

2004/256

2 August 2004

Mr Harry Evans
Clerk of the Senate
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Mr Evans

FINANCIAL MANAGEMENT AND REPORTING OF SPECIAL APPROPRIATIONS

Thank you for your letter of 15 July 2004 to Mr Warren Cochrane providing comments on the Discussion Paper on the above audit. I am writing to seek your views on another issue identified during the audit, namely whether the Australian Agency for International Development (AusAID) has breached the Compact of 1965 in relation to its payments to certain multilateral aid institutions.

During the course of this performance audit, ANAO raised with AusAID its non-reporting of Special Appropriations relating to payments made to certain multilateral aid institutions. AusAID advised ANAO in May 2004 of which appropriations had been used to make the payments in question. AusAID advised that there had been one instance where, although a Special Appropriation existed, its Annual Appropriations had, instead, been used to make a payment.

AusAID further advised that a Special Appropriation was not available for the other payments queried by ANAO, and Annual Appropriations had been drawn against. This reflected a Government decision in 1996 that payments to multilateral aid organisations be made through Annual Appropriations instead of Special Appropriations in order to remove the need for additional legislation for each Australian contribution.

In addition, in July 2004, AusAID advised ANAO that:

Multilateral payments have been treated as ordinary annual services of Government for many years. Some multilateral payments to Asian Development Fund (ADF), International Development Association (IDA) and International Fund for Agricultural Development (IFAD), which established Australia's membership to development funds/organisations, were made under special appropriations. Governments in 1989/90 (IFAD) and 1996-97 (ADF and IDA) decided to move funding from special to annual appropriations.

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AusAID did not receive any funds from Bill 2 until the introduction of accrual accounting when Bill 2 was seen as the only way to provide the injections of cash needed to pay for the obligations established under the replenishments negotiated prior to 1 July 1999. Any new replenishment for ADF, IDA and IFAD from 1 July 1999 are funded through Bill 1 in line with successive Government's policy position on the use of Bill 1 and Department of Finance and Administration's PBS/PAES submissions to Parliament.

AusAID has further advised us that funding agreements with multilateral aid institutions are core elements of the Australian aid program contributing to AusAID's only outcome which is expressed as 'Australia's national interest advanced by assistance to developing countries to reduce poverty and achieve sustainable development'. Assistance to developing countries for the relevant purposes may be provided either directly or through multilateral aid institutions providing developmental assistance.

Payments to the multilateral aid institutions generally involve a substantial commitment of funds over a number of years. For example, one of the recent commitments to the World Bank's International Development Association (IDA) involves payments of \$275 million over a six year period. We noted that AusAID's approach differs from New Policy Proposals, which are usually initially funded through Bill 2 with later year payments then moving to Bill 1.

In this context, we raised with AusAID our concern that the change from Special Appropriations to Annual Appropriation Bill 1 may breach the Compact of 1965. In response, AusAID obtained legal advice, which commented as follows:

Because there is nothing to prevent the Senate, if it chooses, from passing a Bill that is not in accordance with the Compact, it is not possible to assume that, in so doing, the Senate has necessarily accepted that the appropriations are all for the ordinary annual services of the Government. That implication may, however, be able to be drawn in some circumstances, for example, where a matter is on the borderline of matters referred to in the Compact and the characterisation of an appropriation is not clear.

and

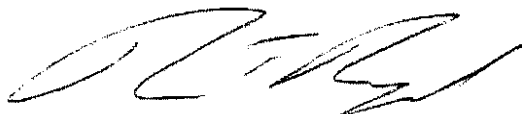
Given the regularity with which the payments of the relevant kind have been made over a large number of years and the fact that such payments are now routinely treated as part of Australia's overseas aid program, I see no real basis for doubting that the payments could be allocated to Appropriation Bill (No. 1) consistently with the Compact (and with sections 53 and 54 of the Constitution). In any case, successive Parliaments have apparently acquiesced in this practice. I think this itself constitutes evidence that Parliament regards the allocation of the appropriation as consistent with the Compact and with sections 53 and 54 of the Constitution.

In relation to this last point, we questioned whether AusAID's Portfolio Budget Statements (PBS) and Portfolio Additional Estimate Statements (PAES) adequately disclosed to Parliament that Bill 1 was being used for these payments such that

Parliament was sufficiently well informed to be able to 'acquiesce' to the use of Bill 1. In response, AusAID has provided us with a summary of its relevant PBS and PAES disclosures from 1993-94 to 2000-01. A copy of this summary is attached for your information.

Please do not hesitate to contact either myself on 6203 7672 or Kim Bond on 6203 7757 if you would like to discuss this issue, or the audit more generally.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Boyd', with a stylized flourish at the end.

Brian Boyd
Executive Director
Performance Audit Services Group



AUSTRALIAN SENATE

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10 August 2004

Mr Brian Boyd
Executive Director
Performance Audit Services Group
Australian National Audit Office
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Dear Mr Boyd

AUSAID PAYMENTS TO MULTILATERAL ORGANISATIONS

Thank you again for your letter of 2 August 2004 concerning these payments and the question of whether they should be made from appropriations for the ordinary annual services of the government.

Before proceeding to that question, it is necessary to dispose of the notion that, because these payments have been made out of appropriations for the ordinary annual services and this has been referred to in portfolio budget statements, the Senate has acquiesced in, or given tacit approval to, that situation. The question has not been considered by the Senate Appropriations and Staffing Committee or by the Senate itself, and therefore the payments out of the appropriations for the ordinary annual services have not been accepted by the Senate.

It is also necessary to emphasise that the question is not justiciable, and therefore it is not a question on which a legal opinion may appropriately be sought, or on which a purported legal opinion carries any particular weight.

The question is whether, under the terms of the agreement as to the meaning of ordinary annual services between the Senate and the government, the payments may appropriately be made from appropriations for the ordinary annual services.

There are two possible answers to this question:

- The payments are not for ordinary annual services, because they are not payments for continuing government activities, in that each payment to an organisation ("replenishment") represents a distinct policy decision to provide further support to the organisation.

- While the initial payments to each organisation in effect represented a new policy decision to support the organisation, and therefore could not have been made out of appropriations for the ordinary annual services, the subsequent payments represent a continuing government activity of supporting the organisations and therefore could be made out of such appropriations.

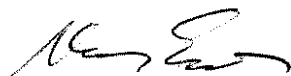
Both propositions are arguable, but I incline to the second, and to conclude that the subsequent payments do represent a continuing activity of government and therefore ordinary annual services which may be funded out of appropriations for that purpose.

I think that it would be an essential part of that conclusion that, when the payments were shifted from special appropriations to annual appropriations, the first payments on that basis should not have been made from appropriations for the ordinary annual services, but subsequent payments could appropriately be so made.

As has been indicated, this question has not been considered by the Appropriations and Staffing Committee or the Senate. I will refer the question to the committee, with our correspondence and my tentative conclusion, and seek an expression of a concluded view. I expect that the committee will not be available to consider the matter until the next parliament, unless the general election is delayed beyond all expectations. I will keep you informed of progress.

Thank you again for your assistance in this matter.

Yours sincerely



(Harry Evans)