

Inquiry into Budget Process for Independent Oversight Bodies and the Parliament of New South Wales

Questions on Notice

Question 1

The Hon. JOHN GRAHAM: One of the questions that has arisen subsequently that we have yet to be able to answer through this Committee process, although a number of witnesses have taken it on notice, is what is the legal basis on which money might be withheld from one of these agencies after the Parliament has appropriated a certain amount to them?

Mr REARDON: The legal basis I would have to take on notice, to be quite frank. My colleague may have a comment. But the policy basis of application of across-government efficiency savings—I do what others do. I get the flexibility to apply that in certain areas. Other areas have to take cuts to not apply that to the integrity agencies, but that is a decision I took for 2019-20.

The CHAIR: But policy cannot conflict with the law. If the Parliament has passed an appropriation bill with a set amount to ICAC, on what basis do you say government policy can override that and reduce the amount that you give to ICAC?

Mr REARDON: I am not saying it is overriding it. I am simply saying I have applied the Government's policy on efficiency dividends.

The Hon. PETER PRIMROSE: What you are saying is that you have taken action without knowledge of the legal reason that you are empowered to do that.

The Hon. TREVOR KHAN: No, he has not taken action.

The CHAIR: You say you may do it in the future. We are trying to understand on what basis you say you can do it in the future, or you have the capacity to do it in the future, if it conflicts with the appropriation bill—a legally binding provision, I would have thought, passed by the Parliament. On what basis do you say you can do that, Mr Reardon?

Mr REARDON: I am applying government policy, as I said. I am happy to take on notice anything else you have asked me on that.

The Hon. JOHN GRAHAM: The specific question is this: Is applying that government policy lawful in the circumstance you are describing? There is a question mark that has been put to this Committee about whether it is lawful.

The CHAIR: I think you suggested Mr Pratt may assist. Now is the opportunity.

Mr PRATT: I do not have a lot more to add on the legal aspect of that. As I understand it, the appropriation is the maximum amount appropriated to an agency more broadly—not just talking about these particular agencies. That, then, becomes the policy of government in terms of any further cost efficiency that they wish to apply to that going forward. As you are well aware, more broadly across government that has been the case: Government has made decisions around applying those efficiency dividends. The legal piece—I agree with my colleague that we would need to take that on notice and come back on that.

The CHAIR: Could you also perhaps address your conclusion there that it is a maximum amount rather than a legal entitlement for these statutory oversight bodies? On what basis do you say it is a maximum amount, which would seem to allow a discretion to reduce it to zero if that is the provision? On what basis do you say it is a maximum amount rather than an entitlement for these statutory bodies?

Mr PRATT: It is an opportunity for government to apply what we have done in this case: efficiency dividends. We do that through control of the labour expense caps and through capital investment caps, and those have been applied in this budget post appropriation. As you are well aware, I am sure, if you read the budget papers, we have applied efficiency dividends through this budget process, which then reduce the amount available that is appropriated to an agency.

The CHAIR: Where a government department is headed up by a Minister and the Minister agrees with that policy setting, that might be one thing. But we have an independent statutory body for which the Parliament has set aside a set funding entitlement; it would seem to be a very different matter. Have you considered the different potential legal or policy matters for an independent statutory agency as opposed to a government department?

Mr PRATT: As I have said, we would need to take that on legal notice. I do not have an answer to that.

Answer

The annual Appropriations Acts in conjunction with the *Constitution Act 1902* (the Constitution) and the *Government Sector Finance Act 2018* (the GSF Act) together determine the basis on which public money can be spent.

The Constitution provides that all public moneys collected, received or held by any person for or on behalf of the State shall form one Consolidated Fund. The GSF Act then provides that money must not be paid out of the Consolidated Fund except under the authority of an Act. Each annual Appropriations Act then provides the relevant Ministers the requisite legal 'authority' (not an obligation) to pay (or delegate payment of) money out of the Consolidated Fund for the specified purpose up to the set maximum amount. This arrangement is consistent with the principles of representative and responsible government (i.e. that Ministers are electorally and publicly accountable for the expenditure of public funds within their portfolios). Any sum appropriated that is not fully drawn down for the relevant purpose automatically lapses at the end of the relevant financial year except in limited situations pursuant to the GSF Act.

The Auditor-General's recent report, 'Compliance of expenditure with section 12A of the *Public Finance and Audit Act 1983* – Law Enforcement Conduct Commission', which was provided to the Parliament on 21 February 2019, provides support for the view that Ministers are lawfully entitled to withhold approval for expenditure by agencies, including independent oversight bodies.

Question 2

The Hon. JOHN GRAHAM: Mr Pratt, would you mind taking on notice what is the quantum, for the agencies this Committee is examining, of the post-appropriation reductions?

The Hon. TREVOR KHAN: I think you have to spell out which of them are.

The Hon. JOHN GRAHAM: No, it is in the terms of reference. For the agencies in the terms of reference, I am asking what is the quantum, on notice—

The CHAIR: If any.

The Hon. JOHN GRAHAM: —we have just been told there are some—of the post-appropriation reductions.

Mr PRATT: For these agencies?

The Hon. JOHN GRAHAM: For these agencies. I will say, for your background, they have suggested these are not the largest amounts of money that they are concerned about. Much of that has been dealt with pre-appropriation. But if you could take on notice the scale of the post-appropriation funding.

Mr PRATT: Yes.

Answer

Post-appropriation reductions are primarily concerned with efficiency dividends (2018-19) and budget savings (2019-20).

As noted in the joint submission of DPC and NSW Treasury, several whole of government Budget savings and reform measures were included in the 2019-20 Budget (see https://www.budget.nsw.gov.au/sites/default/files/budget-2019-06/Budget_Paper_3-Budget_Estimates-Budget_201920.pdf).

These savings are apportioned by DPC amongst the cluster, calculated on a pro rata basis according to the operational expenses of each entity and adjusted for any protected items. Further information about protected items can be found in Treasury Circular NSWTC12-10.

DPC is absorbing all of the required savings for independent oversight bodies within the Premier and Cabinet cluster in FY2019-20, therefore no post-appropriation reductions have occurred for that financial year. Budget savings for future years will be reflected in the annual appropriation bills.

Question 3

Mr REARDON: Could I possibly assist with that, Mr Graham? I think for context on that, the scale of appropriation across the forward estimates for all the other agencies that we are talking about in macro—what they actually are allocated—I think is north of \$900 million for all of them. So it is a significant amount of the allocation of the Premier and Cabinet cluster. The amount of efficiency savings that have not been applied in 2019-20 is, for want of a better technical term, minuscule—that have not been applied. So they are a significant allocation within our cluster. That is the first point: as I said, over \$900 million over the forward estimates for these agencies that you are examining. But we have not applied a very small amount, so we have provided that to them. The cumulative number—and I saw some media on that over the past few days. It is not clear to me whether the integrity agencies have looked at the cumulative number over a long period: over a ten-year period or a four-year period. But, indeed, the numbers I looked at, I could not reconcile what they meant.

The Hon. JOHN GRAHAM: I invite you to examine, particularly, the ICAC's submission, which is quite explicit in detail on that.

The CHAIR: I think all four agencies have set out what they understand the cuts to be over the budget cycle. The Ombudsman's submission does it in detail, the electoral commission's submission does it in detail, the Law Enforcement Conduct Commission does it in detail and the ICAC's submission does it in detail. In fact, for at least three of those four, they have a table setting out what they understand the cuts to be in the future. If you can test any of them or you have a different position, I invite you to explain it now; and if you cannot now, do it on notice.

Mr REARDON: Yes, thanks, Mr Shoebridge. I have just not had time to look at the submissions, to be frank with you. The only comment I would make is we have provided letters from myself to the agencies, so if they have replicated those we would—

The Hon. JOHN GRAHAM: The Government's submission does not contest any of those figures so far. If there was any contest, we would certainly want to know before we, then, deliver.

Mr REARDON: If the question is just purely to accuracy, that this is the numbers that we provided in tables and if they have been reflected—

The CHAIR: I think we can say that unless you can test them, we are going to assume they are right.

Mr PRATT: We will come back, Mr Graham. Can I just make the observation that whether you are one

Answer

DPC and NSW Treasury have nothing to add to the budget figures raised in the public submissions of the ICAC, the LECC, the Ombudsman and the NSW Electoral Commission.