



**SENATE STANDING COMMITTEE**

**FOR THE**

**SCRUTINY OF BILLS**

**FOURTEENTH REPORT**

**OF**

**2005**

**Accountability and Standing Appropriations**

**30 November 2005**



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# **SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS**

## **MEMBERS OF THE COMMITTEE**

Senator R Ray (Chair)  
Senator B Mason (Deputy Chair)  
Senator G Barnett  
Senator D Johnston  
Senator A McEwen  
Senator A Murray

## **TERMS OF REFERENCE**

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
  - (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
  - (iv) inappropriately delegate legislative powers; or
  - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.



# **SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS**

## **FOURTEENTH REPORT OF 2005**

The Committee presents its Fourteenth Report of 2005 to the Senate.

# Scrutiny of Standing Appropriations

## Accountability and standing appropriations

The Standing Committee for the Scrutiny of Bills assesses bills against a set of accountability standards that focus on the effect of legislation on individual rights, liberties and obligations, and on maintaining proper safeguards in the delegation and exercise of legislative power. It seeks to draw to the attention of senators any measure which appears to infringe upon these rights or liberties, or which appears to delegate legislative power inappropriately or allow it to be exercised without sufficient parliamentary oversight.

Standing appropriations are an increasing problem for parliamentary accountability. Hundreds of Acts of Parliament contain standing appropriations, often – misleadingly – called special appropriations. These are provisions which appropriate money, usually of indefinite amount and for an indefinite duration. Often they consist simply of the sentence: ‘The Consolidated Revenue Fund is appropriated as necessary for the purposes of this Act’, or words to that effect.

Standing appropriations enable entities to spend money from Commonwealth revenue, subject to meeting legislative criteria. Their significance from an accountability perspective is that, once they have been enacted, the expenditure they involve does not require regular parliamentary approval and therefore escapes parliamentary control. They are not subject to approval through the standard annual appropriations process.

The numbers of special appropriations and the amounts of expenditure involved have steadily grown over the life of the Commonwealth. They now amount to more than 80% of all Commonwealth government expenditure. The following figures show their growth over the years:

1909-10	10%
1929-30	38%
1949-50	49%
1969-70	56%
1992-93	74%
2002-03	80%



In 2002-03 they authorised \$223.2 billion of expenditure and they have continued to grow. In the 12 months since the beginning of the 41<sup>st</sup> Parliament, 16 bills with standing appropriations have been introduced. A list of these bills is attached.

In a report on the financial management of special (standing) appropriations in November 2004, the Australian National Audit Office found widespread illegalities and lack of accountability and control in the management of these appropriations. More than half of the appropriations were not properly reported by departments and agencies in their annual financial statements.<sup>1</sup>

The Audit Office concluded that ‘there are many important considerations of appropriate accountability, including transparency, in relation to the Parliament.’ The report continued:

10. Given the fundamental importance of appropriations to Parliamentary control over expenditure, changes need to be made to secure proper appropriation management in the Commonwealth...

11. Achieving the necessary improvements to the management of Special Appropriations will require greater understanding of, and increased care and attention to, legislative requirements and appropriation management practices.<sup>2</sup>

The report was the subject of debate in the Senate.<sup>3</sup>

One measure that may improve transparency and accountability in the management of appropriations would be for the Parliament, in considering legislation, to give greater attention to the question of whether standing appropriations are appropriate for the purposes for which they are proposed to be enacted.

No particular scrutiny is given by the Parliament to bills containing standing appropriations. Such provisions in bills normally pass without comment.

### **Scrutiny of proposed standing appropriations**

The executive government is empowered to spend money only in accordance with an appropriation under section 83 of the Constitution. The use of standing appropriations limits accountability and scrutiny by denying the Parliament the opportunity to approve expenditure through its annual appropriations processes.

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<sup>1</sup> Australian National Audit Office, Audit Report No. 15 of 2004-05, *Performance Audit—Financial Management of Special Appropriations*

<sup>2</sup> *ibid*, p14

<sup>3</sup> see Senate Hansard, 29 November 2004, pp. 74-76

The appropriation of money from Commonwealth revenue is a legislative function. The committee considers that, by allowing the executive government to spend unspecified amounts of money for an indefinite time into the future, provisions which establish standing appropriations may, depending on the circumstances of the legislation, infringe upon the committee's terms of reference relating to the delegation and exercise of legislative power.

The committee has therefore determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions (1)(a)(iv) and (v) of its terms of reference, which require the committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

In accordance with its usual practice, the committee will look to the explanatory memorandum to the bill for an explanation of the reason for the standing appropriation. Where circumstances warrant, the committee will also seek from the responsible minister an explanation justifying the inclusion of the provision and the exclusion of the appropriation from subsequent parliamentary scrutiny and renewal through the ordinary appropriations process. This follows the approach the committee took in relation to the Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005.<sup>4</sup>

It will remain for the Senate to determine whether, in the circumstances of the particular legislation, standing appropriations are appropriate for the purposes for which they are proposed. It is open to the Senate to amend bills to remove provisions for standing appropriations, or to restrict them in amount or duration, depending on the purpose for which they are intended. Where standing appropriation provisions are removed from bills, the money could then be appropriated in the annual appropriation bills, subject to the usual level of parliamentary scrutiny involved in that process.

Brett Mason  
Deputy Chair

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<sup>4</sup> *Fifth Report of 2005*, pp 96–99.

## **Bills introduced with standing appropriation clauses – 41st Parliament**

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- P Appropriation (Regional Telecommunications Services) Bill 2005-2006 – clause 13**
- P Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005 – subclause 8(2)**
- P Asbestos-related Claims (Management of Commonwealth Liabilities) (Consequential and Transitional Provisions) Bill 2005 – subclause 5(3)**
- P Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Bill 2005 – clause 23**
- P Financial Framework Legislation Amendment Bill 2004 – Schedule 1, item 397, paragraphs 124(1)(b) and (c) and item 422, subsection 235(2).**  
[also Schedule 1, items 58, 63, 82, 86, 95, 99, 114, 135, 136, 145, 153, 164, 169, 182, 197, 205, 218, 261, 293, 317, 324, 370, 419, 437, 448, 484 and 493 – CRF appropriated by virtue of section 21 of the *Financial Management and Accountability Act 1997*]
- P Human Services Legislation Amendment Bill 2005 – Schedule 2, subitem 720(4)**  
**Indigenous Education (Targeted Assistance) Amendment Bill 2004 – Schedule 1, item 3, subsection 14A(1)**
- P National Water Commission Bill 2004 – CRF appropriated by virtue of section 21 of the *Financial Management and Accountability Act 1997***  
**Offshore Petroleum Bill 2005 – clause 56**
- P Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004 – clause 133**
- P Skilling Australia’s Workforce Bill 2005 – clause 40**
- P Superannuation Bill 2005 – subclause 29(4)**
- P Superannuation (Consequential Amendments) Bill 2005 – Schedule 5, item 1, subsection 4AA(5) and Schedule 6, item 1, subsection 12A(5)**
- P Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005 – Schedule 1, item 1, subsections 158ZO(4), 158ZP(7) and 158ZQ(5) and Schedule 3, item 1, subsection 136C(4)**
- P Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 – Schedule 1, item 12, section 37ZH and subsection 37ZJ(3)**
- P Water Efficiency Labelling and Standards Bill 2004 – CRF appropriated by virtue of section 21 of the *Financial Management and Accountability Act 1997***

## Other relevant appropriation clauses

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- P** **AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004** – Schedule 2, item 3: special appropriation clause – for a finite amount and a finite period of time.
- P** **Social Security Legislation Amendment (One-off Payments for Carers) Bill 2005** – Schedule 2, item 1: special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).

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**P** Indicates bills passed by the Senate