

Chapter 3

Proliferation of Funding Sources

Introduction

3.1 There is a question as to the degree to which Parliament controls the purposes for which monies are appropriated. Professor Lindell, Professorial Fellow in Law, the University of Melbourne and Adjunct Professor in Law, the University of Adelaide and the Australian National University, for example, stated that:

Unfortunately the modern reality is that Parliament is gradually losing control over the expenditure of public funds. Appropriations are increasingly permanent rather than annual and they are also framed in exceedingly broad terms ...¹

3.2 The proliferation of sources from which government can obtain funds raises questions as to the extent to which the Parliament controls even the amount of money made available to government.

3.3 The various sources of funding other than the annual Appropriations Acts that are specifically identified in the Committee's terms of reference are: Special Appropriations; the Advance to the Finance Minister; annual departmental carry-over surpluses; revenue retained under section 31 of the Financial Management and Accountability Act 1997; Special Accounts and Goods and Services tax. Tax expenditures should be added to the list.

3.4 In this chapter the Committee considers four of these sources of funding – Special Appropriations, Special Accounts, revenue retained under Section 31 of the FMA Act and annual departmental carryovers. The remaining sources of funding are considered in Chapter 4.

Special (or Standing) Appropriations

3.5 Special (or Standing) Appropriations are monies that are appropriated by Acts of Parliament other than the annual Appropriations Acts and which generally continue for longer than a financial year (hence 'Standing Appropriations').

3.6 The great majority of the government's finances are appropriated by means of Special Appropriations. In 2002-2003, more than \$223 billion was spent from the Consolidated Revenue Fund under the authority of Special Appropriations. This represented more than 80 percent of all appropriations drawings for the year.²

1 Professor Lindell, *Submission 10*, p. 4.

2 Australian National Audit Office (ANAO), *Financial Management of Special Appropriations*, Audit Report No. 15 of 2004-2005, p. 11.

3.7 Some Special Appropriations are finite, but many are open-ended in the sense that payments authorised under most of the Acts that make provision for Special Appropriations are limited only by the eligibility criteria of the organisations or persons affected by them. These criteria are typically specified in the relevant Act or in subordinate legislation.

3.8 Although the initial (usually open-ended) appropriation is approved by the Parliament when the relevant bill is enacted, the Parliament effectively exercises little on-going control over expenditure from Special Appropriations.³ (It should be noted, however, that agencies are required to identify expected expenditure from Special Appropriations in their PBS, and actual expenditure should be shown in their annual financial statements.)

3.9 Some of the possible consequences of a lack of Parliamentary control may be seen in the findings of an ANAO audit of Special Appropriations, *Financial Management of Special Appropriations*, in which ANAO found a range of technical breaches. The audit highlighted that departments and agencies need to be mindful of the legislative requirements and appropriation management practices relating to Special Appropriations.⁴

3.10 ANAO found *inter alia* that it is 'important that there is defined responsibility and accountability for [special] ... appropriations and that access to the CRF is withdrawn when it is no longer needed'.⁵

3.11 The Committee also has concerns about the open-endedness of many standing appropriations. It considers that if Finance were regularly and routinely to review standing appropriations and report publicly on those reviews, this would ensure not only that access to the CRF is withdrawn when no longer needed but also would ensure that standing appropriations do not entirely escape government and parliamentary scrutiny.

3.12 Alternatively, the Parliament could ensure that enabling legislation includes sunset clauses, even if the period of operation of the appropriation is lengthy. In some cases, these clauses might provide for periods of a decade or more. In this way, however, no appropriation would be open-ended and forever escape parliamentary scrutiny.

3.13 In this context, the Committee has also considered whether ANAO might be asked to consider and advise the Government whether a periodic review of standing

3 The Parliamentary Library in response to client requests has adopted in its regular *Bills Digests* the practice of identifying provisions in bills that would impose or change a Special Appropriation.

4 Australian National Audit Office (ANAO), *Financial Management of Special Appropriations*, Audit Report No. 15 of 2004-2005, p. 14.

5 ANAO, *Submission 4*, p. 35.

appropriations should take place and on what basis, and whether as a matter of principle any appropriation should be open-ended, but should be finite, even if the expiry date is decades hence.

3.14 Professor Bartos commented on Special Appropriations as follows:

One of the notable features of budgeting in Australia is our increasing reliance on special appropriations. They have grown to almost 80% of budget spending; which means that Parliamentary scrutiny of Appropriations Bills has become a relatively minor aspect of overall budgetary transparency and accountability...

The implications of this are that there should be correspondingly greater attention paid to the performance of government programs funded via special appropriations: in particular in the areas of social security and health spending.

One option for this would be a separate reporting vehicle on those areas of spending; the obvious possibility is a budget-related paper that provides the Parliament with information on spending through special appropriations.⁶

3.15 In response to that suggestion, Finance pointed out that information on special appropriations may be found in the PBSs, for both the past year and the year to which the estimates apply.⁷ ANAO submitted that agencies are already required separately to disclose in their PBS their expected use of special appropriations.⁸ However, Professor Bartos made it clear that he was advocating a consolidation of the data in one document:

It is currently possible to find all the detail of special appropriations by going through each individual portfolio budget statement and adding them up. But you have also got to ask who has got the time to do that. It is a fairly difficult task. It also leads to the problem ... that the issues are dealt with piecemeal in different committees at different times so it is hard to form an overview.⁹

3.16 In a further response to a question from the Committee about the considerations that might be involved in producing a separate document, Finance stated that:

... it would need to be considered in terms of the additional value offset of bringing that information together and whether that information in a single place, outside the context of the agency that is delivering against the special

6 Professor Bartos, *Submission 5*, p. 9.

7 Ms Kathryn Campbell, General Manager, Financial Management Group, Department of Finance and Administration, *Committee Hansard*, 8 September 2006, p. 22.

8 ANAO, *Submission 4b*, [p. 15.]

9 Professor Bartos, *Committee Hansard*, 12 October 2006, p. 4.

appropriation, would be of added value. That would need to be given to the government for consideration.¹⁰

Committee's conclusions

3.17 While it acknowledges that the proposal to produce a separate, consolidated budget paper on Special Appropriations would necessarily involve additional resources, the Committee considers the value of such a document for transparency in general and for the estimates committee processes in particular would warrant the application of those resources. In reaching this conclusion, the Committee is mindful of comments made by its predecessor committee in its report on the 2006-2007 Budget estimates, that:

The concern with cross portfolio programs, like those in the Indigenous affairs realm, is that it makes it very difficult to identify who is responsible and answerable for expenditure and performance. This is also of concern to the Committee in relation to the Department of Human Services and related agencies, as previous Committee reports have shown.¹¹

3.18 Government's increased reliance on Special Appropriations as a main source of funding, together with the growth in cross portfolio programs with the attendant obstacles these pose for Parliamentary scrutiny, makes it important that the Parliament and its committees have readily available to them a consolidated document of Special Appropriations.

Recommendation 1

3.19 The Committee recommends that the government produce and table with the annual budget documents a document that sets out the past and expected expenditure from all Special Appropriations. The data in that document should be set out against the programs that are funded from the relevant appropriation.

3.20 Many standing appropriations may escape government and parliamentary scrutiny because they are open-ended. The Committee has considered whether this apparent deficit in accountability might be overcome by the government implementing routine reviews of standing appropriations and reporting the results of those reviews. ANAO could be asked to advise government on those matters. Alternatively, Parliament might ensure that all acts providing for standing appropriations include sunset provisions, even if the expiry dates are decades hence.

10 Mr Mike Loudon, Acting General Manager, financial Management Group, Department of Finance and Administration, *Committee Hansard*, 27 November 2006, p. 4.

11 Senate Finance and Public Administration Legislation Committee, *Budget estimates 2006-07*, June 2006, p. 8.

Recommendation 2

3.21 **The Committee recommends that the Government implement a system of review for standing appropriations to ensure that access to the CRF is withdrawn when no longer required and to ensure that standing appropriations are subject to periodic government and parliamentary review.**

Special Accounts

3.22 Finance defines Special Accounts as follows:

A Special Account is a mechanism used to record amounts in the [Consolidated Revenue Fund] that are set aside for special purposes. The *Financial Management and Accountability Act 1997* (FMA Act) provides an appropriation for the purposes of each Special Account, up to the balance of the Special Account.^{12 13}

3.23 Section 20 of the FMA Act enables the Minister for Finance to establish Special Accounts into which amounts may be credited and enables the minister to specify the purposes for which amounts may be debited from the accounts. Subsection 20(4) of the FMA Act authorises the appropriation of funds from the CRF to these Accounts. Subsection 20(4) reads as follows:

20(4) The CRF is hereby appropriated for expenditure for the purposes of a Special Account established under subsection (1) up to the balance for the time being of the Special Account.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

3.24 Most Special Accounts are established by determinations made under the FMA Act, but Special Accounts may also be established under other Acts of Parliament and abolished by their repeal, in whole or in part.¹⁴

3.25 Presumably appropriations authorised by the annual Appropriations Acts for Special Accounts established under the FMA Act are made on the basis of the outcomes that are specified in the Appropriations Acts. That is how they are reported in the PBS. For example, Finance reports the Comcover Special Account against Outcome 2, Output Group 2.1 – Government businesses.

12 Australian National Audit Office (ANAO), *Agency Management of Special Accounts*, Report No. 24, 2003-2004, p. 11.

13 An example of a Special Account is the Comsuper Special Account which had an opening balance of \$4.7 million at the beginning of 2006-2007. It is estimated that the Account's receipts for the 2006-2007 financial year will amount to \$60.5 million and payments will be \$60.4 million.

14 An interesting example of a Special Account established by an Act other than under the FMA Act is the FFMA Account which was established by the *Future Fund Act 2006*.

3.26 The Finance Minister's determinations establishing Special Accounts or that revoke or vary those determinations, are disallowable instruments under the provisions of section 22 of the FMA Act.¹⁵

3.27 A comprehensive list of Special Accounts is published as a note to the Consolidated Financial Statements. The title and purpose of each account, the receipts and payments and the opening and closing balances for the relevant financial year are shown.¹⁶

3.28 The amount of funds in Special Accounts may be assessed from the ANAO's finding that as of November 2003 there were 241 accounts which had held \$3.40 billion at 30 June 2003. During 2002-2003, \$10.33 billion was credited to Special Accounts and \$10.06 billion was debited.¹⁷

Administration of Special Accounts

3.29 ANAO found that, in 2001-2002, 41 percent of Special accounts were not reported in agency financial statements. In 2002-2003, 17 percent were not reported, which suggests that the ANAO's recommendations were heeded by most agencies and that reporting has improved to some extent. The listing of Special Accounts in the Consolidated Financial Statements (CFS) also indicates that agencies' reporting of Special Accounts has improved.

3.30 ANAO raised concerns about the ability of agencies to transfer funds from administered Special Accounts to Annual Appropriations for departmental outputs. This may be done by means of notional intra-agency transactions in which an agency charges a 'fee' for services provided to a Special Account or is reimbursed for amounts initially paid out of its departmental appropriation for activities relating to the purposes of the Account. ANAO pointed out that it is not simply the purpose to which amounts may ultimately be put that can change but the nature of the relevant entity's control over those funds.¹⁸

15 The Regulations and Ordinances Committee has given only one notice for a disallowance motion under section 22. That was given in the previous Parliament and concerned a matter which was resolved when DoFA provided amended supporting documentation.

16 See, for example, *Consolidated Financial Statements for the Year ended 30 June 2005*, circulated by Senator the Honourable Nick Minchin, Minister for Finance and Administration, December 2005, Note 44 to the financial statements, pp 184-222.

17 Australian National Audit Office (ANAO), *Agency Management of Special Accounts*, Report No. 24, 2003-2004, p. 11.

18 ANAO, *Submission 4*, p. 37.

3.31 In a supplementary submission ANAO again raised this issue, in the following terms:

ANAO considers that the important issue is the current uncertainty as to the transfer of amounts within and across the various forms of appropriations, together with the extent of transparency over such transactions.¹⁹

3.32 In its initial submission to the inquiry ANAO had identified transparency as an issue of concern in relation to the management of Special Accounts:

The transparency of reductions to special account balances where there has been no payment, real or notional, is an issue that would benefit from further disclosure by agencies where such transactions occur.²⁰

3.33 The nature of the executive's capacity to transfer funds between Special Accounts and annual appropriations was illustrated by the Auditor-General:

I will give you a practical example. When you have a special account, you often have a whole branch involved in managing whatever the special account is about. Some departments therefore say that when they provide computers to the individuals in that branch—as they do the rest of the department—it is quite legitimate to charge the special account for the computers going to the staff members in the branch because they are related to their responsibility for managing the special account. It is not universally applied, but doing that, based on legal advice, is consistent with the terms of the special account's purposes. We are not suggesting there is any issue there. Therefore, provided that the departments have a legitimate revenue retention arrangement—the point that Mr Boyd was making—they can expend the money from the special account and credit the department's vote for computer services provided. It is then accredited to the departmental appropriation, which can be utilised on administration of a range of outcomes which may or may not bear a relationship to the original purpose of the special account. So, legally, it is valid; we are just highlighting that we are not sure whether parliament knows the extent of this activity.²¹

Committee's conclusions

3.34 Special accounts grant a right to departments to draw from the CRF. While there are guidelines on the management of such accounts and they are reported in agency PBS there is no consolidated list of such accounts and their balances.

3.35 The Committee considers that there would be merit in requiring the minister for finance no later than 31 August each year to table a consolidated register of special accounts. This would detail the relevant statutory provisions, date of

19 ANAO, *Supplementary Submission 4b*, [p. 17.]

20 ANAO, *Submission 4*, p. 36.

21 Mr Ian McPhee, Auditor-General, Australian National Audit Office, *Committee Hansard*, 27 November 2006, p. 13.

establishment/duration, purpose, and the amount expended at the close of the financial year. The Committee notes that this suggestion is consistent with amendments proposed to the Financial Framework Legislation Amendment Bill (No. 2) 2005 and rejected by the Government.

3.36 Potentially, the executive government's ability and especially the ability of departmental secretaries and other chief executive officers to transfer funds from one form of appropriation to another could significantly compromise the Parliament's ability to control and scrutinise government expenditure. As suggested by the Auditor-General, few Parliamentarians (or indeed Ministers) would be aware of the extent of these transfers or indeed of the executive's capacity to effect such transfers. It is essential therefore that these transfers are reported transparently to the Parliament.

Recommendation 3

3.37 The Committee recommends that the government ensure that where transfers of amounts between different forms of appropriation occur, that the transfers be highlighted in the reporting documents. Because the reporting of these events in agencies' financial statements may not occur until well after the event, these transfers should be documented and tabled as they occur.

3.38 In making this recommendation the Committee is aware that there might be many such transfers and that there could therefore be practical difficulties in the timely provision of the data. The Committee therefore recommends that Finance consider the practical implications of the above recommendation and report to the Committee on this matter this financial year.

Net Appropriations (Section 31 Agreements)

3.39 The mechanism to credit amounts to annual appropriations that have been debited from Special Accounts is an effective Section 31 Agreement.

3.40 Net Appropriations (or Section 31 Agreements) cover funds that agencies receive from non-appropriation sources and are made under the authority of Section 31 of the FMA Act. Under Section 31 the Finance Minister may enter into agreements with other ministers (or with the chief executive officer of an agency with an appropriation item for which the Finance Minister is responsible) for the purposes of items in Appropriation Acts that are marked 'net appropriation'. Section 10 of *Appropriation Act (No. 1) 2006-2007* provides that each departmental item and several administered items are so marked.

3.41 Section 31 agreements are legislative instruments, but are not disallowable.

3.42 Appropriations Act (No. 1) also deals with Section 31 agreements in that it provides that for departmental items and for those administered items that are marked 'net appropriation', 'the amount specified in the item is taken to be increased in accordance with the agreement, and on the conditions set out in the agreement. The increase cannot be more than the relevant receipts covered by the agreement'.

Administration of Section 31 Agreements

3.43 ANAO recently conducted an audit of net appropriation agreements. In its report, *Management of Net Appropriation Agreements*, which was tabled in January 2006, ANAO reported that in 2004-2005, 67 agencies reported Section 31 receipts totalling \$1.46 billion. Those figures contrasted with those for 1996-97, the last full financial year before the commencement of the FMA Act, when net appropriation receipts amounted to \$831 million.²²

3.44 ANAO observed that:

Significant Constitutional consequences result from the operation of Section 31 agreements. Specifically, an effectively executed agreement provides an agency with an appropriation authority to spend the receipts to which it applies.²³

3.45 ANAO was interested therefore in determining whether the agreements that had been entered into between 1/1/98 and 30/6/05 were effective, that is, that they had been properly executed under the terms of the FMA Act. ANAO found that 68 percent of agreements had been effectively executed, but assessed 18 percent as 'ineffective'. ANAO reported that a number of agencies were unable to provide evidence to demonstrate the effectiveness of the remaining 14 percent.²⁴

3.46 The Auditor also found that 16 agencies 'had increased the reported available balance of their annual appropriations by amounts that were at no time captured by a Section 31 agreement, or [had] spent receipts prior to having an agreement in place'. The ANAO data indicate that \$5.8 billion was spent by agencies from 1997 to 2005 without having a demonstrably effective Section 31 agreement in place. For instance, in some cases agreements were entered into by officers who lacked the requisite delegated authority.²⁵

3.47 ANAO devoted a chapter of its report to accountability issues. It reported that there were three mechanisms through which agencies reported their Section 31 agreements to government and Parliament.

3.48 First, since 1 January 2005, Section 31 agreements have been registered on the Federal Register of Legislative Instruments. ANAO found, however, that there had often been delays of some months between the signing of an agreement and its

22 Australian National Audit Office (ANAO), *Management of Net Appropriation Agreements*, Audit Report No. 28, 2005-2006, p. 14.

23 Australian National Audit Office (ANAO), *Management of Net Appropriation Agreements*, Audit Report No. 28, 2005-2006, p. 17.

24 Australian National Audit Office (ANAO), *Management of Net Appropriation Agreements*, Audit Report No. 28, 2005-2006, p. 19.

25 Australian National Audit Office (ANAO), *Management of Net Appropriation Agreements*, Audit Report No. 28, 2005-2006, p. 19.

appearing on the register. There was also apparently some uncertainty about whether the Legislative Instruments Act was intended to apply to Section 31 agreements. Finance responded to the ANAO report, stating that Section 31 agreements would in future be provided to Parliament within six days of the instrument commencing and, in order to remove doubt, that agreements would be registered so that they would be deemed to be legislative instruments under the Act. Finance also informed ANAO that it would continue to work with the Attorney-General's Department to remove any remaining uncertainties.²⁶

3.49 Second, estimated receipts are disclosed in the PBSs and PAES. ANAO reported, however, that the current presentation of those estimates may not assist users of the documents to understand the extent to which the agency expects to increase its annual appropriations for amounts collected under their Section 31 agreements. ANAO found that the consistency and accuracy of the estimates could be improved. ANAO suggested that improved guidance could assist agencies to improve the transparency of the PBSs and PAES data.²⁷

3.50 Third, the increase in agencies' annual appropriations resulting from Section 31 receipts is disclosed in annual financial statements. ANAO reported, however, that a number of agencies had overstated or misstated their receipts. It concluded that improvements were required in agencies' reporting and disclosure of appropriations, including in their PBS and PAES.

3.51 ANAO reported that a number of agencies had addressed these issues in their 2004-2005 financial statements.²⁸

3.52 In its submission to the inquiry, ANAO also dealt with notional transactions and retrospectivity in Section 31 Agreements as follows:

... ANAO recommended that Finance take the necessary steps to align the provisions relating to notional transactions in the annual Appropriation Acts with those set out in Section 6 of the FMA Act. This would then provide certainty as to the capacity of amounts debited from internally managed Special Accounts to be captured by agencies' Section 31 agreements. Finance agreed with qualification to the recommendation, advising that it will give policy consideration to this recommendation and to whether such transactions should be included in Section 31 agreements.²⁹

... greater specificity in the FMA Act as to the conditions under which an agreement [a Section 31 Agreement] can be applied retrospectively to

26 Australian National Audit Office (ANAO), *Management of Net Appropriation Agreements*, Audit Report No. 28, 2005-2006, pp. 26, 118, 121.

27 Australian National Audit Office (ANAO), *Management of Net Appropriation Agreements*, Audit Report No. 28, 2005-2006, p. 27.

28 Australian National Audit Office (ANAO), *Management of Net Appropriation Agreements*, Audit Report No. 28, 2005-2006, p. 26, 28.

29 ANAO, *Submission 4*, p. 38.

amounts previously received would assist in enhancing the rigour of the financial framework and promoting orderly governance of appropriations.³⁰

Outcome of the audit

3.53 ANOA informed the Committee that Finance had agreed to the following audit recommendations:

that it examine options to improve the framework for net appropriation arrangements, including the merits of specifying the relevant terms and conditions (including common eligible receipts) in the annual Appropriations Acts, rather than through delegated legislation Section 31 Agreements'.³¹

that it consider the merits of including greater specificity in the relevant legislative provisions regarding the conditions under which net appropriation agreements may be applied retrospectively to amounts received by an agency.³²

3.54 ANAO also reported that there would be an increased focus on legislative compliance as part of its future financial statement audit coverage and that:

This will involve confirming the presence of key documents or authorities, and sample testing of relevant transactions directed at obtaining assurance about compliance with key aspects of legislative compliance in relation to *annual appropriations, special appropriations, annotated appropriations (through section 31 arrangements) and special accounts.*³³ (Committee's italics)

3.55 Given the results of the audits conducted to date, the Committee fully supports that initiative.

Suggestions for reform

3.56 ANAO drew the Committee's attention to the audit's conclusion that there may be merit in examining the on-going role of individual agency agreements in the management of net appropriations. Two matters were identified in ANAO's submission, namely:

- The instrument establishing the agreement could be changed to reduce the potential for officials to act without Ministerial authorisation; and

30 ANAO, *Submission 4*, p. 32.

31 ANAO, *Submission 4*, p. 34.

32 ANAO, *Submission 4*, p. 32-33.

33 Australian National Audit Office (ANAO), *Management of Net Appropriation Agreements*, Audit Report No. 28, 2005-2006, p. 28.

35 ANAO, *Submission 4*, p. 33.

- Whether instruments relating to individual agencies should be retained as the means of specifying eligible receipts. Specifically, returning the central role in net appropriations from individual agency agreements to the annual Appropriation Acts so as to provide certainty and transparency in relation to the majority of net appropriations that will be available to agencies, without the need for separate agency agreements in all cases.³⁵

3.57 It should be remembered with regard to ANAO's second suggestion above that, prior to the commencement of the FMA Act, the annual Appropriation Acts identified the sources from which net appropriations could be received.³⁶ ANAO submitted that:

The agreements made under those arrangements identified, in a Schedule, the types of receipts an agency would be able to collect under the broad sources specified in the Appropriation Acts, and the quantum of such receipts expected to be collected in the relevant financial year.³⁷

Committee's conclusions

3.58 The Committee accepts that the government attempts to achieve a measure of transparency before the event by mandating the disclosure of estimated receipts in the PBSs and PAES, but notes that ANAO reported that the presentation of those estimates may not assist users of the documents to understand the extent to which an agency expects to increase its annual appropriations through the mechanism of Section 31 Agreements. The Committee notes that agencies are required to disclose in their annual financial statements the increase in annual appropriations resulting from Section 31 receipts but also notes that ANAO found that a number of agencies had overstated or misstated their receipts.

3.59 Given the significant role played by Section 31 Agreements in the transfer of funds between different categories of appropriations, the administrative shortcomings discovered by ANAO and the apparent confusion among the government's advisors about the uses to which the funds in Special Accounts may be applied, the Committee is concerned about Section 31 Agreements. The evidence leads it to question whether Section 31 Agreements are the most appropriate vehicles for authorising increases in agencies' annual appropriations by the amounts they receive from non-appropriations sources.

3.60 In that context, Finance, in answer to a question from the Committee, stated that since the publication of the audit report it had been considering whether the central role in net appropriations should be returned from agency agreements to the Appropriation Acts. It identified the issues involved as follows:

... there are a variety of agencies and therefore a variety of receipts under the individual agreements. By implication, the impact of taking it back into

36 ANAO, *Submission 4*, p. 33.

37 ANAO, *Submission 4*, p. 33.

the appropriation acts would mean that a generic set of issues or types of receipts would need to be agreed on. So we would be looking at the variety of the different types of receipts and the effect that would create upon agencies. We would look at whether it is viable to do it that way or whether there are alternative mechanisms to doing it as part of the annual acts.³⁸

3.61 The Committee appreciates the complexity of the issues involved in any change to the system for managing net appropriations. However, the Committee emphasises the point that the concerns it has outlined above in relation to Section 31 Agreements make it crucial that Finance, in consultation with ANAO and other relevant bodies, address this matter with a view to removing the ambiguity and looseness of the current system and improving the transparency and compliance of net appropriation transfers.

Recommendation 4

3.62 The Committee recommends that the central role in the management of net appropriations should be returned to the Appropriation Acts so as to ensure that these significant transfers of funds are fully transparent to the Parliament. In making this recommendation the Committee is aware that the management of net appropriations is complicated and that the Department of Finance and Administration is investigating other options. If a procedure other than returning the central role to the Appropriations Acts is proposed, the Committee would expect that the Parliament and its committees would be consulted. In particular, the Committee would expect Finance to report on any proposed alternative approach this calendar year.

Annual departmental carryover surpluses

3.63 As reported in Chapter 2, unspent funds appropriated for the use of agencies in the various Appropriation Acts may be carried over from year to year. The quantum of the carryover³⁹ has been assessed by ANAO which drew on the CFS for 2004-2005 and entities' financial statements to determine that there was more than \$14 billion in undrawn appropriation balances as of 30 June 2005, comprising:

- \$7.71 billion in Annual Appropriations;
- \$5.35 billion in Special Accounts; and
- \$974 million in limited Special Appropriations.⁴⁰

(The amounts above compare with the amounts appropriated in the *Appropriation Act (No.1) 2006-2007*, namely, \$37 billion for departmental outputs and \$16 billion for

38 Mr Loudon, *Committee Hansard*, 27 November 2006, p. 4.

39 'Carryovers' in this report is used in a general sense to describe unspent funds from the annual appropriations. The Auditor-General explained that what is involved is really the authority to spend funds that have been carried over from many years.

40 ANAO, *Submission 4*, pp 4-5.

administered expenses; a total of \$53 billion. It should be noted that, in addition to the above, there are also large sums of money that have been appropriated by way of Special Appropriations that are 'carried over' because the appropriation is open ended.)

3.64 In this context it is significant that the long title of Appropriation Act (No. 1) is now:

An Act to appropriate money out of the Consolidated Revenue Fund for the ordinary annual services of the Government, and for related purposes;

rather than:

An Act to appropriate money out of the Consolidate Revenue Fund for the service of the year ending on 30 June ..., and for related purposes;

which was the long title of the Acts prior to 1999-2000 when the accrual-based outcomes/outputs system was adopted.

3.65 Concerns have been expressed in the literature and by witnesses at the inquiry about the ability of agencies to carry over unspent funds, for example:

The most dramatic weakening of Parliament's role, however, comes not from the *structure* of the Acts but from what they actually do – or, rather, do not do.

The annual Appropriation Acts do not lapse on 30 June.

Ostensibly, this is to permit the Executive to finance its accrued expenses (such as provisions for employee leave entitlements and depreciation of assets etc.) included in the amounts for a current year's appropriation, but for which no actual payment is required until some event in a future year

...⁴¹

3.66 The author of the Research Paper from which the above is quoted canvases what he calls a worst case in which the Executive might make use of carryovers to thwart the will of the Parliament. He postulates that a combination of accrued expense provisions and Special Accounts could allow the Executive to establish:

... what are, in effect, 'hollow logs' of 'appropriations made by law' (section 83 of the Constitution); and Parliament has unwittingly surrendered its most sacred power – the power to prevent the Executive from continuing to function when denied supply for the ordinary annual services of the Government.⁴²

41 Maurice Kennedy, *Cheques and Balances*, Department of the Parliamentary Library, Research Paper N0. 16, 2001-2002, pp 41-43.

42 Maurice Kennedy, *Cheques and Balances*, Department of the Parliamentary Library, Research Paper N0. 16, 2001-2002, pp 41-43.

3.67 That proposition was put by the Committee to the Auditor-General, who responded as follows:

I think at a conceptual or theoretical level there is something in that. But it is not forever; it is, I imagine, for a relatively constrained period of time because the government needs authority across a very broad range of programs. Whether this level of authority, despite the size of it, provides the breadth and the coverage to allow a government to continue for too long would need deeper analysis. But I think it certainly—put it this way—gives greater authority than there used to exist under a cash system, where the authority lapsed at 30 June.⁴³

3.68 Mr Tony Harris, a former senior Commonwealth Government official and New South Wales Auditor General, who gave evidence in a private capacity, submitted that:

By allowing accrual appropriations, the Parliament has allowed the government to establish hollow logs and to forfeit control over the use of those accumulated monies for which the government has no present need. (One instance seen by the writer concerned an additional appropriation of over a billion dollars successfully sought to meet additional salaries in the defence department. Ultimately that appropriation was not used for salaries but to compensate the department for a write-down in asset values for the amount appropriated.)⁴⁴

3.69 Mr Harris also submitted that:

A corollary to re-establishing adequate Parliamentary control over public monies is that annual appropriations revert to annual lives so that at the end of the financial year appropriations lapse and that there would be a severe reduction in the ability of the minister for finance to siphon off appropriations or monies to special accounts.⁴⁵

Committee's conclusions

3.70 It is of course the case that any funds carried over at the end of a financial year have at one time or another been legally appropriated, ostensibly for particular purposes, and it might be argued that the ability of agencies to retain funds for future liabilities is conducive to better asset management and greater transparency. However, any perceived increases in managerial efficiency must be considered in the context of loss of Parliamentary control of the appropriations.

3.71 The Committee has concluded that to address some of the transparency issues surrounding carried over appropriations, agencies should report to Finance soon after the end of each financial year the amount of their unexpended funds on each of their

43 Mr Ian McPhee, Auditor General, *Committee Hansard*, 27 November 2006, p. 7.

44 Mr Harris, *Submission 7*, p. 1.

45 Mr Harris, *Submission 7*, p. 2.

outcomes (or programs) and the reasons for the underspend. The government would then arrange for a consolidated report to be tabled in Parliament within six months. Parliamentarians and the public would thus be informed of any significant underspending on the specific purposes for which funds had been appropriated. The underspent appropriations should be returned to the CRF unless the finance minister determines that there is good cause why they should be retained by the agency.

Recommendation 5

3.72 The Committee recommends that agencies report the amounts of their unspent appropriations and the reasons for the underspend to Finance at the end of each financial year and that the government tables in Parliament a consolidated report on the amount and reasons for the underspend within six months of the end of the relevant financial year. The Committee further recommends that unspent appropriations be returned to the CRF unless the finance minister determines that there is good cause for the funds to be retained.

3.73 Much of the departmental underspend is in relation to funds appropriated for depreciation. Many of the issues highlighted in relation to appropriations not lapsing could be addressed by government ceasing to appropriate funds for depreciation.

Recommendation 6

3.74 The Committee recommends that unless the Government can propose another mechanism that would overcome the accountability and transparency issues raised in connection with the carry over of appropriations it should discontinue the appropriation of funds to agencies for the purpose of depreciation.