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Advance to the  
Minister for Finance

289

Joint Committee of  
Public Accounts



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
JOINT COMMITTEE OF PUBLIC ACCOUNTS

**REPORT 289**

**ADVANCE TO THE  
MINISTER FOR FINANCE**



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JOINT COMMITTEE OF PUBLIC ACCOUNTS  
SIXTEENTH COMMITTEE

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#### DUTIES OF THE COMMITTEE

Section 8.(1) of the Public Accounts Committee Act 1951 reads as follows:

Subject to sub-section (2), the duties of the Committee are:

- (a) to examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the Audit Act 1901;
- (aa) to examine the financial affairs of authorities of the Commonwealth to which this Act applies and of inter-governmental bodies to which this Act applies;
- (ab) to examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;
- (b) to report to both House of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,

and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

#### PREFACE

The Advance to the Minister for Finance is a provision authorised by the annual Appropriation Acts and made available to the Minister as a central contingency fund. The Advance is necessary for the smooth running of the Government because it provides flexibility, particularly for urgent and unforeseen expenditures.

The Advance is a special area of Government expenditure. The more usual procedure is for money to be spent for specific purposes only after it has been appropriated by the Parliament for those purposes. However, expenditure of funds from the Advance takes place without prior specific Parliamentary sanction; only the total Advance has been appropriated.

The Parliament recognises the need for the Advance to the Minister for Finance. However, as its use departs from the normal practice the Parliament has developed strict procedures to ensure that the Advance is administered and used correctly.

The only amounts which should remain a charge to the Advance at the end of the financial year are urgent and unforeseen expenditures which arise between the last day for preparation of the additional Appropriation Bills and the close of the financial year. The Minister for Finance is required under the terms of the appropriations to submit a statement of this expenditure to the Parliament after the end of the financial year. The Joint Parliamentary Committee of Public Accounts has routinely examined this statement as part of its statutory duties since the Committee was re-established in 1952.

In its examination the Committee seeks to ascertain whether the expenditure from the Advance to the Minister for Finance has been confined to urgent and unforeseen requirements for which provision could not have been made in the original or Additional Estimates. In addition, the Committee examines whether the Department of Finance has administered the Advance in the correct fashion. The Committee may also seek to discover whether the departments concerned have maintained efficient administration in the expenditure of funds under the items examined.

This review of the facility has arisen from concerns which the Committee developed during its preparation of Report 286 on the use of the Advance to the Minister for Finance for the financial year 1986-87. The Committee is concerned that use of the Advance be kept within the strict parameters laid down by the Parliament. This is a fundamental element in the role of the Parliament supervising the executive government.

The Committee draws attention to the wording of the legal opinion of the Attorney-General's Department which makes clear that there are serious doubts about the legality of the present Department of Finance guidelines for the Advance to the Minister for Finance.

The three main concerns of the Committee are:


- . whether the procedures for the use and reporting of the Advance are appropriate for this special area of Government expenditure, where funds are being spent without prior specific Parliamentary sanction;
- . whether the wording of the various Appropriation Acts with respect to the Advance is being interpreted correctly, particularly the terms 'urgent' and 'unforeseen'; and
- . whether the Committee should maintain its present role in reviewing expenditure from the Advance.

As a result of the recommendations of this review the Committee considers that the application and approval process will be better defined and more strictly controlled, and that the Parliamentary review process will be facilitated.

The Committee notes that other committees of the Parliament have adopted a role in scrutinising expenditure from the Advance. This Committee will not routinely examine this facility while it is satisfied that Parliamentary scrutiny is being undertaken.

During its review the Committee also noted the broader issue of whether the directions and guidelines prepared by all departments reflect accurately the wishes of the Parliament as specified in acts and regulations. This potential problem area needs to be kept under review.

For and on behalf of the Committee.



R E Tickner, MP  
Chairman

M J Talberg  
Secretary  
Joint Parliamentary Committee  
of Public Accounts  
Parliament House  
CANBERRA  
23 March 1988

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## CONCLUSION AND RECOMMENDATIONS

The Committee's conclusion and recommendations are listed below and cross-referenced to their locations in the text. The Committee's analysis in the text should be referred to when considering them.

The Committee concludes that:

- The Public Accounts Committee should not undertake routine annual examination of final expenditure under the Advance to the Minister for Finance while it is satisfied that other Parliamentary committees, who also have a responsibility in this area, are undertaking appropriate scrutiny. (para 2.44)

The Committee recommends that:

- A standard form be used for all applications for urgent and unforeseen expenditures from the Advance to the Minister for Finance whether or not they will remain as a final charge to the Advance (para 2.13)
- The monthly statement from the Department of Finance to the Parliament have appended applications made on the standard forms for funds from the Advance to the Minister for Finance so that the Parliament can see clearly for what purpose advances are applied. (para 2.18)
- To ensure conformity with the law and effective scrutiny of all expenditure, the guidelines issued by the Department of Finance be revised in respect of the terms 'urgent' and 'unforeseen'. (para 2.32)

## CHAPTER 1

### INTRODUCTION

- . Background to the Advance to the Minister for Finance (AMF) Facility
- . The Committee's Present Role

#### Background to the Advance to the Minister for Finance Facility

1.1 The principle of prior parliamentary appropriation of expenditure is an important feature of the Westminster system. Section 83 of the Constitution provides that no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

1.2 In the normal course of events detailed specific appropriations for expenditure are passed by the Parliament in the Appropriation Acts prior to actual expenditure. However, there will always be cases where, due to various reasons particularly in urgent and unforeseen circumstances, moneys will be required for expenditure before the next Appropriation Bills are passed by the Parliament.

1.3 To give the Parliament some flexibility, but without contravening the Constitution, a special appropriation is passed which has strict constraints and for which the specific applications of expenditures are communicated to the Parliament at a later date. In Australia this appropriation is the Advance to the Minister for Finance (AMF). Other Westminster style parliaments have similar provisions.

1.4 The AMF is a provision authorised by the annual Appropriation Acts and made available to the Minister for Finance for issue in accordance with the terms of the appropriations and Section 36A of the Audit Act 1901.

1.5 Under the terms of the Appropriations Acts the AMF facility is to enable the Minister for Finance:

- . to make advances that will be recovered during the financial year;
- . to make money available for expenditure:
  - (i) that the Minister for Finance is satisfied is expenditure that:
    - (a) is urgently required; and

(b) was unforeseen until after the last day on which it was practicable to include appropriation for that expenditure in an appropriate Bill before it is introduced into the House of Representatives; and

(ii) particulars of which will afterwards be submitted to the Parliament; and

to make money available for expenditure 'pending the issue of Governor-General's Warrant'.<sup>1</sup>

1.6 The AMF facility is thus a central contingency fund used mainly as a source of temporary finance. Advances for the first and third categories are usually small. The second category comprises moneys made available in supplementation of existing appropriations for specified purposes, and moneys made available for new services for which no specific appropriation has been made. This category is commonly the main user of the AMF.

1.7 When funds have been advanced from the AMF to a department for urgent and unforeseen expenditure, the department is required to seek the amount involved in the next corresponding Appropriation Bill. After the Act is passed the amount is credited back to the AMF.

1.8 The only amounts which should remain a charge to the appropriations for the Advance at the end of the financial year are urgent and unforeseen expenditures which arise between the last day for preparation of the additional Appropriation Bills (usually sometime in March) and the close of the financial year.

1.9 The following table shows use of the AMF for urgent and unforeseen expenditure not recovered through additional Appropriation Acts and therefore remaining a charge to the AMF at the end of the financial year.

FINAL EXPENDITURE REMAINING AS A CHARGE TO THE AMF AT 30 JUNE

Year	Appropriation Act	Appropriation Act	Total
	(No. 1)	(No. 2)	
	\$	\$	\$
1975-76	56 700 475	12 376 749	69 077 224
1976-77	18 372 410	722 802	19 095 212
1977-78	21 477 733	28 612 004	50 089 737
1978-79	35 161 334	430 258	35 591 592
1979-80	26 249 449	7 516 461	33 765 910
1980-81	38 336 817	19 080 385	57 417 202
1981-82	41 705 404	6 624 278	48 329 682
1982-83	53 881 967 (a)	3 338 409	57 220 376
1983-84	141 785 221	118 952 494	260 737 715
1984-85	116 502 639	67 218 422	183 721 061
1985-86	39 079 276	101 131 265	140 210 541
1986-87	35 636 581	43 866 172	79 502 753

(a) Appropriation Acts (Nos. 1 and 3)

The Committee's Present Role

1.10 The expenditure of funds from the AMF is a departure from the more usual procedure of money being spent for specific purposes only after it has been appropriated by the Parliament for those purposes and consequently the Parliament has developed strict formal conditions for its use.

1.11 Until 1955-56 it was the practice to include in what were called 'Supplementary Estimates' funds issued from the Advance to the Treasurer (as it was then known) that were not recouped in the Additional Estimates. Supplementary Estimates were considered and passed by the Parliament after the close of the financial year. The first report of the new Public Accounts Committee reviewed the Supplementary Estimates 1951-52.<sup>2</sup> The Committee considered that examination of expenditure under the Advance was in pursuance of its statutory duties imposed under Section 8.(1)(a) of the Public Accounts Committee Act 1951.<sup>3</sup>

1.12 In accordance with recommendations of the Committee in 1957<sup>4</sup> Supplementary Estimates were abandoned and replaced by a requirement for particulars of amounts remaining a charge to the Advance at 30 June to be included in a statement tabled in the Parliament which the Committee would examine.

1. The need for Governor-General's Warrant was eliminated by amendments to the Audit Act contained in Statute Law (Miscellaneous Provisions) (No.1) Act 1987, which was assented to on 18 December 1987. The new provisions allowed the Minister for Finance to authorise the Secretary of the Department of Finance to draw the amount from the Commonwealth Public Account.

2. Joint Parliamentary Committee of Public Accounts, Report 1 - Supplementary Estimates 1951-52, AGPS, Canberra, 1953.  
3. *Ibid*, p 3.  
4. JPCPA, Report 31 - Advance to the Treasurer: Presentation of Supplementary Estimates, AGPS, Canberra, 1957, p 20.



1.13 In 1982-83 new procedures governing the Advance to the Minister for Finance were introduced. Under these arrangements, all departmental applications for funds must be accompanied by adequate supporting detail. The Department of Finance provides the Committee with copies of all approved applications for funds from the AMF where they would remain a final charge to the AMF at the close of the financial year. The Committee does not receive copies of unapproved applications.

1.14 The Minister for Finance presents to the Parliament a monthly summary of moneys made available from the AMF in supplementation of existing appropriations and for new services for which no specific appropriation had been made. The Government's reporting of expenditure from the AMF culminates with the Minister for Finance presenting a statement of heads of expenditure, and the amounts charged thereto, to the Parliament early in the Budget period of sittings following the end of the relevant financial year. This statement is examined by the Committee.

1.15 In its examination of the AMF, the Committee seeks to ascertain whether final expenditure from the AMF has been confined to urgent and unforeseen requirements for which provision could not have been made in the original or Additional Appropriations. In addition, the Committee examines whether the Department of Finance has administered the Advance in the correct fashion. The Committee may also seek to ascertain whether the departments concerned have maintained efficient administration in the expenditure of funds under the items examined.

1.16 After the Committee's report on the AMF is tabled in the Parliament it is submitted for consideration and action to the Department of Finance and to other appropriate departments. The responses to the report are made in the form of a Department of Finance Minute. The Committee then reports back to the Parliament on the Minute, and comments on recommendations which are not fully or adequately dealt with or which are to be subject to further inquiry.

1.17 The Senate Estimates Committees are also required to examine and report on the expenditure under the AMF for the previous year as part of their terms of reference (see Appendix 1).

1.18 In addition, the Australian Audit Office examines expenditure under the AMF. That review is mainly concerned with the completeness and accuracy of amounts, and whether the amounts were appropriately authorised.

## CHAPTER 2

### ADVANCE TO THE MINISTER FOR FINANCE (AMF)

- . The Committee's Concerns
- . Improvements to the Procedure
- . Interpretation of the Appropriation Acts and Finance Guidelines
- . The Role of the Committee

#### The Committee's Concerns

2.1 One of the Committee's statutory duties is to report to the Parliament on any alteration it thinks desirable in the mode of receipt, control, issue or payment of public moneys.<sup>1</sup> It is in this regard that the Committee is examining the AMF with a view to improving the efficiency and effectiveness of the AMF.

2.2 The Committee is concerned about three aspects of the AMF facility. The first issue is whether the procedures for the use and reporting of the AMF are the most appropriate for this special area of Government expenditure where funds are being spent without prior specific Parliamentary sanction. Secondly, is the wording of the various Appropriation Acts with respect to the AMF being interpreted correctly. In particular, the terms 'urgent' and 'unforeseen' may need clarification. Finally, should the Committee maintain its present role in reviewing the AMF.

2.3 The last major review of the use of the AMF facility was a report of the Senate Standing Committee on Finance and Government Operations in August 1979.<sup>2</sup> Some of the Senate Committee's recommendations were adopted, as outlined in a statement to the Senate by the then Minister for Finance in May 1981.<sup>3</sup>

2.4 The Committee notes that the broad question of whether a central contingency fund such as the AMF is workable and worthwhile was examined by the Senate Committee which reviewed similar facilities in the Australian States, Canada, New Zealand and the United Kingdom.<sup>4</sup> The Senate Committee concluded that the AMF is a proper tool of Government and the Public Accounts Committee agrees with their finding provided that the AMF is used strictly according to the terms set out by the Parliament and that its use is subject to prompt and effective Parliamentary scrutiny.

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1. Public Accounts Committee Act 1951, s 8(1)(c).  
2. Senate Standing Committee on Finance and Government Operations, Report on the Advance to the Minister for Finance, AGPS, Canberra, 1979.  
3. Senate, Hansard, 26 May 1981, pp 2066-8.  
4. Senate Standing Committee on Finance and Government Operations, op cit, p 14.

2.5 In this report the Committee is only reviewing the procedures involving expenditures which remain as a final charge to the AMF. The Committee developed its concerns while preparing its report on the expenditure from the AMF in 1986-87.<sup>5</sup> In that report the Committee focused its attention on the administration of the AMF. Further issues were raised during a public hearing held on 23 November 1987 which was part of the Committee's inquiry into the Review of the Reports of the Auditor-General 1985-1987.<sup>6</sup> Evidence on the use of the AMF facility was taken from officers of the Department of Finance. An observer was also present from the Australian Audit Office.

#### Improvements to the Procedure

2.6 The Committee has identified a number of areas where procedures are deficient. These are mainly in the area of documentation of approvals and the timing of the review process.

2.7 The approval process also involves consideration of the criteria under which applications are approved and who gives the approval. These aspects are covered in the next section under interpretation.

2.8 Whether the procedure can be improved by other bodies undertaking some or all of the work of the Committee is dealt with in the final section on the role of the Committee.

2.9 The Committee has commented in previous reports that documentation accompanying applications for funds from the AMF has not been of sufficient standard for the Committee's purposes. For example, the Committee had to obtain additional information for 28 out of 96 applications which remained as final charges to the AMF 1986-87.<sup>7</sup> Supplementary material was also requested for 22 out of 103 applications in 1984-85<sup>8</sup> and for 28 out of 112 applications in 1983-84.<sup>9</sup>

2.10 The Committee is also concerned that if the Department of Finance has not received adequate documentation then it may approve advances that are outside the conditions defined by the Parliament. This has been alluded to in previous remarks, eg:

The Committee would have expected the Department of Finance to have insisted upon sufficient documentary material for it to be

5. JPCPA, Report 286 - Expenditure from the Advance to the Minister for Finance (Appropriation Acts 1986-87), AGPS, Canberra, 1987.
6. Minutes of Evidence, Review of Reports of the Auditor-General 1985-87.
7. Report 286, op cit, p 4.
8. JPCPA, Report 247 - Expenditure from the Advance to the Minister for Finance (Appropriation Acts 1984-85), AGPS, Canberra, 1986, p 3.
9. JPCPA, Report 239 - Expenditure from the Advance to the Minister for Finance (Appropriation Acts 1983-84), AGPS, Canberra, 1985, p 3.

satisfied that an urgent and unforeseeable requirement for funds from the Advance was warranted, prior to approval being finalised.<sup>10</sup>

2.11 Another result of poor documentation is that the review by the Committee is hindered, eg the Committee has stated:

The need to coax sufficient information from Government departments prolongs the process and inconveniences all concerned.<sup>11</sup>

2.12 Noting that its previous exhortations on these matters had not had the desired results, the Committee felt in its examination of the AMF 1986-87 that the Department of Finance should insist on tighter procedures in the approval process.<sup>12</sup> The Committee concluded that a standard form was necessary for all applications for the AMF (see example in Appendix 2). The standard form will bring consistency and rigour to the applications and facilitate the review of expenditure. In particular, the applicant department's explanation of the requirement from the AMF will provide full details addressing the urgent and unforeseen criteria.

2.13 The Committee recommends that:

a standard form be used for all applications for urgent and unforeseen expenditures from the Advance to the Minister for Finance whether or not they will remain as a final charge to the Advance.

2.14 The Committee raised its concern during the public hearing that some approvals may be given over the telephone without a written application.<sup>13</sup> The Committee notes with approval the assurance by the Department of Finance that this did not occur. However, the Committee reinforces its strongly held view that, in the interests of accountability, the Department of Finance must not approve applications unless they are in writing. The Department should not even give qualified approval to applications not in writing.

2.15 If a written application is deficient in some respect then the Department of Finance must ensure that it has all the material information available before it gives approval. In urgent cases this may require information provided by telex, facsimile, etc. Information provided orally only is not sufficient.

2.16 In the above cases, where the Department of Finance approves an urgent application for funds from the AMF which does not exhaustively meet the information requirements, the applicant department must provide the complete information as soon as

10. Report 247, op cit, p 4.
11. Report 286, op cit, p 4.
12. Ibid, p 5.
13. Minutes of Evidence, op cit, pp 211-13.

possible after approval is given. This procedure ensures conformity with the law and ensures effective scrutiny of expenditure. The Committee has raised this aspect before.<sup>14</sup>

2.17 To facilitate early Parliamentary review more information should be included in the monthly statement of moneys made available from the AMF which is tabled in the Parliament. This can be achieved through the tabling, with the monthly statement, of copies of the standard forms provided to the Department of Finance by applicant departments. Questions on these advances could be asked by members of the Parliament or examining committee much earlier, which could lead to more detailed investigation of particular items by the examining committee before the end of the financial year.

2.18 The Committee recommends that:

the monthly statement from the Department of Finance to the Parliament have appended applications made on the standard forms for funds from the Advance to the Minister for Finance so that the Parliament can see clearly for what purpose advances are applied.

2.19 A possible method to assist the examining committee in determining whether the Department of Finance approves advances correctly is for the Department to submit to that committee all applications, whether they have been approved or not. This would include applications which may not have been fully documented prior to rejection. The reasons for rejection would also be necessary. In this way that committee will have a clearer understanding of how the Department of Finance applies its guidelines. It may also indicate inefficiencies in departments which may not otherwise be detected. The Committee does not recommend this action now, but it could be considered if other measures do not prove satisfactory.

2.20 It is noted that the size of the total AMF available has increased in the last nine years from \$225m to \$310m.<sup>15</sup> The Committee also notes that the AMF expressed as a percentage of the previous year's appropriations has decreased from 2.1% to 1.3%.<sup>16</sup> Since the percentage figures have stayed below the limit of 2.3% recommended by the Senate Standing Committee on Finance and Government Operations in 1979<sup>17</sup> (but not adopted by the Government), the Committee feels that it is not a cause for concern. The size of the AMF has increased at a slower rate than inflation and no action should be taken unless the AMF increases above the Senate Committee's proposed limit.

14. Report 286, op cit, p 5.

15. Minutes of Evidence, op cit, p 214.

16. Ibid.

17. Senate Standing Committee on Finance and Government Operations, op cit, p 20.

2.21 The Committee notes that the final charge to the AMF has been greater in the last four years compared to the previous eight (see table in Chapter 1). However, examination of the reports for the last four years indicates that a number of large value items occurred in each year which the Committee was satisfied at the time fulfilled the urgent and unforeseen criteria or which the Committee did not comment on further.<sup>18</sup> The Committee realises that an urgent and unforeseen item can be quite large by its very nature. For this reason, the Committee would not criticise use of the AMF if it fulfils appropriate criteria. The Committee can only repeat the need for strict application of guidelines and early Parliamentary review to ensure that the AMF is not misused or abused.

2.22 The Committee also notes that due to various budget reforms there is more scope for departments to move funds from one area to another to make up shortfalls arising from various circumstances. These reforms probably account for some of the reduction in the number of small advances from the AMF approved in recent years.

#### Interpretation of the Appropriation Acts and Finance Guidelines

2.23 The use of the AMF for supplementation of existing appropriations and for new services for which no specific appropriation has been made hinges on the interpretation of whether the expenditure is 'urgent' and 'unforeseen'. The Committee notes that these terms have been incorporated in the Schedules to the Appropriation Acts as passed by the Parliament since 1980-81 following the recommendation of the Senate Standing Committee on Finance and Government Operations.<sup>19</sup> The Senate Committee made its recommendation to reduce confusion surrounding existing guidelines and criteria.

2.24 The Committee has commented in previous reports that not all applications for funds from the AMF have satisfied criteria for being both urgent and unforeseen. For example, Report 285 said:

The Committee is satisfied that in all cases of expenditure remaining a final charge to the Advance in 1985/86, the requirements were urgent. However, it is not convinced that all were unforeseeable. .... In several cases the requirement for additional funds should have been foreseen before the end of the Additional Estimates process.<sup>20</sup>

18. Report 239, op cit; Report 247, op cit, p 6; JPCPA, Report 285 - Expenditure From the Advance to the Minister for Finance (Appropriation Acts 1985-86), AGPS, Canberra, 1987, p 4; Report 286, op cit.

19. Senate Standing Committee on Finance and Government Operations, op cit, pp 24-26.

20. Report 285, op cit, p 4.

2.25 The Committee is concerned that the Department of Finance has not obtained a legal opinion on the current wording of the Appropriation Acts, which are the authority on which Department of Finance guidelines should be based.<sup>21</sup>

2.26 The Committee is also disturbed by contradictions in responses given by senior officers of the Department, in particular, for the case where funds are required from the AMF because they were not included in the estimates due simply to clerical error. One officer said that such expenditure was unforeseen and could not be advanced,<sup>22</sup> whereas another officer said:

It would be unforeseen in the sense that the need for access to the Advance to the Minister for Finance would have been unforeseen at the time the original appropriation figures were prepared.<sup>23</sup>

2.27 These and other concerns led to the Committee obtaining a legal opinion from the Attorney-General's Department on questions about wording in the Appropriation Acts and the guidelines of the Department of Finance. Copies of the request and the response can be found in Appendices 3 and 4. The current Department of Finance guidelines are incorporated as part of Appendix 3.

2.28 The Attorney-General's Department was asked to examine, *inter alia*, the guidelines of the Department of Finance for the assessment of 'urgently required and unforeseen' expenditure to determine whether they included only those matters which are reasonable to include in such a definition. It was their view that clerical inadvertence to include an amount or a sufficient amount for expenditure in an Appropriation Bill could not be regarded as being unforeseen.

2.29 Although the Attorney-General's Department suggested amending the wording of the Advance if it is intended that clerical inadvertence be regarded as unforeseen, the Committee is not in favour of widening the use of the AMF.

2.30 The Committee considers that amendment of the guidelines and stricter documentation requirements will reinforce that expenditure from the Advance must be for both 'urgent' and 'unforeseen' circumstances as specified by the Parliament.

2.31 The Committee is most concerned that a Government department should issue guidelines which do not conform with the requirements laid down by the Parliament in the Appropriation Acts.

21. Minutes of Evidence, op cit, p 192.

22. Ibid, pp 196-7.

23. Ibid, p 199.

2.32 The Committee recommends that:

- to ensure conformity with the law and effective scrutiny of all expenditure, the guidelines issued by the Department of Finance be revised in respect of the terms 'urgent' and 'unforeseen'.

2.33 The advice also stated that the opinion of the Minister for Finance must not be unreasonable and it must be formed having regard to relevant considerations including the correct legal meaning of the expressions 'urgently required' and 'unforeseen' and for permissible purposes. It is clear from this advice that there are constraints to giving approval to applications for funds from the AMF and that the Minister does not have a wide-ranging discretion.

2.34 The Minister has to be satisfied that the expenditure is to be urgent and unforeseen. However, there is no requirement that the purpose of the expenditure is also urgent and unforeseen.

2.35 It is noted that the Minister for Finance has authorised the holders of certain offices in the Department of Finance to exercise the power for him and on his behalf.

2.36 The Committee was concerned at the public hearing that Cabinet might make a decision for funds from the AMF and by-pass the urgent and unforeseen criteria.<sup>24</sup> The Department of Finance said that it was rare for a Cabinet decision to specifically say that funds from the AMF will be provided. However, even if it did, the officer approving the advance on behalf of the Minister would turn their mind to be satisfied that it was urgent and unforeseen.<sup>25</sup>

2.37 The Committee was concerned that the application would not be subject to the same rigorous scrutiny as other applications. The Department replied:

Probably the scrutiny has taken place before the Cabinet decision. ...it is a question of fact whether something is required urgently. Cabinet's decision is a fair manifestation of the urgency that is required of this expenditure...<sup>26</sup>

2.38 The Committee is not entirely satisfied by the Department's response and stresses strict adherence to the wording of the Appropriation Acts. The Minister or officer he has authorised on his behalf must not be swayed by the opinion of others.

24. Minutes of Evidence, op cit, pp 203-5.

25. Ibid, pp 204-5.

26. Ibid, p 205.

2.39 The Committee's consideration of the interpretation of the Department of Finance guidelines led it to the broader issue of whether the directions and guidelines prepared by all departments are legally correct and an accurate reflection of the wishes of the Parliament as specified in acts and regulations. The Committee considers that the Parliament and departments need to be aware of this potential problem and that departmental directions and guidelines need to be frequently reviewed to ensure consistency with acts and regulations.

#### The Role of the Committee

2.40 Expenditure from the AMF is not specifically appropriated by the Parliament, but it is not practical for the Parliament or a Parliamentary committee to approve applications for advances individually; there are too many and they occur at irregular intervals. Therefore it is worthwhile and necessary for these expenditures to be examined as a group by the Parliament soon after they occur. Examination by a committee and subsequent reporting to the Parliament is a logical means of carrying out this function without involving the Parliament in the whole process. Thus there is an important role for a committee to play in examining expenditure from the AMF.

2.41 The terms of reference for the Senate Estimates Committees clearly establish a responsibility to examine expenditure under the AMF and report to the Senate (see Appendix 1). Although the Senate Estimates Committees are mainly concerned with future expenditures, their continuing examination of groups of departmental proposed expenditures may place them in a unique position to examine and report expenditure under the AMF.

2.42 The possibility that the Australian Audit Office (AAO) examine in greater detail expenditure under the AMF was discussed during public hearing.<sup>27</sup> The AAO has programmed an audit of the applications for the AMF, including cases remaining as final charges to the AMF, for the first half of 1988.<sup>28</sup> The AAO propose to report the results in the Auditor-General's Report on the Minister for Finance's Financial Statements in around November 1988.<sup>29</sup>

2.43 Although the Committee acknowledges the usefulness of the independent AAO review, it considers that appropriate Parliamentary committees should still examine the AMF because the nature of the AAO's work, ie examination of systems and random detailed sampling, may not provide the level of information necessary for Parliamentary review.

2.44 The Committee concludes that:

- the Public Accounts Committee should not undertake routine annual examination of final expenditure under the Advance to the Minister for Finance while it is satisfied that other Parliamentary committees, who also have a responsibility in this area, are undertaking appropriate scrutiny.

-----  
27. Minutes of Evidence, op cit, pp 209-11.

28. Letter to the JPCPA from Acting Auditor-General of 14 January 1988.

29. Ibid.

APPENDIX 1

Extract from: Senate, Hansard, 22 September 1987, p 489

### ESTIMATES COMMITTEES

#### Reference

Motion (by Senator Robert Ray for Senator Gareth Evans) agreed to:

(1) That the Particulars of Proposed Expenditure in respect of the year ending on 30 June 1988 in relation to the Parliamentary Departments, the Particulars of Proposed Expenditure for the Service of the year ending on 30 June 1988 and the Particulars of Certain Proposed Expenditure in respect of the year ending on 30 June 1988 be referred forthwith to Estimates Committees for examination and report.

(2) That expenditure under the Advance to the Minister for Finance for the year ended 30 June 1987 be referred to Estimates Committees for examination and report prior to its consideration in Committee of the Whole.

(3) That the Committees consider Proposed Expenditure and departmental expenditure under the Advance to the Minister for Finance in the Estimates Committee groupings agreed to by Resolution of the Senate.

(4) That the Committees report to the Senate on or before Thursday, 5 November 1987.

APPENDIX 2

Proposed standard form for applying for funds from the  
Advance to the Minister for Finance



EXPENDITURE FROM THE ADVANCE TO THE MINISTER FOR FINANCE 1986-87  
EXAMPLE OF AN EXPLANATION

Department:<sup>1</sup>  
Division: (Insert title of Division)  
Sub-Division: (Insert title of Sub-Division)  
Item: (Insert title of Item)

Purpose of item:

This item provides for ....

Funds available:

Source	1984-85	1985-86	1986-87
	\$	\$	\$
Appropriation Act No. (1/2) <sup>2</sup>			
+ Appropriation Act No. (3/4) <sup>3</sup>			
Advance to the Minister for Finance <sup>3</sup>			
<b>TOTAL FUNDS AVAILABLE</b>			
<b>TOTAL EXPENDITURE</b>			
<b>UNSPENT FUNDS<sup>4</sup></b>			

Explanation of requirements from AMF:<sup>5</sup>

APPENDIX 3

Public Accounts Committee Memorandum  
of 18 December 1987 to the Attorney-General's Department  
Appropriation Acts - Advance to the Minister for Finance

- 
- 1 During financial year 1986-87.
  - 2 Act No. to be amended as necessary.
  - 3 This figure must be the value of Warrant Authority issued and remaining as a charge against the AMF. It need not necessarily be the amount expended.
  - 4 The funds not expended from the AMF or from any other source must be shown as 'Unspent funds' as provided for above; where expenditure has occurred without Warrant Authority the amount concerned should be shown below the 'Unspent funds' line.
  - 5 Should provide full details especially addressing the urgent and unforeseen criteria.



COMMONWEALTH OF AUSTRALIA  
JOINT PARLIAMENTARY COMMITTEE OF PUBLIC ACCOUNTS

PARLIAMENT HOUSE  
CANBERRA, A.C.T.  
TEL. 727455  
TELEX AA61689  
FAX 727689

The Secretary  
Attorney-General's Department  
Robert Garran Offices  
BARTON ACT 2600

APPROPRIATION ACTS - ADVANCE TO THE MINISTER FOR FINANCE

One of the Public Accounts Committee's duties as specified in the Public Accounts Committee Act 1951 is the examination of the receipts and expenditure of the Commonwealth. This includes an examination by the Committee each year of expenditure under the Advance to the Minister for Finance (AMF) to determine whether that expenditure has been made in accordance with the relevant legislation, the Appropriation Acts. This review is restricted to 'final charges' to AMF, which are those payments made out of the Advance after the final date on which it is possible to replenish the Advance from Appropriation Acts Nos. 3 and 4. The Committee generally reviews those 'final charges' some months after the close of the financial year.

The Committee is currently considering both the operation of the AMF facility within the Department of Finance and the relevance of, and possible need for change to, the current method of parliamentary scrutiny of that Advance.

The Committee has a number of questions concerning the criterion which must be met before the Minister for Finance (or his delegate) can be satisfied that expenditure from the AMF facility is warranted and therefore seeks your advice on the following questions concerning the wording of the Appropriation Act (Attachment A) and the guidelines issued by the Department of Finance (Attachment B). Your Department's previous advice on the AMF to the Secretary, Department of Finance dated 11 December 1979, reference A/79/685 has been noted. This further advice is sought as the wording of the Appropriate Acts was amended following your earlier advice.

The wording of the Appropriation Acts that is of particular interest is:

To enable the Minister for Finance ....


b) to make money available for expenditure -

- (i) that the Minister for Finance is satisfied is expenditure that -
  - (A) is urgently required; and
  - (B) was unforeseen until after the last day on which it was practicable to include appropriation for that expenditure in the Bill for this Act before the introduction of that Bill into the House of Representatives; and
- (ii) particulars of which will afterwards be submitted to the Parliament.

Questions:

- 1) Is the interpretation of what is 'urgent and unforeseen' a subjective one ie as long as the Minister for Finance (or his delegate) is satisfied that the expenditure was urgent and unforeseen and certifies as such, then it meets all legal requirements?
- 2) Can this interpretation be challenged by another person or body?
- 3) Do the guidelines issued by the Department of Finance (Attachment B) for the assessment of 'urgent and unforeseen' include only those matters that are reasonable to include in such a definition?
- 4) Would the following expenditure fall into the category of 'urgent and unforeseen':
  - a) where expenditure is planned and the amount known (but no commitment is entered into) prior to the preparation of the Appropriation Bills but due to clerical error, no amount is included in the Bills. After the Bills have been prepared, the oversight becomes apparent and funds are sought from AMF to cover the shortfall.
  - b) a similar scenario to a) above, but a commitment has been entered into prior to preparation of the Bills, and the payment to comply with the commitment must be made in the current financial year or a financial penalty will apply.

- 5) Does the ability to transfer funds between appropriation items change the answers to questions 5a) and 5b)?
- 6) The wording of the Act states that the Minister is to be satisfied that the expenditure is to be urgent and unforeseen. Is the purpose of the expenditure also required to be urgent and unforeseen?



M J Talberg  
Secretary  
18 December 1987

## ATTACHMENT A

Appropriation (No. 1) 1987-88 No. . 1987 49

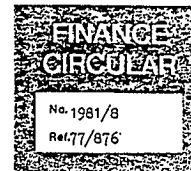
## ADVANCE TO THE MINISTER FOR FINANCE

	1986-87	
	Appropriation	Expenditure
Division 310.—ADVANCE TO THE MINISTER FOR FINANCE	\$	\$
To enable the Minister for Finance:		
(a) to make advances that will be recovered during the financial year, in respect of expenditure that is expenditure for the ordinary annual services of the Government;		
(b) to make money available for expenditure:		
(i) that the Minister for Finance is satisfied is expenditure that:		
(A) is urgently required; and		
(B) was unforeseen until after the last day on which it was practicable to include appropriation for that expenditure in the Bill for this Act before the introduction of that Bill into the House of Representatives; and		
(ii) particulars of which will afterwards be submitted to the Parliament; being expenditure for the ordinary annual services of the Government; and		
(c) to make money available for expenditure, being expenditure for the ordinary annual services of the Government, pending authorisation under section 32 of the <i>Audit Act 1901</i> (whether or not affected by amendments made by the <i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1987</i> in relation to that expenditure. . . . .	170 000 000	160 000 000

\* Expenditure is shown under the appropriation to which it has been charged.



ATTACHMENT B

CIRCULAR MEMORANDUM  
TO DEPARTMENTS

DEPARTMENT OF FINANCE  
CANBERRA, A.C.T. 2600

ADVANCES TO THE MINISTER FOR FINANCE  
CRITERIA GUIDELINES

The Minister for Finance, on 26 May 1981, announced the Government's response to the recommendations of the Senate Standing Committee on Finance and Government Operations concerning the use of the Advances to the Minister for Finance. *Inter alia*, the Government has decided that expenditure from the Advance should be permitted only if the Minister for Finance is satisfied that the expenditure is urgently required and was unforeseen at a specified date; this criteria is now specifically included in the wording of appropriations for the Advances in the Appropriation and Supply Acts.

2. The purpose of this circular is to indicate the guidelines which are to be applied in assessing whether a proposed expenditure relating to:

- a new service for which no specific appropriation has been made in an Appropriation or Supply Act; or
- an existing service for which insufficient appropriation has been included in an appropriation or Supply Act,

meets the "urgent and unforeseen" criteria. The test is to be applied in relation to the date specified in the wording of the appropriation for the Advance included in the Schedule to an Appropriation or Supply Bill as appropriate. The significance of that date is that it is the cut-off beyond which alterations could not be made to the Bills to include additional provisions for requirements not previously foreseen.

"Urgency"

3. "Urgency" in this sense means that circumstances exist under which funds are required immediately from the Advance. Typical of situations meeting the test of "urgency" include:

- (i) accounts are on hand or expected to be received but insufficient funds remain to meet them.
- (ii) insufficient funds are available to enable the payment of salaries/wages.
- (iii) where competent authority has approved that a payment be made, the presumption should be that the payment be made as soon as practicable unless the contrary intention applies.

CONTENT INQUIRIES — D. Evans  
DISTRIBUTION INQUIRIES —

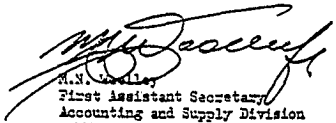
63 3723 Tel. 63 3624

'Unforeseen'

4. Expenditures may be unforeseen both as to amount and to timing and include instances -
- (i) arising from an unforeseen price/cost increase subsequent to the settlement of amounts to be included in an Appropriation Bill,
  - (ii) where a price increase is foreseen but is unknown as to quantum at the time when amounts are settled for inclusion in an Appropriation Bill, or
  - (iii) where, due to clerical error, or inadvertance, no amount or an insufficient amount has been provided in an Appropriation Bill, for particular expenditure, and funds are required to pay accounts from creditors.
  - (iv) where, at the time of settlement of the amounts to be included in an Appropriation Bill, it is not known that expenditure on a specific service or grant will be required.
  - (v) where, at the time of settlement of the amounts to be included in an Appropriation Bill, it is known that a payment will be required to be made, but there is considerable doubt as to the timing of payment.
5. Departments should still prepare their estimates in accordance with the principles set out in Finance Directions.
6. In seeking funds from the Advances to the Minister for Finance for expenditures for which the existing appropriation is insufficient or where payment is required under a new head of expenditure, for which there is no existing appropriation, Departments should bear in mind that the above criteria will have to be met. It is, of course, necessary for the Minister or her delegate to satisfy themselves in this regard and therefore it is still essential that Departments in making applications for funds should give full details of the reasons for the additional requirement.
7. Funds will generally be issued to cover requirements up to the date that it is expected that the appropriations will become legally available. Where a requirement for expenditure arises after the cut-off for inclusion of amounts in the Appropriation Bills (Nos 3 and 4), sufficient funds will be issued from the Advance to meet expenditure for the balance of the financial year.
8. An exception to this general rule applies in the case of grants or subvention to various organisations, payments to the States or other payments outside the administrative and operational mainstream of departmental expenditures. Under the main Appropriation Acts (Nos 1 and 2) grants to organisations and payments to the States can be made monthly, quarterly or annually in advance or arrears depending on the nature of and conditions attaching to the particular grant or payment. In the context of providing funds from the Advances the normal practice would be to treat as urgent the need to issue

funds on the same basis as the original grant or payment.

9. The criteria applying to issues from the Advances to the Minister for Finance do not apply to issues from the Advances for funds required pending a Governor-General's Warrant or for advances to be recovered during the financial year.
10. The contents of this circular will be incorporated as guidelines in the Finance Directions.

  
M.N. Uddell,  
First Assistant Secretary,  
Accounting and Supply Division  
27 May 1981

APPENDIX 4

Attorney-General's Department Memorandum  
of 4 February 1988 to Public Accounts Committee  
Advance to the Minister for Finance - Appropriation Acts  
- Urgently required and unforeseen expenditure



ATTORNEY-GENERAL'S DEPARTMENT

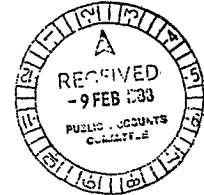
TEL: 71 9111

ROBERT GARRAN OFFICES  
NATIONAL CIRCUIT  
BARTON, A.C.T. 2600

Please Quote: GC88-172

Your Ref.:

4 February 1988



The Secretary  
Joint Parliamentary Committee of  
Public Accounts  
Parliament House  
CANBERRA ACT 2600

Attention: M J Talberg

**ADVANCE TO THE MINISTER FOR FINANCE - APPROPRIATION ACTS -  
URGENTLY REQUIRED AND UNFORESEEN EXPENDITURE**

I refer to your memorandum dated 18 December 1987 seeking, on behalf of the Committee, advice on the power of the Minister for Finance to make money available from the Advance for urgently required and unforeseen expenditure, and on the operation of guidelines issued by the Department of Finance (Attachment B to your memorandum) relating to the exercise of the power.

2. Your specific questions, and my answers, are in paras.4-10.
3. The standard provision of the Advance that concerns the Committee ('the relevant provision') is para.(b) of the following:

'Division - ADVANCE TO THE MINISTER FOR FINANCE

To enable the Minister for Finance:

- (a) to make advances ...;
- (b) to make money available for expenditure:
  - (i) that the Minister for Finance is satisfied is expenditure that:





- (A) is urgently required; and
- (B) was unforeseen until after the last day on which it was practicable to include appropriation for that expenditure in the Bill for this Act before the introduction of that Bill into the House of Representatives; and

(ii) particulars of which will afterwards be submitted to the Parliament;

being expenditure for the ordinary annual services of the Government; and

(c) ...'.

Question 1

'Is the interpretation of what is "urgent and unforeseen" a subjective one, ie. as long as the Minister for Finance (or his delegate) is satisfied that the expenditure was urgent and unforeseen and certifies as such, then it meets all legal requirements?'

4. The relevant provision commits to the Minister, and to no one else, the power to form an opinion that particular expenditure meets the requirements set out in sub-sub-paragraphs (A) and (B). It is a power expressed in subjective terms. However, the Minister is not free to form any opinion he pleases. His opinion must be not unreasonable and it must be formed having regard to relevant considerations - including the correct legal meaning of the expressions 'urgently required' and 'unforeseen' and for permissible purposes. (Reference to the Minister's delegate, which occurs also in the guidelines, is not, strictly speaking, correct. Rather, the Minister for Finance has, I understand, authorized the holders of certain offices in the Department of Finance to exercise the power for him and on his behalf.)

Question 2

'Can this interpretation be challenged by another person or body?'

5. Most subjectively formulated administrative discretions are judicially reviewable (see, eg. Aronson and Franklin, Review of Administrative Action, pp.26-31). However, the question whether such a discretion in the context of an Appropriation Act is reviewable requires special consideration: 'An Appropriation Act ... is something of a rara avis in the world of statutes' (Victoria v. The Commonwealth ('the AAP Case') (1975) 134 CLR 338, at 393 per Mason J. ). An appropriation confers only the authority to spend money (Campbell, 'Parliamentary Appropriations' (1971-72) 4 Adel. L.Rev. 144, at 161). It does not regulate conduct or impose rights and duties (AAP Case at 392-3, per

Mason J.). No person or government, including a person or government with a statutory, contractual or other right to be paid money by the Commonwealth, can compel an appropriation for that purpose to be made, or, if it is made, for the money appropriated to be expended (Campbell, ibid.).

6. So far as the constitutional validity of expenditure under items in Appropriation Acts is concerned, it seems to me probable, on the basis of the two principal cases in which these matters have been raised (Attorney-General (Vic.) v. The Commonwealth (1945) 71 CLR 237; and the AAP Case (above)), that the present High Court would hold that expenditure is justiciable and that a State or State Attorney-General would have standing to challenge it. However, the relevant provision is not a mere appropriation item. Parliament has not simply authorized expenditure but has conferred a discretion capable of being exercised lawfully or unlawfully and in terms that would normally subject the exercise of the discretion to review by a court. The relevant provision reflects Parliament's desire to retain authority over how moneys of the Crown are spent. It is intended to prevent, other than in exceptional circumstances, expenditure (not being expenditure referred to in para.(a) or (c) of the provision) that is not specifically itemised in an Appropriation Act. While the principal means of oversight of the power are undoubtedly review by the Committee on behalf of Parliament and examination by the Auditor-General, I do not think that judicial review is precluded. (Of course, review by the High Court under s.75(v) of the Constitution could not be precluded.) However, although the relevant provision may be justiciable, it seems to me doubtful whether any body or person apart from a State or State Attorney-General would have the necessary standing. (The Commonwealth and the Commonwealth Attorney-General would also have standing but would be most unlikely to seek judicial review.) It seems most unlikely that the Committee or any member would have standing to challenge it.

Question 3

'Do the guidelines issued by the Department of Finance for the assessment of "urgently required and unforeseen" expenditure include only those matters that are reasonable to include in such a definition?'

7. The guidelines state that expenditure may be unforeseen, among other things, -

'(iii) where, due to clerical error, or inadvertence, no amount or an insufficient amount has been provided in an Appropriation Bill, for particular expenditure, and funds are required to pay accounts from creditors.'

Where, due to clerical error or inadvertence only, an amount for an expenditure has been omitted to be included in an Appropriation Bill, or an incorrect (and insufficient) amount has been included, I do not think the expenditure can be regarded as having been unforeseen. (Failure through inadvertence to foresee that some particular expenditure would be necessary would be a different matter.) The wording of the Advance should, in my view, be amended if it is intended to apply in such cases.

Questions 4(a) and (b)

'Would the following expenditure fall into the category of "urgently required and unforeseen":

- (a) where expenditure is planned and the amount known (but no commitment is entered into) prior to the preparation of the Appropriation Bills but due to clerical error, no amount is included in the Bills. After the Bills have been prepared, the oversight becomes apparent and funds are sought from the Advance to cover the shortfall.
- (b) a similar scenario to (a) above, but a commitment has been entered into prior to preparation of the Bills, and the payment to comply with the commitment must be made in the current financial year or a financial penalty will apply.'

8. As stated in para.7, where a decision has been made to include an amount of expenditure in an Appropriation Bill and because of clerical error only that amount is not included, I do not think the Minister could reasonably be satisfied that the expenditure was unforeseen. Where it is foreseen that particular expenditure will be required at some time but it is uncertain whether that time will come before the end of the financial year, I do not think it can be regarded as 'unforeseen'. By contrast, where it is foreseen that it will be required at some time, and it is believed that it will probably be after the end of the financial year, I think the Minister could reasonably regard the expenditure as 'unforeseen'. (The reference to expenditure must be a reference to expenditure of the required amount at the required time.) Whether or not there exists a commitment or legal obligation to make a particular expenditure within a financial year is, of course, relevant to the question of whether that expenditure is urgently required. (Expenditure may also, of course, be urgently required in the absence of such a commitment or legal obligation.)

Question 5

'Does the ability to transfer funds between appropriation items change the answers to q.4(a) and (b)?'

9. No. Section 37 of the Audit Act 1901 authorizes the transfer of funds between items within a subdivision of an Appropriation Act in limited circumstances. Where there is a shortfall in the amount for a particular item within a subdivision and that additional expenditure was foreseen (and therefore cannot be funded from the Advance) but not included due to clerical error, s.37 may enable that shortfall to be made up by transfer of the surplus from another item within the same subdivision. If no item for a particular expenditure has been included in an Appropriation Bill - one of the situations to which q.4 refers - s.37 has no application.

Question 6

'The wording of the Act states that the Minister is to be satisfied that the expenditure is to be urgent and unforeseen. Is the purpose of the expenditure also required to be urgent and unforeseen?'

10. The answer is clearly 'No'. An appropriation for a particular purpose may be less than turns out to be required. To the extent that the Minister is satisfied that the extra amount is urgently required and was unforeseen, it can be expended under the Advance.

  
(P J CLAY)  
for Secretary

Contact Officer: Sandra Power  
Tel: 71 9653