

The Senate

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Appropriations and Staffing Committee

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Ordinary annual services of the government

50<sup>th</sup> report

June 2010

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# **MEMBERS OF THE COMMITTEE**

President of the Senate, Senator the Hon John Hogg (Chairman)

The Leader of the Government in the Senate, Senator the Hon Chris Evans

The Leader of the Opposition in the Senate, Senator the Hon Eric Abetz

Senator the Hon John Faulkner

Senator Kate Lundy

Senator Stephen Parry

Senator the Hon Nick Sherry

Senator John Williams

Senator Nick Xenophon

## **THE COMMITTEE**

The Standing Committee on Appropriations and Staffing, appointed under standing order 19, determines the amounts for inclusion in the parliamentary appropriation bills and reports to the Senate on its determinations prior to the Senate's consideration of those bills.

The committee examines matters affecting the staffing and administration of the Department of the Senate, including proposals to vary the staffing structure, and other matters referred to it by the Senate. The committee makes an annual report to the Senate on the operations of the Senate's appropriations and staffing and related matters (standing order 19(3)).

The committee has the explicit capacity to scrutinise security funding and administration and to advise the President and the Senate as appropriate. Under a resolution of the Senate agreed to in 1987 the committee also examines proposed changes in the structure and responsibilities of the parliamentary departments.

The committee is chaired by the President and includes the Senate Leaders of the Government and the Opposition as ex officio members.



# 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

June 2010







**THE HON LINDSAY TANNER MP**  
Minister for Finance and Deregulation  
Member for Melbourne

Senator John Hogg  
President of the Senate  
Chair of the Appropriations and Staffing Committee  
Parliament House  
CANBERRA ACT 2600



Dear Senator Hogg

In my letter to you of 25 June 2009, I indicated I would write to you when the Government had reached a position on the Senate Executive Compact in response to the reports of the Appropriations and Staffing Committee and the Finance and Public Administration Committee.

I note that the existing interpretation of how expenditure is allocated between Appropriation Bill No. 1 (ordinary annual services of government) and Appropriation Bill No. 2 (other services of government) has been consistently applied by executive governments since the introduction of the accrual budgeting framework in the 1999-2000 financial year.

Budget Paper No.4 *Agency Resourcing 2009-10* provides a brief overview of the Government's interpretation of the Compact and how appropriations are allocated between Appropriation Bills No. 1 and No. 2. In particular, Budget Paper 4 specifies:

"The annual appropriation Bills propose specified amounts of appropriation for expenditure by agencies in achieving the government's outcomes.

...

Appropriation Bill (No. 1) 2009-2010 proposes appropriations for activities that are considered to be the ordinary annual services of the Government and hence the Bill cannot be amended by the Senate under section 53 of the Constitution. The Bill sets out amounts according to whether they are departmental outputs, administered expenses, or for payment to CAC Act bodies.

...

Appropriation Bill (No. 2) 2009-2010 provides appropriations for matters that are not proposed for the ordinary annual services of the Government. It covers both 'non-operating' costs (including payments to CAC Act bodies) and administered expenses in the form of new administered expenses for new outcomes, payments direct to local government, and some national partnership payments through the states, the Australian Capital Territory (ACT) and the Northern Territory (NT).

...  
 The new administered expenses item in Appropriation Bill (No. 2) requests appropriation in respect of administered outcomes which have not previously been approved by Parliament. This requirement is based in the Compact of 1965.”

Since the Rudd Government was elected, we have made a number of reforms to simplify and improve the Appropriation Bills. Specifically under Operation Sunlight, the Government has improved the transparency of appropriations and the ability of the Parliament to scrutinise government spending.

Improvements to the appropriation bills include:

- *Improving the specificity and transparency of agency outcome statements.*  
 Outcome statements are the primary point of appropriation, but have previously been so broad and general as to be virtually meaningless. From the 2009-10 Appropriation Bills and supporting Budget Papers, agency outcome statements have been significantly improved to ensure that the purpose of appropriations is clearly defined to the Parliament.
- *Improved reporting of the Advance from the Finance Minister (AFM).*  
 In 2009 the Government released the first comprehensive report into the use of the AFM, detailing its use in the 2008-09.

The Government has also reformed Commonwealth–State financial relations with the introduction of the *Federal Financial Relations Act 2009 (FFR Act)*. The framework provides a robust foundation for collaboration between the Commonwealth and the States by providing clearer specification of the roles and responsibilities of each level of government. The new framework rationalises the number of payments made to the States and improves accountability through the transparent reporting of outcomes and results. The effect of this reform has meant that the majority of payments to the States and Territories have been removed from Bill No. 2 or 4 and are now made through the *FFR Act* with general drawing right limits provided in Bill No. 2.

These changes, and improvements to the Appropriation Bills, have significantly improved the transparency of appropriations and improved the ability of the Parliament to scrutinise government spending.

Therefore the Government sees no need to change the Executive’s interpretation of the Compact as it has been applied since 1999.

As the Committee would be aware, the Compact of 1965 which guides the allocation of appropriations between the Bills No.1 and No.2 is not set out in a single document, but is constituted by a series of meeting notes and correspondence between the Executive and the Senate. Given this, it is my view that there would be value in bringing this material together into a single document. This administrative exercise would not change the Government’s interpretation of the Compact.

I expect to have this work completed by the end of this financial year and will provide the document to you at that point.

I have copied this letter to the Prime Minister and the Treasurer.

Yours sincerely



Lindsay Tanner

13 NOV 2009



## Appendix 2

### Proposed consolidated resolution on ordinary annual services of the government

*(additions to the resolution of 17 February 1977 shown thus)*

The Senate resolves:

- (1) To reaffirm its constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the government.
- (2) 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 (*but not including the acquisition of computers or the fitting out of buildings*)<sup>1</sup>;
  - (d) grants to the states under section 96 of the Constitution;
  - (e) new policies not previously authorised by special legislation;
  - (f) *items regarded as equity injections and loans; and*
  - (g) *existing asset replacement (which is to be regarded as depreciation)*,<sup>2</sup>

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.

- (3) *That, in respect of payments to international organisations:*
  - (a) *the initial payment in effect represents a new policy decision and therefore should be in Appropriation Bill (No. 2), and*

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<sup>1</sup> Agreed in correspondence between the Appropriations and Staffing Committee and the Government, tabled in the Senate on 3 November 1988 and 4 April 1989.

<sup>2</sup> Paragraphs (f) and (g) proposed in the Appropriations and Staffing Committee's *Thirtieth Report*, adopted by the Senate on 22 April 1999.

- (b) *subsequent payments represent a continuing government activity of supporting the international organisation and therefore represent an ordinary annual service and should be in Appropriation Bill (No. 1).*<sup>3</sup>
- (4) *That all appropriation items for continuing activities for which appropriations have been made in the past be regarded as part of ordinary annual services.*<sup>4</sup>

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<sup>3</sup> Adapted from the resolution of the Senate of 8 December 2004, agreed to on the adoption of the committee's 41<sup>st</sup> report.

<sup>4</sup> *Thirtieth Report*, adopted by the Senate on 22 April 1999.