

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Inquiry into National Funding Agreements

Opening Statement

Mr Chairman,

Thank you for your invitation to appear before the Committee this afternoon.

I wish to focus on the inadequacy of the parliamentary scrutiny of funding agreements. Many are properly seen as instruments of interference.

So far as I can find, there is no close examination of these executive agreements as to:

- (a) whether they are contrary to the powers under the Constitution for the Commonwealth executive to enter into; or
- (b) whether the terms and conditions of the grants used to finance them are so coercive as to bring about an abdication of parliamentary power to the executive.

The Ombudsman's remarks on the advantages of these executive schemes, to which I have referred, were in my view unhelpful, if not misconceived, when he said:

*The main advantage of executive **schemes** is their **flexibility**. Because there is no need to wait until legislation is drafted, considered and passed by Parliament, such schemes can be quickly established when the need arises, adjusted easily as circumstances change and closed down when the need for them no longer exists.*

In short, arrangements, schemes, contrivances or artifices which can easily avoid Parliamentary scrutiny.

That approach is tantamount to amending the Constitution by deleting the forty paragraphs in s.51 so that it effectively reads that... *the Parliament shall have power to make laws for the peace, order and good government of the Commonwealth.*

By entering into the *National Partnership Agreement on the Nation Building and Jobs Plan*, particularly the \$16.2 billion *Building the Education Revolution* (BER) program, the Executive on its face overreached its power. Sanctions are imposed if a State fails to have met the bench mark expenditure. For example; ***“by requiring the State to return the shortfall of expenditure to the Commonwealth, noting the Commonwealth will reallocate the amount to other States and/or use it for Commonwealth own purpose programs.”*** The BER program is an illustration of the coercive way in which the Commonwealth has sought to invade the States exclusive functions over education.

Its very name as a *National Partnership Agreement* carries with it the legal relationship of principal and agent. It works to promote the impermissible idea that the States are acting as agent for the Commonwealth. Doing so is an abdication of Parliament’s power under s. 96 to the Executive. It was a step too far.

In my opinion the drawing down of funds from the COAG Reform Fund account to pay to the States for the BER program was contrary to s. 96 of the Constitution and hence unlawful.

Because the Commonwealth raises more than 80 cents in the dollar of all taxation, it raises more money than it needs.

Geoffrey Sawer remarked long ago that, *those who tax, don't have to justify the spending, and those who spend, don't have to have to justify the taxing.*

The Parliament needs to be reminded that roughly 90 cents in the dollar of Australia's physical public assets. e.g. schools, universities, hospitals, roads, railways, power stations, dams and other water infrastructure etc., are owned and/or operated by the States.

Inter-governmental agreements serve to promote interfering and irresponsible government. Evidenced by the growth of large duplicate bureaucracies, e.g., in education. They are instruments of executive expediency. They are not a long term solution.

The solution is for the Commonwealth to keep the GST and allow the States to fix the rates of personal income tax, but letting the Commonwealth collect it as their agent.

Let's go to competitive federalism and be done with executive federalism.

The key question is not "what's the problem, how do we solve it?" but "there's the problem, here's the solution, what's stopping us applying it?"

It must be constantly borne in mind that the powers of the Federal Parliament and the Executive Government under the Constitution are *limited*.

Australia is not a unitary state but a federation.

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Bryan Pape

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