation to give effect to that. We did not appreciate that the legislation in effect was self-executing. The Department of Finance and Administration facilitated the annual appropriation and the certifying officers in the ANAO certified our statements for those years. So we all, I think, shared the assumption that we did need annual appropriation. Clearly, that has been pointed out to us and, as a consequence of that, we have tightened up our procedures. We have a better understanding with Finance in terms of the way these things will work in the future.

Ms PLIBERSEK—But do you think the mistake would have been picked up without the audit?

Mr Anderson—We have a range of internal audits. It may well have been. We had to go back and look at the parent legislation and we had to get some very detailed legal advice from AGS.

Ms PLIBERSEK—Would you normally, in the course of your annual preparation of financial statements and so on, go back to legislation in the way that you had to in order to establish that an error had occurred here? Would you normally go back to the legislation in that way?

Mr Anderson—Not unless there was a particular need to do so. The legislation is enacted and, as a consequence, actions flow from that. You obviously go back to the legislation from time to time. In this case, where they were getting interest credited each year, that in a sense is a fairly routine process. The problem related to how it was being appropriated. We do have rigorous internal auditing. We have the Audit Office certify the accounts, so it is very hard for me to speculate on your question as to whether we would have picked it up.

Ms PLIBERSEK—Do you think there was a possibility that you would have spent it all?

Mr Anderson—We did not spend any of it.

Ms PLIBERSEK—But do you think there is a possibility that you would have?

Mr Anderson—No.

Ms PLIBERSEK—You think you would have picked it up before you spent it?

Mr Anderson—We did not know we had it so it would have been hard to spend it.

Senator WATSON—But didn't you say that Finance certified your accounts?

Mr Anderson—No, the Audit Office certified our accounts for a number of years.

Senator WATSON—And didn't pick this up?

Mr Anderson—Not the certifying officer. It was picked up through this special audit.

Senator WATSON—What role did Finance have? None?

Mr Hutson—We do not audit the accounts, Senator.

Senator WATSON—But have you just entirely wiped your hands of special accounts of other departments?

CHAIRMAN—What about the FMA Act?

Mr Hutson—That is not a correct characterisation at all. The fundamental recording of special accounts is primarily a responsibility of agencies. It is certainly not true to say that Finance has wiped its hands of special accounts. Our role is one of maintaining the financial framework and ensuring that agencies properly understand and implement that framework. This report and indeed the joint committee's report on the draft financial framework legislation amendment bill both highlighted that there were some issues there that needed to be addressed. As I said, we have done a whole bunch of different things to enhance the framework across agencies. We have not only produced our guidelines but also now we are putting the special accounts into the consolidated financial statements. We have required agencies to report their special accounts in their portfolio budget statements. These sorts of measures are aimed at ensuring that special accounts are given the proper attention that they require.

Senator WATSON—What is the nature of that reporting? Is there a minimum amount of information that must be in the annual report?

Mr Hutson—There has to be a summary of the transactions on the special account, whether there were any or not. So even if the special account started and finished the year with a zero balance and with no transactions in the middle, it must be reported in the annual report.

Ms PLIBERSEK—You did have an appropriation that you got through the parliament and you had the automatic appropriation that was in the legislation. So technically you could have spent the money twice.

Mr Anderson—No. There were a number of different ways in which the account was credited. One was through the self-executing principle which really allowed for the interest to come forward, but there was also a top-up from a parliamentary appropriation. That will vary each year, and that is in addition. You have the initial investment into the trust account, you have annual interest that is invested, and from time to time the government appropriates additional funds—we get top-up money to keep the account at a certain level.

Ms PLIBERSEK—I have obviously misunderstood the report because I thought the point in the report was that there was the automatic legislative money that you got—

Mr Anderson—That is right.

Ms PLIBERSEK—and then you went back to the parliament and asked for that money again. Is that what happened?

Mr Anderson—No, I was trying to explain—

Ms PLIBERSEK—That is correct, is it?

Mr Boyd—That is correct in relation to Telstra 2 money, yes.

Mr Anderson—In addition to that there is an annual appropriation that puts additional money into the account.

Ms PLIBERSEK—But in relation to this T2 money, you got it once automatically and then you asked for it again because you did not know you were getting it automatically.

Mr Anderson—That is correct.

Ms PLIBERSEK—And the parliament has approved both of those lots of money?

Mr Anderson—It approved the annual appropriation through the budget process. The earlier amount was self-executing, so it was there since the original legislation.

Ms PLIBERSEK—So you could have spent them both quite legally with the permission of the parliament but you did not know you had two lots of money?

Mr Anderson—Correct. When we discovered that through this audit, we then debited the account. We recognised those additional credits for the first time and then debited the account. In terms of actual cash, there was no budget impact on that trust account.

CHAIRMAN—Just to follow up on that, our recommendation No. 1 said:

A determination of the Finance Minister establishing a Special Account should include a reference to amounts that are allowed or required to be debited from a Special Account and this reference should be linked to the reference to the purposes of the Special Account.

Would that have helped fix your problem from day one?

Mr Anderson—This account was not established by ministerial determination; it was established by legislation. So it is a little different to an account established by a ministerial determination. But certainly any guidance would have been useful. There is no doubt about that.

Ms GRIERSON—In this audit, the Audit Office identified 19 instances in 13 agencies where the agency had transacted on a special account when no special account actually existed. We all know that it is required by parliament to be set up legally et cetera. Fortunately, a legal opinion was obtained that said that, as long as there was a specific appropriation for that specific purpose, it would not be a breach of the Constitution—thank goodness. However, in one instance—the Federal Magistrate Service litigants trust account—there was no special appropriation for that special purpose and \$130,000 had been transacted. Could Finance tell me what the current situation is regarding that—that is, how that has been sorted out or if that has been sorted out?

Mr Culhane—One of the determinations before parliament at the moment is to establish a litigants fund special account in relation to that court. That will provide the necessary appropriation authority going forward for the correct treatment.

Ms GRIERSON—So we are reverse-legislating for something that has occurred? Is that right?

Mr Culhane—No, I do not think that is correct. It will not have effect retrospectively and it will not affect transactions that have gone on in the past.

Ms GRIERSON—But those transactions were illegal, basically.

Mr Culhane—Sorry?

Ms GRIERSON—The transactions that have gone on really were illegal—a breach of the Constitution—because there was no specific allocation for that expenditure and it was transacted out of a special account which had not been legally set up.

Mr Culhane—I do not have that legal advice in front of me, but it is possibly the case.

Ms GRIERSON—According to legal advice, section 83 of the Constitution is not breached where payments purportedly made from a nonexistent special account could have been legitimately recorded against another valid appropriation. However, in the case of this litigants trust account not only was there a nonexistent special account but also there had not been an appropriation made for that purpose. So basically you are telling me that there will be legislation to cover it retrospectively?

Mr Culhane—There will be a special account established through a legislative instrument to cover it going forward. Looking back, the fact that it may not have been done with a proper appropriation authority does not necessitate that corrective action need take place.

Ms GRIERSON—I am not sure that that is so. Of the other 13 agencies, would anyone else like to comment on how that could have occurred in your department. You must have paper-trailed that a little bit, I would think. How did a nonexistent special account get set up?

Mr Hutson—With respect to the particular issue that you raise, this is a matter that is also the subject of a recommendation in the audit report, so I just want to focus on it a little bit. What was happening with that particular Federal Magistrates Service was that the money was essentially being treated as trust money. There was a view that trust money was not part of consolidated revenue fund and therefore expenditure of trust money did not require an appropriation because it was never part of the Treasury of the Commonwealth, which is what is required by section 83. That was a view that was held. This issue clearly caused us to look at this a lot more closely, and we obtained legal advice in September 2003. That is partly detailed in the audit report on page 81.

Again, following the recommendations of the audit report, we have come to the conclusion that the better view is that we should treat trust money as if it were part of consolidated revenue. We have had further legal advice since this. Our decision is that that is the better view. Rather

than trying to decide whether some money received by the Commonwealth goes into consolidated revenue and some does not, we are going to form the view that essentially all money received by the Commonwealth does go into consolidated revenue. Therefore, an appropriation is required. For that reason, we are creating these new special accounts in the court system to put the matter beyond any doubt. It is not a concluded view that trust money was previously part of consolidated revenue and therefore always did require an appropriation. We are taking an abundance of caution and a conservative approach and, as I said, forming the better view that even money held by the Commonwealth in trust is part of consolidated revenue and therefore does require an appropriation to be properly authorised by parliament.

Ms GRIERSON—Good. Would any of the departments like to comment on how their specific instance of a nonexistent special account came into existence and what they have done to make sure that does not happen again? We might start with two that were rather large. I think half-a-billion dollars of money had been transacted in one of them. I know the money was there for another purpose. Was that fisheries' strategic ballast water research and development account?

Mr Gaukroger—Yes, that is correct. That was a special account that was accidentally repealed; there was a defect in the enabling legislation three years ago. A certain amount of levies were collected for the operation of R&D activities for ballast water. When the levy's limit had been reached, that accidentally repealed the operation of the special account. In all other respects the special account had operated correctly with payments being made on specific activities. There was an industry consultative committee set up but we did not have the underpinning legislation to operate that particular special account.

In relation to the second part of your question, since then we have undertaken a review of all our special accounts to ensure that we had valid enabling legislation in place—and that was the case. We have a register set up of our special accounts, and they get reviewed every 12 months to ensure that it never happens again.

Ms GRIERSON—Can everybody assure this audit committee that this will not happen again—that a special account will not be transacted where it does not actually exist? Are you confident that your procedures now will make sure that no-one will assume that an account is there and start using it?

Mr Anderson—That is not an issue for our department.

Ms GRIERSON—All right—we hope so. Audit Office, you heard that.

Mr Hutson—I would like to add to that answer more generally. Finance now does two things that are relevant to all of this. We now have a register of special accounts and we also publish each year in the consolidated financial statements a complete list of those special accounts. The consolidated financial statements are audited. I am almost certain that the Audit Office would match the list in the consolidated financial statements against the special accounts they see in agencies' portfolio budget statements and annual reports.

Senator WATSON—That should be a function of Finance. The prime authority for checking should not be Audit; it should be Finance.

Mr Hutson—You are right. The prime authority for making sure the consolidated financial statements, as we prepare them, are correct does rest with Finance, but the assurance is that the Audit Office has audited those accounts.

Ms GRIERSON—I guess the matter of drawing rights is different in every department. Is that right? Does every department decide the drawing rights on the special accounts, or is there some framework that should always be—

Mr Boyd—The authority is delegated to each chief executive officer and they then subdelegate it.

Ms GRIERSON—Right. So each department would be different.

Mr Boyd—Not necessarily.

Ms GRIERSON—Not necessarily. Have drawing rights been extended where they should not have been? Do you think that has caused some of this problem? Does it make operation more difficult if you do not have that delegation? I would imagine it does. What has happened? Perhaps the finance people can answer first. Have you reviewed aspects of who actually managed those accounts and therefore were responsible, I suppose, in terms of drawing on those accounts?

Mr Culhane—We have reviewed the issue of drawing rights broadly and issued some guidance early this year to agencies in terms of explaining a little bit more about the drawing rights framework as provided for by the FMA Act. As Mr Boyd said, the power to issue drawing rights has been delegated from the minister for finance to the chief executives of each agency. They are the appropriate people to determine who in their agency has the power to draw on any given appropriation, including the appropriations that support special accounts.

Some agencies might want to hold that very closely; other agencies might want to do it in a more devolved framework. In part, it depends on the nature of the agency itself—whether it is a small agency or a large agency; how geographically dispersed it is. There are a whole range of factors. So it is not really possible for finance to review who in an agency has drawing rights in relation to a particular special account and nor is it our responsibility. The chief executive has the primary responsibility for the financial management and for managing that in a way that they see fit.

Ms GRIERSON—Did you form a view as to whether it needed tightening up and whether it had become too loose or had devolved too far?

Mr Culhane—We did not form a view, no.

Ms GRIERSON—Okay. In some cases, negative account balances arose because of the incorrect use of these accounts. One of those was with the Department of Communications, Information Technology and the Arts. Could that department please tell us what progress they have made in making sure a negative special account balance does not arise again?

Ms Holthuyzen—Sorry, could you repeat the question?

Ms GRIERSON—Yes. In the instance of CITA there was an account in negative balance. It was actually in deficit. Obviously, that has had to be resolved. Sometimes we know that what goes in one comes out of another. But what progress have you made in implementing some steps to make sure that does not happen again?

Ms Holthuyzen—The reason that happened is that the revenue goes into the account from carriers. The NRS is a national rely service for the hearing impaired and carriers fund the payment of the service. But the service is provided by the department under contract. The reason that the balance went into negative was that payments were made out to the service provider and, although the department was aware that the payments were coming in, the payments had not come in. In any instance there was only one to four days between the day the department expected the payment to come in and it coming in. The payment had to be made to the service provider, so—

Ms GRIERSON—So the appropriation was made annually but did not come annually into your budget?

Ms Holthuyzen—No, there was no appropriation from the parliament. The appropriation came from telecommunications carriers. The department had a contract with the service provider who was providing the service. The payment into the account came from carriers. They are levied under some legislation. Because we are under a contract to the service provider to make the payments, when we were aware that the payments were coming then the payments were made. But in a few instances there was a few days gap between the payment actually arriving in the account and us making the payment. It arrived after we had made the payment to the service provider.

Ms GRIERSON—So what change has been made?

Ms Holthuyzen—Certainly now those accounts are blocked by the finance and budgets area so no payments can actually be made out of those accounts unless the payments are released. Secondly, we have made some changes to the contractual arrangements with the service provider which basically say that we will pay them as soon as we can and as close as we can to the required date but we will not actually pay them until the money has come into the account.

Ms GRIERSON—Does that satisfy audit?

Mr Boyd—That would seem to address the problem, yes.

Ms GRIERSON—I am happy to pass over to someone else and come back to some other questions.

Mr Boyd—I would like to correct one thing the deputy chair asked in terms of the Natural Heritage Trust. There is actually an amount we calculated on page 92 of \$37 million where, because of the nature of the errors, there is a certain amount of the errors that could not be taken back out because legally interest was earned on amounts that should not have been there. The legal advice to the department was that they could not take that—I think the legal phrase is fruit of the poison tree. That amount could not be taken out. Therefore, had none of the mistakes ever

been made, the actual balance that can be spent on the NHT would have been \$37 million less than now can be spent.

Mr Anderson—Can I make a point of clarification. You were suggesting that perhaps we could have spent this money twice. I would like to put on the record that the trust has a fixed total amount available and each year the government decides how much will be spent. Also there is a ministerial board that approves all the projects within that annual amount.

Ms PLIBERSEK—But you also got approval from the parliament for a second lot of money to go in, didn't you, a second appropriation?

Mr Anderson—That is true, but what I am saying is that when we went to spend the money and became aware we had it twice we would have realised that it would exceed the total amount approved for the trust and the alarm bells would have started to ring. This goes also to the chair's point about recommendation 1. I am really saying that there were a number of checks and balances in the system in terms of the total value of the trust, annual approval of the amount to be spent and then individual approval of the projects by the ministerial board. Those checks and balances would have meant that I do not think we could possibly have spent the extra money if we knew we had it.

Senator WATSON—So the board oversights this special account as well, or just the payments?

Mr Anderson—It is a Natural Heritage Trust ministerial board that approves the expenditure of the projects on an annual basis.

Senator WATSON—Do they also look at the moneys that come in as well as approving expenditure?

Mr Anderson—As ministers they would have approved the amount to be allocated in a given year, but what they would not necessarily look at the source of that funding. They would make some assumptions that that is correctly accredited to the account.

Ms PLIBERSEK—I want to ask you about the Federation Fund account, which was understated by \$30.2 million in 2001-02 because a debit had been made that was outside the purpose of the account. The error related to funds allocated to the Sydney Harbour Federation Trust for the decontamination of Cockatoo Island. I think that is a very good thing, but I am just curious that the money was taken out of a special-purpose account and presumably should have been taken out of another area of your budget. How did that happen and what measures have been taken to make sure that that does not happen in the future?

Mr Anderson—The money was put into the special account for the decontamination and a range of other measures. Because of delays and a change of strategy, that was funded separately through an annual appropriation, so there was no need for the money to be spent from the Trust account. We then went to return the money to consolidated revenue but discovered that was not within the meaning of the act.

Ms PLIBERSEK—You could not do it; you could not pay it back.

Mr Anderson—It would not allow you to return the money to consolidated revenue. The only way you could return it to consolidated revenue was by actually closing the account, which we are in the process of doing.

Ms PLIBERSEK—So you will have \$30.2 million left in the account when you close it and that money will go back to consolidated revenue.

Mr Anderson—That is right. The government decided that they would fund that expenditure through a different process. We were actually asked to return the money to consolidated revenue, which we did. We debited that from the account. We were then told that is not within the purpose of the act, so we restored the money. We have \$30 million sitting there at the moment. When the special account is closed, that will then be returned to consolidated revenue.

Ms PLIBERSEK—Is there an intention to close the account? Did you say you were in the process of closing the account?

Mr Anderson—Yes.

Ms PLIBERSEK—Are there other bits of money left over in that account where appropriations have been made separately, or is there just this Cockatoo Island rehabilitation money left in it?

Mr Anderson—My understanding is that all the other money was spent on the purposes for which it was established and this is expenditure related to the Cockatoo Island contamination and Sydney Harbour Trust properties. The expenditure has occurred but it has gone through a different process.

Ms PLIBERSEK—Have you changed any systems to prevent that happening in the future or do you not see it as a particular problem?

Mr Anderson—It was unique in some ways. We were returning the money to consolidated revenue, but the meaning of the legislation did not allow that. If we were in the business of setting special accounts in the future we would clearly want to look at having the facility to return money to consolidated revenue if there was no longer a requirement for it.

Ms PLIBERSEK—So you would write that in when you were establishing the special purpose account, would you?

Mr Anderson—We are not in the business of establishing too many special accounts, but we would look at that if we did.

CHAIRMAN—I want to follow up on that. Mr Hutson, considering all the answers to the questions Ms Plibersek and Ms Grierson have asked, why in the hell do we persist in having special accounts? Why can't we just have consolidated revenue and one set of books, where we put money in and we take money out but we have it appropriated? I understand the necessity from time to time for a trust account. Excepting that legal necessity, why do we have to have special accounts?

Mr Hutson—It comes back to the answer I gave to you previously. There are a number of occasions when the parliament wants to see money set aside to ensure that it is spent on specific purposes. The particular instance we were talking about before was the Federation Fund.

CHAIRMAN—Can't we do that through the books? Can't we do it with account numbers, for heaven's sake?

Mr Hutson—Essentially, that is what special accounts really are. They are an hypothecation of the consolidated revenue fund. You need to have an appropriation approved by law, and the special account is a mechanism for that appropriation to be managed.

CHAIRMAN—Transport got themselves in all kinds of trouble a few years ago over hypothecation, didn't they? If I remember correctly there was the fuel tax and road funding. I go back to the same questions I asked on the public record back when we had a look at this draft legislation for Finance. I still do not understand why we have special accounts. Listening to each of you tell us about why or how something went wrong, I have not changed my mind—if anything, I am more convinced than ever.

Ms GRIERSON—I want to go back to drawing rights. In the audit it was found that there were no valid drawing rights at all for 13 accounts across two of four agencies examined. In particular, Treasury had no drawing rights for any account up to May 2003, but I gather it has partially complied since then; and the Department of Defence had no drawing rights for any account at any time of the audit. Treasury, could you explain how that happened and how it will not happen again?

Mr Murcutt—In fact, we did have some drawing rights for our special accounts. We had them for a valid draw out for making a payment from a special account. So it is really only on the technical side of debiting the appropriation that we did not have a valid drawing right for. We have since updated all our CEIs, so now we do have valid drawing rights for all our special accounts.

Ms GRIERSON—Is the Audit Office satisfied that that has occurred?

Mr Boyd—Essentially, the evidence available to us was that prior to May 2003 Treasury did not have drawing rights to cover any of their special accounts. In May 2003, with the assistance of the Australian Government Solicitor, drawing rights were drafted to cover parts A and B of section 26 of the Financial Management and Accountability Act. Parts A relates to paying money, part B to requesting a debit to an appropriation with part C being the actual debiting of the appropriation, which is the final step in the accounts and records process. Those drawing rights did not cover part C. That was the status at the time of the audit. I understand from what is being said now that, in terms of drawing rights that are complete in their coverage, that has now been addressed.

Ms GRIERSON—All right. We know Defence has its own very special ways, but can someone tell me if drawing rights for any account have been set up in the Department of Defence?

Mr Boyd—Defence not being here, from our perspective, at the time they had not issued any drawing rights. Drawing rights are not required to be publicly tabled or anything like that. At this point in time, the audit having been completed—at the time we finished the audit, they still had not issued drawing rights—we understand they are involved in work which is picking up a range of these issues, working with the Australian Government Solicitor to try and fix them all. I do not know what stage that is at. We can inquire with the department if you wish us to.

Ms GRIERSON—I think that is probably a good idea, actually. When the strategic balance account was abolished it still had an amount in credit. How was that dealt with?

Mr Gaukroger—The balance was transferred back to the CRF—the consolidated revenue fund. It is reissued out each year.

Ms GRIERSON—And then reappropriated to you specifically?

Mr Gaukroger—Yes. It is reappropriated as bill 1 departmental appropriation based on the estimated activities that are set to occur in each year. So there may be some overs and unders. We keep a reconciliation of that and all other aspects—

Ms GRIERSON—Was the total of \$995,000 reappropriated?

Mr Gaukroger—The balance remaining was about half a million dollars, which was put back into the consolidated revenue fund. That gets reappropriated out each year depending on the estimated activities.

CHAIRMAN—Ladies and gentlemen, thank you for coming. This is very complex stuff. I appreciate, anyhow, I am not going to win. We are still going to have special accounts. You win; I lose—but anyhow, thank you for coming. I thank our witnesses and all those support staff back there. I thank my colleagues; I thank the secretariat; and once again, as always, God bless Hansard.

Resolved (on motion by **Ms Plibersek**):

That the committee authorise publication, including publication on the parliamentary database, of the proof transcript of evidence given before it at the public hearing today.

Committee adjourned at 11.52 a.m.