



**The Parliament of the  
Commonwealth of Australia**

**REPORT ON THE  
ORDINARY ANNUAL SERVICES  
OF THE GOVERNMENT**

**Senate Standing Committee  
on Constitutional and  
Legal Affairs**

**June 1976**

**Parliamentary Paper  
No. 130/1976**

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## INTRODUCTION

1. On 14 November 1974 on the motion of Senator Laucke the Senate resolved to refer to the Standing Committee on Constitutional and Legal Affairs for inquiry and report the following matter:

The apparent variations disclosed in the reports of Estimates Committees A and C from the practice as announced on 13 May 1965 by the Commonwealth Treasurer that appropriations for new policies not authorised by special legislation would be included in a Bill amendable by the Senate.

And that the Committee consider and report to the Senate upon the means by which the constitutional right of the Senate to amend proposed laws appropriating revenue or moneys for expenditure on matters other than the ordinary annual services of the Government may be preserved.

2. The committee deferred its consideration of the matter until after it had completed its then current inquiry into the clauses of the *National Compensation Bill* 1974. Although the report on the latter matter was completed on 21 July 1975 the committee was unable to complete its inquiry into the subject reference before Parliament was dissolved on 11 November 1975.

3. Following the elections in December 1975 the committee was re-established on 2 March 1976 by resolution of the Senate. Pursuant to that resolution the committee is empowered to inquire into and report upon such matters as were referred to the Legislative and General Purpose Standing Committees during previous sessions of the Parliament and not disposed of by those committees. On 8 April 1976 the committee tabled a 'Report on Outstanding References'. In this report the committee stated that it had resolved to continue its inquiry into this matter.

4. Since the matter was referred to the committee on 14 November 1974, the committee has held eight private meetings in relation to the reference.

### ORIGIN OF THE CURRENT PROCEDURE WITH RESPECT TO APPROPRIATION BILLS

5. The powers of the Senate over Appropriation Bills are spelt out in sections 53 and 54 of the Constitution which provide:

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

6. It would appear that in providing that Appropriation Bills were not to originate in the Upper House, the Australian Constitution follows the Westminster practice. However, pursuant to the Constitution the Australian Upper House, the Senate, is given

much wider powers over Appropriation Bills than the House of Lords. With respect to proposed appropriation laws the Senate:

- (a) may refuse to pass any appropriation laws;
- (b) may amend any proposed law for the appropriation of revenue or monies for any purpose other than the ordinary annual services of the Government;
- (c) cannot amend any proposed law for the appropriation of revenue or monies for the ordinary annual services of the Government;
- (d) may at any stage return to the Lower House any proposed appropriation law which it could not amend 'requesting, by message, the omission or amendment of any items or provisions therein';
- (e) in no case can the Senate amend any Appropriation Bill 'so as to increase any proposed charge or burden on the people'.

7. It is clear then that the extent of the power of the Senate to amend Appropriation Bills is determined by what is meant by the expression 'the ordinary annual services of the Government'. The High Court has ruled that for the purposes of sections 53 and 54 of the Constitution the interpretation of the expression is a matter for Parliament itself to resolve.

Whatever obligations are imposed by these sections are directed to the Houses of Parliament whose conduct of their internal affairs is not subject to review by a court of law. (Griffith C. J., *Osborne v The Commonwealth* 12. C.L.R. 321 at p. 336)

8. The first analysis of these provisions made after agreement on the Constitution was reached but before Federal Parliament first met was made in the work by J. Quick and R. R. Garran entitled *The Annotated Constitution of the Commonwealth*. Both authors were prominent lawyers involved in the framing of the Constitution. In that part of their work concerning sections 53 and 54 of the Constitution, Quick and Garran state (at page 669):

Public expenditure may be divided into and considered under three separate headings:

- (1) the costs and expenses of maintaining the ordinary annual services
- (2) fixed charges on permanent appropriations
- (3) extraordinary charges and appropriations.

9. As to item 1, the costs and expenses of maintaining the ordinary annual services, they state (at page 669):

The ordinary annual services include the various public departments manned and equipped to carry on the general work of the Government departments, such as customs and excise, posts and telegraphs, lighthouses, light-ships, and quarantine, naval and military defence, the money to pay for which is voted by Parliament from year to year.

10. Item 2, fixed charges on permanent appropriations mean appropriations which have been fixed by the Constitution or by statute and are not renewed from year to year, such as the salary of the Governor-General. Quick and Garran state (p. 670):

There is no constitutional limit to the authority of the Federal Parliament to make permanent appropriations. . . . but it is not likely that the policy of special appropriations will be largely favoured, because it removes expenditure from the annual supervision and control of Parliament.

11. As to the third item, extraordinary charges and appropriations, Quick and Garran state (p. 670):

Extraordinary charges, which do not come within the meaning of ordinary annual services, are appropriations of revenue or loan money for the construction of public works and buildings, and for the application of revenue or loan money to public purposes of a special character.

12. Quick and Garran conclude (p. 670):

From the above enumeration and discussion of the various kinds of appropriations it will be seen that the Senate is denied the power to amend only one of the three kinds of Bills appropriating revenue or money. It is true that annual Appropriation Bills constitute by far the largest and most important of all

Appropriation Bills, embracing, as they do, the expenditure necessary for the maintenance of the ordinary administrative departments of the Commonwealth. Whilst the Senate, however, could not amend an ordinary annual Appropriation Bill, it could with unquestionable constitutionality amend a public works Bill, a railway construction Bill, a harbour improvement Bill, a Bill relating to the salary of the Governor-General, a Bill relating to the salaries of ministers of state, a Bill relating to the allowances of the members of the Federal Parliament, a Bill appropriating fines or other pecuniary penalties, a Bill for appropriating fees for licences or fees for services under a proposed law. This power of amending appropriations must be read in conjunction with the limitation prescribed by paragraph three of the section.

Paragraph three of section 53 of the Constitution provides:

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

13. Upon the introduction of the first Supply Bill into the Senate in June 1901, a debate ensued during which it was asserted that the Senate had the right to amend Bills concerning proposed appropriations for the construction of public works and buildings and that the Senate had the responsibility of stating whether items in Appropriation Bills were for the ordinary annual services of the government.

14. When in October 1901, the Estimates for 1901-1902 were introduced into Parliament, they were in the form of two Appropriation Bills:

- one for the ordinary annual services of the government
- the other for works and buildings

This occurred notwithstanding the legal opinion of Attorney-General Deakin of 26 September 1901 that 'appropriations for new buildings or additions when these are required in the ordinary course of departmental business are appropriations for the ordinary annual services, and may constitutionally be included in the annual Appropriation Bill'. (Page 9, paragraph 23, fifty-fourth report of the Joint Committee of Public Accounts). The procedure thus established was followed until 1964, although there was from time to time debate on the meaning of 'the ordinary annual services of the Government'. A full analysis of the parliamentary convention with respect to the ordinary annual services of the Government is to be found in:

- (a) the fifty-fourth report of the Joint Committee of Public Accounts, on the Form of the Estimates, presented to Parliament on 6 September 1961;
- (b) Report from the Committee appointed by Government Senators on Appropriation Bills and the Ordinary Annual Services of the Government, Parliamentary Paper No. 55 of 1967; and
- (c) *Australian Senate Practice* by J. R. Odgers, Fourth Edition, Chapter XVI, especially pages 318 and following.

### **A change in the Appropriation Bill Procedures**

15. In September 1961, the Joint Committee of Public Accounts tabled its fifty-fourth report which related to the form of the Estimates, as presented to Parliament. In its report the Committee stated at pages 14 and 15;

48. The evidence received to this point in our enquiries indicated that most of the items appearing in the various sections of the Estimates could be included in one Appropriation Bill which would not be subject to amendment by the Senate, and that such an alteration would be an improvement from the point of view of administrative convenience, of obtaining greater clarity of presentation and of better coherency in the Estimates papers. There would still remain a number of appropriations each year, including expenditures from loan moneys, payments to the States under section 96 of the Constitution, etc., which would require separate Bills which would be subject to the Senate's powers of amendment.

49. Also of importance was the evidence of the Solicitor-General emphasising the force of the word 'services' in section 53 of the Constitution instead of a reference to items of expenditure and the opinion that 'the Constitution knows nothing of the distinction between capital and income expenditure . . . ' and later at page 19;

75. In the course of this enquiry your Committee learnt that the form of the estimates was designed to facilitate the preparation of two Appropriation Bills and endeavoured, as a consequence, to ascertain the necessity for the two Appropriation Bills, the two Appropriation (Works and Services) Bills, the Supply Bill and the Supply (Works and Services) Bill which are introduced each year. It would not be practicable to recommend the deletion of the Works and Services section of the estimates whilst separate appropriations for these expenditures are required.

76. The evidence obtained by your Committee revealed that the question of the necessity for the separate Bills is dependent upon the nature of the expenditures involved . . . .

The committee agreed that the question of what were the ordinary annual services of the Government was a matter for the determination of the two houses of Parliament.

16. On 5 May 1964, the Treasurer, Mr Holt, announced that having regard to the report of the Joint Committee of Public Accounts the Government decided to alter the form of future annual appropriation measures (Hansard H. of R. 42 of 1964 at page 1509):

Briefly the Government has decided that, from 1964-65, the contents of the Appropriation Bill and the Appropriation (Works and Services) Bill will be amalgamated, subject to the separation out and inclusion in separate measures of any particular items which, as a matter of interpretation, do not fall within the description of appropriations for 'the ordinary annual services of the Government'.

17. The effect of this decision was to reduce the amount of appropriations in the Bill amendable by the Senate from approximately £70 million in 1963-64 to approximately £1 million in 1964-65.

18. In debate in the Senate on a motion to take note of the Government's statement, concern was expressed at the effect of the new procedure on the constitutional powers of the Senate. An amendment was moved, and agreed to unanimously, that the Senate 'refrains from the determination of its constitutional rights in respect of the proposed change in the contents of the annual Appropriation Bills and resolves to consider such Bills'.

19. The Appropriation Bills 1964-65 were in fact presented in the form that the Government had proposed but a committee of Government Senators was established under the chairmanship of Senator M. C. Cormack (later Sir Magnus Cormack) to inquire into the matter and present a report to the Government. In its report (recorded as Parliamentary Paper No. 55 of 1967) that committee summarised its recommendations as follows (pages 34-35):

116. The following is a summary of the Committee's recommendations, together with reference to the numbers of the relevant paragraphs of the Report:

- (1) Public works and buildings—Appropriations for the construction of public works and buildings are extraordinary charges and should not be included in the Appropriation Bill for the ordinary annual services of the Government; (71-85)
- (2) Acquisition of sites and buildings—Appropriations for these purposes should not be included in the Appropriation Bill for the ordinary annual services of the Government; (86-8)
- (3) Plant and equipment—As a working rule, expenditure on items of plant and equipment below the value of £50,000 may be included in the Appropriation Bill for the ordinary annual services of the Government, but appropriations for single items of plant and equipment of £50,000 and over should be itemised in an Appropriation Bill for other than the ordinary annual services; (89-93)
- (4) Fittings and furniture—Appropriations for these purposes may properly be included in the Appropriation Bill for the ordinary annual services of the Government; (94-5)
- (5) Defence expenditure—No change is sought in the present practice of including all Defence expenditure in the Appropriation Bill for the ordinary annual services of the Government—with the exception of appropriations for the acquisition of sites and erection of buildings; (96-7)
- (6) Parliament—Appropriations for the purposes of Parliament should not be included in the Appropriation Bill for the ordinary annual services of the Government; (98-101)
- (7) Grants to the States under section 96 of the Constitution—These appropriations should not be regarded as appropriations for the ordinary annual services of the Government and should not be included in the Appropriation Bill which the Senate may not amend; (102-7)



- (8) New policies—As far as possible, the first provision for new policies which have not been authorised by special legislation, and for which the only Parliamentary authorisation proposed is an annual Appropriation Act, should be included in a Bill for other than the ordinary annual services of the Government. (108-15)

117. It is recommended that the foregoing division of expenditure be given effect in three annual Appropriation Bills, as follows:

- (1) Appropriation Bill (which may not be amended by the Senate) for the ordinary annual services of the Government;
- (2) Appropriation Bill (subject to Senate amendment) for—Construction of public works and buildings; Acquisition of sites and buildings; Plant and equipment, being single items of £50,000 or more;
- (3) Appropriation Bill (subject to Senate amendment) for—Parliament; Grants for financial assistance to the States under section 96 of the Constitution (other than the special appropriations authorised by special legislation); New policies not authorised by special legislation; Any other appropriations for services which Parliament, from time to time, decides are not for the ordinary annual services of the Government.

20. Although that report was not tabled in the Senate until 1967 the Government had received it when the Treasurer, Mr Holt, in May 1965, announced what has become known as the 1965 compact. It, in effect, involved substantial adoption of the recommendations of the committee of Government Senators. It is recorded in Hansard H. of R. 46 of 1965 at pages 1484-5 as follows:

. . . the Government has now decided that henceforth there will be a separate Bill . . . subject to amendment by the Senate, containing 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 authorised by special legislation. Subsequent appropriations for such items will be included in the Appropriation Bill not subject to amendment by the Senate.

## THE REPORTS OF THE SENATE ESTIMATES COMMITTEES

21. On one occasion with respect to Estimates for 1973-1974 and on two occasions with respect to 1974-1975 Estimates, committees of the Senate queried whether certain matters appearing in the Appropriation Bills were not strictly in accordance with paragraph (e) of the compact of 1965 relating to new policies not authorised by special legislation. The appropriations which were queried related to the National Health Insurance Plan and the National Commission on Social Welfare (Estimates Committee C, 1973); the Australian Ombudsman (Estimates Committee A, 1974); and the Australian Government Advertising Advisory Council and the British Commonwealth Youth Program (Estimates Committee C, 1974). It was as a result of these issues that the current subject of inquiry was referred to this committee.

22. Paragraph (e) of the 1965 compact is an abbreviated reformulation of the recommendation of the committee of Government Senators that (page 34):

As far as possible, the first provision for new policies which have not been authorised by special legislation, and for which the only Parliamentary authorisation proposed is an annual Appropriation Act, should be included in a Bill for other than the ordinary annual services of the Government. [The underlining was added by this Committee.]

23. An issue arose in October, 1973 in Estimates Committee C as to whether certain appropriations should be included in the non-amendable Appropriation Bill when legislation to authorise these new policies had been introduced into Parliament or was about to be introduced into Parliament. The then Treasurer stated that these appropriations were distinguishable from appropriations for other new policies appearing

in the amendable Bill as the latter would be items 'for which the only Parliamentary authorisation proposed is the annual Appropriation Act'.

24. When a similar issue arose in Estimates Committee A the following year, that Committee expressed its opinion that the apparent ambiguity in the words relied upon by Mr Crean (above) could be resolved by reading them in conjunction with the paragraphs next following in the Government Senators' report. Paragraphs 113 and 114 of the latter committee's report (Parliamentary Paper No. 55 of 1967) read as follows:

113. If such a practice were adopted, Parliament would be protected from the possibility of appropriations for any new policies not being readily identifiable in an omnibus Appropriation Bill. Members of both Houses could then approach a consideration of the annual appropriation sure in the knowledge that only appropriations for services already approved were included in one Appropriation Bill, while those for any new policies not previously authorised attracted the searchlight of attention in a separate Bill. We think that proper, and good Government. [Underlining by Estimates Committee A].

114. The Committee appreciates that departmental difficulties may arise in deciding which activity should, and which should not, be classified as new policy. We suggest that, in cases of doubt, such doubts be resolved by excluding the appropriations from the Appropriation Bill for the ordinary annual services of the Government.

25. It is the opinion of this committee that the 1965 compact, considered in the light of the Government Senators report upon which it was based, does not lend itself to an interpretation that a Government can place any financing for new policies in a non-amendable Bill purely on the basis that the required legislation would be forthcoming at a later date.

#### **Correspondence between this Committee and the Treasurer**

26. On 8 April 1976, the Chairman of the Committee wrote to the Treasurer the Hon. P. R. Lynch, seeking his views as to whether or not the procedure announced by Mr Holt in 1965 in respect of ordinary annual expenditure would be followed in future appropriation legislation. (This letter is set out in Appendix A.)

27. The Treasurer indicated in his reply of 4 May 1976 (set out in Appendix B) that the 1965 compact would be followed in the preparation of future appropriation legislation.

28. The Committee recommends that in view of the Treasurer's letter the Senate accept the assurance that the 1965 compact should continue to operate.

#### **Preservation of the Senate's Constitutional Rights**

29. The second branch of the Committee's reference requires it to '... consider and report to the Senate upon the means by which the constitutional right of the Senate to amend proposed laws appropriating revenue or moneys for expenditure on matters other than the ordinary annual services of the Government may be preserved'.

30. In the light of the established principle that in the final analysis, the contents of Appropriation Bills are a matter for the two Houses of Parliament and not the courts to decide, the committee recommends:

- (i) That the Senate continue to be vigilant in scrutinising all Appropriation Bills so as to ensure that Appropriation Bills for the ordinary annual services of the Government only contain appropriations for those services.
- (ii) That the Senate should reaffirm by resolution that the 1965 compact should continue, in the following terms:

Senator                      to move that—

The Senate resolves:

1. To reaffirm its constitutional right to amend proposed laws appropriating revenue or monies 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;
  - (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 monies for expenditure on the said matters shall be presented to the Senate in a separate Appropriation Bill subject to amendment by the Senate.

ALAN MISSEN  
*Chairman*

The Senate  
Parliament House  
Canberra  
June 1976

APPENDIX A

Parliament House  
Canberra, A.C.T. 2600  
Tel. 72 6737  
8 April 1976

Ref: 13/1/1

The Hon the Treasurer Mr P. R. Lynch  
Parliament House  
Canberra, A.C.T. 2600

My dear Treasurer,

On 13 May 1965 the Treasurer, Mr Holt, announced a policy for the distinction of ordinary annual expenditure in Appropriation Bills (Hansard Volume 46, pages 1484-5).

The matter of ordinary annual expenditure in Appropriation Bills was raised at the meetings and in the reports of the Senate Estimate Committees A and C in October and November 1974. Subsequently on 14 November 1974 the matter was referred to this Committee for inquiry and report (Hansard 14 November 1974, page 2410).

At the request of the Committee, I am writing to seek your views on whether or not the procedure announced by the Treasurer in 1965, in respect of ordinary annual expenditure will be followed in future appropriation legislation.

Yours sincerely,

ALAN MISSEN  
*Chairman*

APPENDIX B

Treasurer  
Parliament House  
Canberra, A.C.T. 2600  
24 May 1976

Senator Alan Missen  
Chairman  
Standing Committee on Constitutional  
and Legal Affairs  
Parliament House  
Canberra, A.C.T. 2600

My dear Senator

I refer to your letter of 8 April 1976 in which you sought my views on whether or not the procedure announced by the Treasurer in 1965 in respect of ordinary annual expenditure will be followed in future appropriation legislation.

I am aware of the terms of the 1965 compact and confirm that there is no present intention of seeking a change in its terms, i.e. we propose to follow it in the preparation of future appropriation legislation.

Yours sincerely,  
PHILLIP LYNCH

