Teacher Reference Document 116

AUSTRALIAN CONSTITUTION CENTRE

Unit 12: Federalism v Westminster Year 9 - C & C Strand: Laws & Citizens

Topic 9.2: Federalism v Westminster

Finances - How do Governments raise money and where do they keep it?

Governments primarily raise money by imposing taxes. They can also get money by borrowing it, being paid for selling goods and services, imposing fees for licences or privileges, receiving rents, receiving royalties, earning interest on investments, and imposing fines and penalties.

Taxation

The courts have long accepted that a tax can only be imposed by Parliament. The Executive Government cannot use its 'prerogative power' (i.e. executive power inherited from medieval times) to impose a tax. All taxes are therefore imposed and controlled by legislation.

Section 51(ii) of the Commonwealth Constitution gives the Commonwealth Parliament the power to make laws with respect to 'taxation; but so as not to discriminate between States or parts of States'.

Sometimes people think this means that only the Commonwealth Parliament can impose taxes. But that is not true. It just gives the Commonwealth Parliament a power to make laws about Commonwealth taxes. It does not stop State Parliaments from imposing State taxes. Nor does it allow the Commonwealth Parliament to legislate about State taxes. The Commonwealth Parliament does not have the power to legislate to prohibit a State from imposing a tax.

But the Constitution does take one tax power away from the States. Section 90 of the Constitution gives the Commonwealth Parliament the exclusive power to impose 'duties of customs and of excise'. A customs duty is a tax on goods when they are imported into Australia. An excise duty is a tax on goods that are produced or manufactured in Australia.

Former Prime Minister, Gough Whitlam, was dismissed by the Governor-General on November 11, 1975
Source: Wiki Commons

So States cannot impose taxes on goods, but they can impose taxes on other things, such as a land tax, or a tax on insurance, or a tax on the payroll of a business, or even an income tax (although they haven't imposed income tax since World War II when the Commonwealth took it over).

Limits on the Commonwealth's taxation power

There are a number of limits on the Commonwealth Parliament's power to tax. A key one is that its taxation laws cannot discriminate between States or parts of States. For example, the Commonwealth could not impose a goods and services tax at the rate of 10% in New South Wales and 20% in Victoria. It must tax in a uniform way.

This can be tricky when there are genuine differences between the States which, as a matter of fairness, need to be accommodated. This is largely dealt with by the Commonwealth providing different levels of financial support for the States. A tax may apply equally across the country, but the Commonwealth might send back some of the money collected to one of the States to support it, because that State is economically disadvantaged.

The High Court has previously decided that even though the Commonwealth must not discriminate in how it taxes the States, it may discriminate in how much money it gives to the States in grants, as this is necessary to help those States that face different economic conditions.

But the Commonwealth still needs to be quite careful that any arrangement is not seen as a scheme to undermine the non-discriminatory requirement of section 51(ii). This is sometimes a fine line to navigate.

Another constraint on the Commonwealth involves procedural rules about passing tax laws. This goes back to old principles of 'no taxation without representation' and that taxation must be controlled by the House of Parliament that represents the people – being the lower House. A consequence is that the upper House, the Senate, has limited powers over tax bills. Section 53 says that tax bills cannot originate in the Senate or be amended in the Senate, and the Senate cannot amend a bill in a way that increases any proposed 'charge or burden on the people'. But the Senate can request the House of Representatives to amend tax bills and can reject them, so the limitations on the Senate's powers are not great.

Nonetheless, because the Senate has limited powers in dealing with tax bills, section 55 prevents other measures from being 'tacked on' to tax bills, to prevent the exploitation of the limitations on the Senate's powers. It says a law imposing tax may only deal with the imposition of taxation, and any provision in it dealing with other things is of no effect. For this reason, the Commonwealth has to be very careful to isolate tax provisions in separate legislation, because if it passed a law (eg the *Migration Act*) and just one tiny bit of it amounted to a tax, then all the rest of the Act, dealing with important matters, would be of no effect.

Where is the money kept?

Section 81 of the Constitution says that all money 'received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund'. This means that departments cannot impose fees or taxes and keep the money for their own expenditure. Every cent of money received by every part of the Commonwealth Executive Government must go into the Consolidated Revenue Fund. These days, the Fund is managed electronically, as a matter of accounting. There is no big money-bin in which the Commonwealth's cash is kept.

But the reason behind section 81 is still important and effective. Critically, section 81 says that money can only come out of the Consolidated Revenue Fund if Parliament passes an appropriation bill to withdraw it. This gives Parliament full control over any spending done by the Executive Government. It is a key way in which the Executive Government is forced to be accountable to Parliament.

The Executive Government can create policies that involve spending money, but unless it can convince Parliament to appropriate the money for that purpose, it cannot give effect to its policies that involve spending. Historically, a defeat of the Government on a 'money bill' (which includes tax bills and appropriation bills) is regarded as a vote of no confidence in the Government, meaning it has to resign or convince the Governor-General to grant it an election.

This is the case, even for symbolic defeats involving small amounts. For example, the Fadden Government resigned in October 1941 after an opposition amendment reduced an item in the budget by £1. In 1945 the Dunstan Country Party Government in Victoria was also defeated by a motion for the reduction of the budget by £1. The Premier, Albert Dunstan, sought an election, but the Governor would only grant it if Dunstan could achieve the appropriation of enough money to cover the election period. He failed to do so. The Governor then effectively dismissed him by forcing his 'resignation'.

Governments that cannot achieve supply cannot govern. Resignation, an election or dismissal are the only options, as the Whitlam Government found in 1975.

Finances - Who oversees the raising and spending of public money?

Governments raise and spend vast amounts of money. Who keeps an eye on what they are doing and calls the Government to account? There are two main sources for scrutiny. The first is Parliament, which through its committees oversees Government finances, and in particular, government spending. The second source is independent accountability bodies, such as the Auditor-General.

Estimates Committees

Twice a year [Senate Committees examine Government 'Estimates'.] These are the estimates of government spending that are contained in the main appropriation bills that form part of the budget and additional appropriation bills later in the year that are used to supplement government finances.

The existing Senate Committees that deal with particular subjects will deal with the estimates for government departments that are most closely related to that subject area. So the Legal and Constitutional Affairs Committee holds estimates hearings for the Attorney-General's Department and the Home Affairs Department. Estimates hearings not only examine departments, but also other statutory bodies that are funded through the budget and fall within a Minister's portfolio, such as tribunals and commissions.

The Committees hold public hearings at which senior public servants give evidence about how money has been used and is proposed to be used by the Departments. This extends to the various programs run by the Department, their operation, efficiency and value for money. If the relevant Minister is a Senator, he or she also attends to deal with political issues. If not, a Senator who is a Minister will represent the relevant Minister from the lower House. Public servants are there to provide information and explain policies, but they are not supposed to express opinions on policies or defend them. That is a matter for the Minister.

Commonwealth Ministry
Source: Albanese Twitter

If the Minister or an official cannot answer a question, it can be taken as a 'question on notice', to which the witness must give a written answer within a specified time. Supplementary hearings are then later held to resolve outstanding issues.

Sometimes proceedings in Estimates hearings become quite fiery as it is one of the few chances that Opposition Senators get to expose government failures and force answers. Excerpts of exchanges often appear on the news or Twitter.

Both public servants and Ministers are wary of being attacked in Estimates hearings, causing them to be more cautious in their behaviour in administering government money. If a junior public servant is worried about inappropriate or extravagant expenditure, he or she only has to ask 'How would this look, Minister, if it was examined in an Estimates hearing?' This is usually quite an effective warning and a disincentive to poor behaviour.

Auditor-General

The Auditor-General is the key independent officer who, with the assistance of his or her office, audits the annual financial statements of government bodies as well as 'performance audits' of particular programs. In doing so, the Auditor-General aims to expose any illegality, inefficiency or failure to comply with financial standards or relevant rules of behaviour. The Auditor-General also makes recommendations to improve practices and procedures to avoid problems in the future.

The Auditor-General is usually given full access to all internal government documents to be able to undertake the necessary inquiries and report. The Commonwealth and each State and Territory has an Auditor-General and Audit Office.

At the Commonwealth level, the *Audit Act 1901* was the fourth Act passed by the Commonwealth Parliament, showing the importance of the Auditor-General in the framework of government. That Act has since been replaced by the *Auditor-General Act 1997* (Cth), which sets out the powers and functions of the Auditor-General.

To ensure that the Auditor-General is independent of the Executive Government and cannot be influenced or pressured by it, section 8 of the *Auditor-General Act 1997* (Cth) makes the Auditor-General an 'independent officer of the Parliament' who has 'complete discretion in the performance or exercise of his or her functions or powers'. The Act ensures the Auditor-General cannot be directed by anyone to undertake a particular audit, or in how an audit is to be conducted.

The Auditor-General makes his or her reports to Parliament, which are then protected by parliamentary privilege. The federal Auditor-General heads an office, the Australian National Audit Office, comprised of officers who conduct the investigations. The Auditor-General is appointed for a ten year term, which reinforces his or her independence.

While the Auditor-General is appointed by the Governor-General on the advice of the Prime Minister, his or her appointment must first be approved by a parliamentary committee (see below).

In practice, the Auditor-General reports on a wide range of matters, such as the effectiveness of the Government's regulation of charities, whether the Government is fair or biased in giving sporting grants and regional jobs grants, whether foreign aid grants deliver value for money and the effectiveness of the 'Future Submarine Program'.

Public Accounts Committee

The Joint Committee of Public Accounts and Audit undertakes inquiries into matters raised by the reports of the Auditor-General as well as examining 'the financial affairs of authorities of the Commonwealth' and intergovernmental bodies. This Committee also oversees the Audit Office, inquiring into its operations, resources, staffing and funding, but it is not permitted to direct the activities of the Auditor-General.

The Committee may also approve or reject the proposed appointment of a person as Auditor-General.

In addition the Committee oversees the Parliamentary Budget Office (which calculates the costs of election promises) and holds public hearings with the Commissioner of Taxation twice a year to ensure it is subject to greater public accountability and transparency.

The Committee is comprised of 6 Senators and 10 members of the House of Representatives. It is established by the *Public Accounts and Audit Committee Act 1951* (Cth), which confers powers on the Committee, including the power to summon witnesses and to issue a warrant for the apprehension of any person who fails to appear when summoned. A person may be detained in custody until released by order of the Chair or Deputy Chair of the Committee. It is an offence to give false evidence before the Committee, with a maximum penalty of five years' imprisonment.

Topic 9.2: Lesson/ Activities Six

Money, money, money - how Governments get and spend it

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Time/Lesson	Learning Goal
• 1 hour/ 1 Lesson	To understand how money is raised, kept and spent by the Government and how this is scrutinised.
Rationale	**Success Criteria**
Students will better understand the role of finance in the system of government.	Students can explain the constraints on the government raising and spending money and how this is scrutinised.

Teaching Reference Document

- TRD 116: How do Governments raise money and where do they keep it?
- TRD 117: Finances - Who oversees the raising and spending of public money?

Tuning In

- **WATCH**: Video on the Audit Office https://www.youtube.com/watch?v=qPsSugP85CQ
- **EXPLAIN**: Money is essential to the exercise of government power. Governments raise and spend vast amounts of money. This needs to be closely scrutinised to make sure that it is being done lawfully and the money is not being wasted. Under the principle of responsible government, the Government is responsible to Parliament. Parliament controls what money is granted to the Government for its use and it scrutinises how that money is used, through its parliamentary committees.

Teacher Instruction

- **READ**: TRD 116: How do Governments raise money and where do they keep it?
- **ANSWER** questions when reading:
  - How do governments raise money?
  - What limits are there on the Commonwealth's power to tax people?
  - Where does tax money go once it is received?
  - What limits are there on State powers to impose taxes?
  - What is the significance of a Government being defeated in Parliament on a money bill?
- **READ**: TRD 117: Finances - Who oversees the raising and spending of public money?
  - What is the role of an Estimates Committee?
  - What is the role of the Auditor-General?
  - Why does the Auditor-General report to Parliament, rather than the Government?
  - What powers does the Joint Committee of Public Accounts and Audit have?

Group Independent Learning

RESEARCH: Students investigate the website of the Australian National Audit Office ('ANAO' - https://www.anao.gov.au/pubs) to find a report on a performance audit on a subject that interests them - eg sports grants (https://www.anao.gov.au/work/performance-audit/award-funding-under-the-community-sport-infrastructureprogram). Students read the audit snapshot, summary and recommendations. Students prepare a report that identifies: why the ANAO conducted this investigation, the concerns raised by its investigation and the recommendations it made. What does this tell us about how the Government has managed public money and how its practices should be improved? How did the Government respond to the report? Students draw from their research a conclusion about the value of the ANAO in its scrutiny of government performance and expenditure.

Wrapping It Up

EXPLAIN: Scrutiny is an important way of ensuring that people behave appropriately. Governments need scrutiny too - especially when they are spending public money. The Auditor-General and parliamentary committees provide that scrutiny.

Differentiation/Enrichment

EXTENSION: Students investigate examples of where a government has fallen because one of its budget bills was reduced by a small symbolic amount. If a Government is defeated on a money bill in the lower House, why is this treated as a vote of noconfidence in the Government? Why is there such a strong connection between the right to govern and the ability to spend money?

Assessment Strategies

Assess the written report and answers to questions.