



Talk



Budget surplus may belong to the states

WITH BRYAN PAPE

P RIME Minister Kevin Rudd and Treasurer Wayne Swan plan to save the actual surplus of nearly \$17 billion for 2008 and the Budget surplus of about \$22 billion for 2009. In short, they are to be frozen. Does the Australian Constitution allow this?

If the money is retained for proper Commonwealth purposes, such a plan is unchallengeable. But if it is not, the Constitution demands that the surplus revenue be paid to the states on a monthly basis.

The framers of the Constitution provided under section 94 that the Parliament may provide, on such terms as it deems fair, for the monthly payment to the several states of all surplus revenue of the Commonwealth.

A former chief justice of the High Court, Sir Garfield Barwick, was of the view that the absence of mandatory terms in section 94 really is of no practical consequence. As such, all surplus revenue must be paid to the states.

It will come as a surprise to many, if not a shock, including perhaps Mr Rudd, that under the Constitution, the Commonwealth is not a national government. Its legislative and executive powers are limited.

Importantly, section 81 of the

Constitution demands that all Commonwealth revenue must only be appropriated for the purposes of the Commonwealth.

The Rudd Government's plan is to freeze most of its surplus revenues into three funds, amounting to \$41 billion for essentially non-Commonwealth purposes. This ought to be an invitation to Premier Mike Rann's Government to move the High Court to declare such a course as beyond power.

Briefly, Mr Swan announced in the Budget that the Government would establish by January, 2009, a Build Australia Fund (BAF) of \$20 billion, an Education Investment Fund (EIF) of \$11 billion and a Health and Hospitals Fund (HHF) of \$10 billion.

This trio of funds is to be managed by the board of the Future Fund set up by the previous treasurer, Peter Costello, to finance the Commonwealth's huge unfunded superannuation liability for public servants.

Now, in 2008, it stands at \$108 billion. Arguably, some of the liability is attributable to public servants employed in ministries administering education and health and which to a large extent are rightly seen to be for non-Commonwealth purposes.

As at June 30, 2007, the Future

Fund's net assets were \$52 billion. The arithmetic still shows a gaping shortfall.

On the other hand, if it is measured against the present value of this long-term liability, discounted at, say, the long-term bond interest rate, the shortfall is likely to be much less.

Of course, this is not the whole story. If the funds from the \$41 billion trio are used for state and territory projects, they "will flow through a new Council of Australian Governments (COAG) Reform Fund".

Unless the states are prepared to withdraw from the cosy COAG cabal, they will further weaken their right to govern independently of the Commonwealth.

Failure to do so will herald a new era of executive federalism to generate an uncontrollable virus of centralism called Canberraitis.

As eminent economist Colin Clark said: "In Australia, nothing useful will be tried out so long as the Commonwealth continues to sit like a cuckoo in the nest claiming an excessive proportion of the national income."

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STACK OF CASH: But should it be paid to the states?

Where the money comes from

■ More than half the Education Investment Fund – \$6.2 billion – will come from the Howard government’s Higher Education Endowment Fund. The Build Australia Fund is supposedly designed to pick up the infrastructure financing which has not been provided by the states, such as road, rail and port facilities.

■ The EIF is principally to finance capital works for universities.

■ In SA, for example, this would mean the University of Adelaide, Flinders University and the University of South Australia. They are established under state Acts of Parliament and for years have been starved of capital funding, aggravated by payroll taxes.

■ The Health and Hospitals Fund is for financing the renewal and refurbishment of hospitals, which again are a state responsibility.