

# 50<sup>th</sup> Report

## Ordinary annual services of the government

The committee reports to the Senate on the issue of ordinary annual services of the government.

The committee has been endeavouring to resolve issues arising from the classification of proposed expenditure in the annual appropriations bills since 2005.

Expenditure for the ordinary annual services of the government has always been contained in a separate bill to preserve the Senate's right under section 53 of the Constitution to amend bills appropriating funds other than for the ordinary annual services of the government and to comply with section 54.

The full history of this matter is set out in the committee's *Annual Report 2005-06*, Appendix 1 (incorporating the committee's *39<sup>th</sup> report*) and *Annual Report 2006-07*, Appendix 1. It was most recently considered in the committee's *45<sup>th</sup> report*, presented in March 2008, in which the committee stated:

Recent appropriation bills have been based on a mistaken assumption that the committee agreed to abandon the long-standing principle that all new policies would be classified as not part of the ordinary annual services of the government, and that the committee agreed that any expenditure falling within an existing outcome would be classified as ordinary annual services expenditure. On this view, completely new programs and projects may be started up using money appropriated for the ordinary annual services of the government, and the Senate is unable to distinguish between normal ongoing activities of government and new programs and projects or to identify the expenditure on each of those areas.

The committee considered that the solution to this problem is to return to the Senate's original determination, so that new policies for which no money has been appropriated in previous years are separately identified in their first year in the appropriation bill which is not for the ordinary annual services of the government.

At that time, the committee was awaiting a response from the Minister for Finance and Deregulation to its concerns. A resolution of the Senate was agreed to on 16 September 2009 in the following terms:

That the Senate—

(a) notes that:

- (i) the inclusion of expenditure not for the ordinary annual services of the government in the appropriation bill for the ordinary annual services, which is required to be separated from other appropriations by section 54 of the Constitution, was raised by the Australian National Audit Office and the Appropriations and Staffing Committee in 2005;
- (ii) the matter has been the subject of successive reports by the Appropriations and Staffing Committee and the Finance and Public Administration Committee since that time;
- (iii) the Minister for Finance and Deregulation has not yet carried out an undertaking to provide to the Appropriations and Staffing Committee proposals whereby this problem might be overcome;

(b) calls upon the Minister for Finance and Deregulation to provide a substantive response to the Appropriations and Staffing Committee on this matter by 16 November 2009.

The Minister responded on 13 November 2009, indicating that the Government saw "no need to change the Executive's interpretation of the compact as it has been applied since 1999". The Minister's correspondence is reproduced in Appendix 1.

It has long been recognised that sections 53 and 54 of the Constitution, referring as they do to "proposed laws", are not justiciable. The matters they raise are matters to be resolved by the Parliament.<sup>1</sup> The committee notes the view of the Executive as conveyed by the Minister for Finance and Deregulation, and notes that the Minister's response has not provided a way forward to resolve this difference of view.

That being the case, the committee has resolved that, consistent with its approach to this issue over many years, as most recently expressed in its *45<sup>th</sup> report*, the solution to the problem is to return to the Senate's original determination, so that new policies for which no money has been appropriated in previous years are separately identified in their first year in the appropriation bill which is not for the ordinary annual services of the government.

Past resolutions of the Senate have declared the Senate's view of items that are or are not ordinary annual services of the government. Further changes were agreed to in correspondence between the committee and the government, tabled in the Senate on 3 November 1988 and 4 April 1989, and in the committee's *Thirtieth Report*, adopted by the Senate on 22 April 1999.

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1 For example, Griffith CJ said in *Osborne v The Commonwealth* (1911) 12 CLR 321 at 336, "it is for the Parliament itself to determine the meaning of the phrase".

The committee **recommends** that:

(a) the Senate restate its position on ordinary annual services of the government, in a new resolution incorporating the resolutions of 17 February 1977 and 8 December 2004, and the changes agreed to in 1988, 1989 and 1999;

and

(b) the President continue to draw to the attention of the Minister for Finance and Deregulation any items of expenditure which appear to be inappropriately included in the appropriation bill for the ordinary annual services of the government.

A proposed resolution is in Appendix 2.

JJ Hogg  
Chairman

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