

## Appendix 1

Updated paper on ordinary annual services of the government



## **ORDINARY ANNUAL SERVICES OF THE GOVERNMENT**

Since 2005 the Appropriations and Staffing Committee has had before it a question relating to the ordinary annual services of the government, arising from the system of outcome budgeting adopted after 1999. This question arose in relation to the classification of expenditure authorised by the annual appropriations bills.

### **Origin of the question**

In May 2005 the Australian National Audit Office (ANAO) raised a question about the interpretation to be placed upon the Thirtieth Report of the Appropriations and Staffing Committee, presented and adopted by the Senate in 1999, in relation to items of expenditure which may be regarded as ordinary annual services of the government. ANAO considered that there was a misunderstanding about what the committee and the Senate had agreed to on that occasion. Members of the committee subsequently indicated that they agreed with the interpretation of the report which had been provided to ANAO in subsequent correspondence.

The question of interpretation arose from the appropriation bills presented early in 2005 to authorise expenditure on relief for the victims of the 2004 tsunami. Part of that expenditure was contained in a bill designated for ordinary annual services of the government. As expenditure on tsunami relief could not possibly be expenditure for the ordinary annual services of the government, the bill was treated in the Senate as a non-ordinary annual services bill, and, on the question being raised by ANAO, this was communicated to ANAO.

Subsequently, ANAO questioned other expenditure made from appropriations for the ordinary annual services, and raised the question again. Following further correspondence, which was referred to in Audit Report No. 25 of 2005, it appeared that the Department of Finance and Administration (DoFA) had not accepted the interpretation of the Thirtieth Report of the committee endorsed by the Senate, and adhered to a view that any expenditure on existing outcomes of departments is expenditure for the ordinary annual services of the government. This is contrary to the agreement between the Senate and the Government known as the Compact of 1965 and with subsequent determinations by the Senate, including the determination made on the Thirtieth Report of the committee.

It is necessary to set out briefly the history of this matter.

## **Classification of the ordinary annual services**

Section 53 of the Constitution provides that the Senate may not amend a bill appropriating money for the ordinary annual services of the government, but may request amendments of such a bill. An appropriation bill not for the ordinary annual services of the government may be directly amended by the Senate. Section 54 of the Constitution provides that an appropriation bill for the ordinary annual services of the government must contain only those appropriations.

The classification of appropriation bills on the basis of whether they are for the ordinary annual services of the government determines how the Senate deals with a bill procedurally. This classification of appropriation bills, however, is also a useful adjunct to parliamentary accountability for expenditure, because it enables the Parliament to see at once which expenditure is for normal ongoing activities of the government and which expenditure is for other purposes.

The classification of appropriations was the subject of an agreement between the Senate and the Government in 1965, known as the Compact of 1965. It was then agreed that appropriations for the following matters would be regarded as not part of the ordinary annual services of the government:

- (a) the construction of public works and buildings;
- (b) the acquisition of sites and buildings;
- (c) items of plant and equipment which are clearly definable as capital expenditure;
- (d) grants to the States under section 96 of the Constitution; and
- (e) new policies not authorised by special legislation, subsequent appropriations for such items to be included in the appropriation bill not subject to amendment by the Senate.

The agreement was subsequently confirmed by the Senate, including by a resolution of 1977, which provides that appropriations for expenditure on:

- (a) the construction of public works and buildings;
- (b) the acquisition of sites and buildings;
- (c) items of plant and equipment which are clearly definable as capital expenditure;
- (d) grants to the States under section 96 of the Constitution; and
- (e) new policies not previously authorised by special legislation,

are not appropriations for the ordinary annual services of the government, and that proposed laws for the appropriation of revenue or moneys for expenditure on the said matters shall be presented to the Senate in a separate Appropriation Bill subject to amendment by the Senate.

The application of the Compact of 1965 was the subject of correspondence between the committee and the government, tabled in the Senate on 3 November 1988 and 4 April 1989. It was agreed that expenditure on computers, which, due to changes in technology, are no longer major items of capital equipment, and expenditure on the fitting out of buildings, should be regarded as part of the ordinary annual services subject to certain limits.

Under the terms of these determinations by the Senate, clearly expenditure for new policies could not be part of the ordinary annual services of the government.

The current question relates to correspondence between the committee and the Minister for Finance and Administration and the Thirtieth Report of the committee in 1999.

### **The modifications of 1999**

In February 1999 the then Minister for Finance and Administration wrote to the President of the Senate suggesting that there should be some “modest changes”, consequent upon the impending introduction of accrual budgeting, to the Compact of 1965 between the Senate and the government on what constitutes the ordinary annual services of the government under section 53 of the Constitution.

The proposal submitted by the minister was:

- (i) all equity injections and loans, including for defence purposes, in Bill 2;
- (ii) new administered expenses that fall within an existing outcome included in Bill 1;
- (iii) asset replacement will be typically funded from depreciation provisions appropriated in Bill 1 as part of the price of outputs. [Bill 1 is the ordinary annual services bill and Bill 2 the other bill.]

It should be noted that only *administered expenses* (ie., expenses, such as statutory entitlements, over which departments have no control, as distinct from departmental expenses) falling within “existing outcomes” would be ordinary annual services. What was meant by “existing outcomes” in any event? The minister's proposal also stated that appropriations for new capital acquisitions would be contained in the appropriation bill not for the ordinary annual services “so that Parliament can clearly distinguish between Government resourcing for *ongoing activities* and its investment in agencies” (emphasis added). So “ongoing activities” were ordinary annual services.

The minister's proposal was referred to the committee by the President.

The committee, and the Senate by endorsing the committee's report, agreed that:

the classification of appropriation items according to whether they fall within the category of ordinary annual services of the government ... remain unchanged except that:

- (i) items regarded as equity injections and loans be regarded as not part of ordinary annual services
- (ii) all appropriation items for continuing activities for which appropriations have been made in the past be regarded as part of ordinary annual services
- (iii) all appropriations for existing asset replacement be regarded as provision for depreciation and part of ordinary annual services. (Thirtieth Report of the committee, adopted by the Senate on 22 April 1999.)

In considering the general effect of accrual budgeting, the committee observed:

Given that all expenditure on achieving an existing outcome, including maintaining and replacing existing assets involved in achieving that outcome, is to be regarded as part of expenditure on that outcome, it is logical that such expenditure should be classified as part of ordinary annual services.

The equation of “continuing activities” with “existing outcomes” clearly arose from the language in the minister's proposal. At that time the meaning and content of the expression “outcomes” was not clear.

In effect, the committee took up the minister’s expression “ongoing activities” (slightly altering it to “continuing activities” and adding the definitional phrase “for which appropriations have been made in the past”), and this was what was adopted by the committee and the Senate. This expression was adopted because it avoided the lack of clarity about what would be involved in “outcomes”.

In that context, there was still an expectation that new policy proposals, which cannot by definition be “continuing activities”, would not be included in the ordinary annual services bill. The adoption of the alternative formulation was an attempt at an explanation or an interpretation of the concept of “new policy” which, it was presumed, would be of assistance in classifying appropriations in the context of accrual budgeting.

The classification criteria adopted in the committee’s Thirtieth Report were not intended to replace the classification criteria previously established under the Compact of 1965. The report clearly stated that the original criteria “remain unchanged” except as modified by the new criteria. All of the criteria must be read together. When that is done, it clearly emerges that paragraph (ii) of the new criteria, referring to “continuing

activities” of government as part of the ordinary annual services, is a clarification of the concept of “new policies” in the accrual setting.

On this basis, proposed expenditure, both departmental and administered, for new policies should continue to be in appropriation bills not for the ordinary annual services.

The concept of “new policy”, and indeed the concept of “continuing activities” of government, involve problems of interpretation. Those problems, however, have always been present. They are to be solved by consideration of particular cases.

As noted above, this interpretation of the effect of the 1999 agreement was put before committee in May 2005 and endorsed by the members of the committee.

### **Later cases**

The question was again raised in 2005-06 by ANAO following its examination of the operations of the Australian Securities and Investment Commission (ASIC). The attention of ANAO was drawn to the fact that \$90.7 million for ASIC to implement new policies announced by the government had been included in the appropriation bill for the ordinary annual services.

Initially, ANAO suggested that an apparent difference in interpretation between the Senate and DoFA should be the subject of further discussion. DoFA, however, rejected this approach and asserted that its interpretation of the 1999 modification of the Compact of 1965 should stand. The ANAO then recommended, in its report No. 25 of 2005-06, “that the Department of the Senate and Finance should take steps to develop a shared understanding of the appropriate location between the Annual Appropriation Acts of departmental amounts for new policy” (paragraph 2.14).

There have been further cases of expenditure included in the ordinary annual services bill which are clearly new policies and therefore not part of ordinary annual services.

The Northern Territory Emergency package of bills in 2007 included an appropriation bill purportedly for the ordinary annual services. Clearly the response to the emergency was a new policy and not part of the ongoing activities of departments and agencies.

The examination of the Portfolio Budget Statements of various agencies produced a list of items which were clearly not ordinary annual services but which were included in the ordinary annual services bill. That list is attached to this paper.

In its report on 2006-07 annual reports, the Finance and Public Administration Committee also drew attention to items inappropriately included in the ordinary annual

services appropriation bill. That committee reiterated a recommendation in its report of March 2007 on *Transparency and accountability of commonwealth public funding and expenditure*, that expenditure should be reported at the levels of programs. That recommendation refers to the fact that the budget documentation does not allow definite identification of programs and projects which are included in outcomes. It is therefore not possible to identify all of the expenditure inappropriately included in the ordinary annual services appropriation bill.

### **The issue**

The assertion by DoFA that money for new policies may be included in the ordinary annual services bill is based on a claim that, in the 1999 modification of the Compact, the Senate agreed that any expenditure falling within existing outcomes could be included in the ordinary annual services bill. This is clearly a misreading of the 1999 modification. DoFA appears to be construing part, and only part, of the language put by the minister to the committee, rather than the terms adopted by the committee and the Senate.

Given that outcomes are now so nebulous (and the vagueness of their content was not known in 1999), under the interpretation adopted by DoFA virtually any expenditure could be included in ordinary annual services. If that interpretation is allowed to stand, the distinction between ordinary annual services and other expenditure could virtually disappear.

It would also be much more difficult for the Parliament generally, and Senate estimates hearings in particular, to distinguish between expenditure for normal ongoing government activities and other expenditure. Anomalies such as “ordinary annual tsunamis” would multiply. The way in which the Senate deals with appropriations would be unnecessarily complicated.

### **The 2006-07 correspondence**

On 17 February 2006 the then President, on behalf of the Appropriations and Staffing Committee, drew this matter to the attention of the then Minister for Finance and Administration, and forwarded to the minister examples of expenditure inappropriately included in the ordinary annual services bill. Further letters of the President drew attention to subsequent cases.

The March 2007 report of the Finance and Public Administration Committee also recommended that the Appropriations and Staffing Committee and the Finance Minister arrive at a solution to the problem of ordinary annual services.



The then minister responded by letter dated 21 May 2007, not dealing with the issue or the examples, but suggesting an alternative scheme for distinguishing ordinary annual services from other items of expenditure. Under this proposed scheme, all expenditure under existing outcomes would be regarded as part of ordinary annual services, and the only items included in the other appropriation bill would be new *administered* items, major capital funding and financial assistance to the states, territories and local government, items which were never regarded as ordinary annual services.

This proposed scheme does not meet any feasible interpretation of the simple language of the Constitution, “ordinary annual services of the government”. It would allow completely new policies, programs and projects to be funded through the ordinary annual services appropriation bill, and not necessarily identified in the budget documentation, on the basis that they fall within the vaguely worded outcomes.

The minister’s letter simply confirmed the position put by DOFA to ANAO in 2005. That position has not changed. A memorandum sent by the Department of Finance and Deregulation (as it now is) to all departments and agencies in January 2008 instructs them to follow this interpretation in composing their 2008-09 estimates.

## **Conclusion**

The only solution to the problem, consistent with both the Constitution and parliamentary control over expenditure, would be to return to the Senate's original determination, that there should be no new policies included in appropriations for the ordinary annual services, with the objective test for new policies, namely, whether money has been appropriated for them previously.

This solution would be consistent with the spirit of the recommendation of the Finance and Public Administration Committee that programs and projects be identified in the budget documentation.

**EXPENDITURE ON NEW POLICY PROPOSALS  
INCLUDED IN APPROPRIATIONS FOR THE  
ORDINARY ANNUAL SERVICES OF THE GOVERNMENT**

- New policies to be implemented by ASIC: \$19.4M in 2002-2003, total \$90.7M\*
- Aid to the victims of the 2004 Asian tsunami: \$131.4M in 2004-2005\*
- Establishment of central project management of proposed Access Card: \$36.7M in 2006
- Establishment of National Training Centre for Aerial Skiing: \$2.5M one-off in 2006-2007
- Establishment of Alfred Deakin Institute: \$4M one-off in 2006-2007
- Establishment of National School Chaplaincy Programme: \$14.1M in 2006-2007, total \$107.5M
- Establishment of Beaconsfield Community Fund: \$7.2M in 2006-2007, total \$8.3M
- Establishment of ethanol distribution scheme: \$6.3M in 2006-2007, total \$17.2M
- Establishment of liquefied petroleum gas vehicle conversion scheme: \$74.7 in 2006-2007, total \$835.9M
- Assistance to General Motors Holden: \$2M in 2006-2007, total \$6.7M
- Establishment of Port Kembla Industry Facilitation Fund: \$2.6M in 2006-2007, total \$5.2M
- Establishment of scheme to identify potential onshore energy sources: \$7.4M in 2006-2007, total \$58.9M
- Establishment of Office of Water Resources: \$2M in 2006-2007, total \$4.5M
- Establishment of Uranium Mining Processing and Nuclear Energy Review Taskforce: \$3.9M one-off
- Establishment of national system for registration of personal property securities: \$22.3M in 2007-2008, total \$113.3M
- Establishment of Australian Government Summer School for Teachers, cash rewards for schools: \$32.3M in 2007-2008, total \$154.9M
- Establishment of Australian Centre for Climate Change Adaptation: \$17.1M in 2007-2008, total \$126M

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\* These were the cases drawn to attention by the Australian National Audit Office.