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# How effective is parliamentary oversight over executive expenditure authorised by standing appropriations?

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**Abstract:** For the executive to spend money, the Parliament must legislate an appropriation from the Consolidated Revenue Fund. To ensure accountability, the Senate has established the Budget Estimates process to examine and conduct public parliamentary scrutiny over executive expenditure in the annual appropriation bills. However, this amounts to approximately just one quarter of authorised expenditure—the other three quarters is authorised in various ‘standing’ appropriations with no dedicated ongoing review mechanism. This article considers what standing appropriations are and the challenge they pose to responsible government, and what mechanisms currently exist to provide government accountability and parliamentary oversight within the Australian Senate as the house of review. It concludes by offering some recommendations for the Senate to improve parliamentary oversight in order to ensure that standing appropriations remain fit for purpose and the executive are held accountable for spending authorised under them. Specifically, this article recommends that the Senate: request more information be provided in ministers’ second reading speeches and explanatory memoranda accompanying bills that establish standing appropriations, to assist in their scrutiny; include sunset clauses and provisions requiring review in new standing appropriations to ensure regular oversight and scrutiny over standing appropriations once enacted; and publish online a running list of standing appropriations with additional information to improve transparency and aid in understanding the context within which the Parliament can consider proposed standing appropriations.

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## INTRODUCTION

*Proper parliamentary supervision and control of expenditure, and the proper application of section 53 of the Constitution, require that all government expenditure be approved annually in specified amounts by Parliament...[t]here is no reason for this situation not being achieved, except an executive desire to avoid unwelcome parliamentary attention.<sup>2</sup>*

One of the Australian Parliament's key functions is to pass legislation that authorises the executive to spend money, called 'appropriations'. In line with the principle of responsible government, the government must remain accountable to the Parliament, as representatives of the people, for how appropriated monies are spent.<sup>3</sup> To ensure this accountability Parliament needs to retain some oversight over expenditure and, to this end, the Senate has established a rigorous system for examining annual appropriations through what is known as the Budget Estimates process. However, annual appropriations only account for approximately 25% of government expenditure, while standing appropriations (also known as 'special appropriations', and which exist in legislation over multiple years or indefinitely) account for the other 75% and are not subject to this kind of examination.<sup>4</sup> This removes Parliament's direct oversight over significant amounts of spending and challenges Parliament's role as the ultimate authority on expenditure.

While much has been written on the constitutional basis for appropriations and associated jurisprudence in Australia,<sup>5</sup> little examination has been given to the Australian Parliament's oversight over executive expenditure authorised by standing

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<sup>2</sup> Rosemary Laing (ed), *Odgers' Australian Senate Practice: as revised by Harry Evans*. Canberra: Department of the Senate, 14<sup>th</sup> ed, 2016, p. 397.

<sup>3</sup> Gabrielle J Appleby and John M Williams, 'A tale of two clerks: When are appropriations appropriate in the Senate?'. *Public Law Review* 20(3) 2009, p. 203.

<sup>4</sup> Department of Finance, 'Budget 2023-24 Agency Resourcing: Budget Paper No. 4', 9 May 2023, p. 111 ('*Budget Paper No. 4*').

<sup>5</sup> See for example *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1; *Williams v Commonwealth of Australia* (2012) 248 CLR 156; *Wilkie v Commonwealth* (2017) 263 CLR 487; Anne Twomey, 'Wilkie v Commonwealth: A Retreat to Combet over the Bones of Pape, Williams, and Responsible Government'. Accessed at: [auspublaw.org/2017/11/wilkie-v-commonwealth/](http://auspublaw.org/2017/11/wilkie-v-commonwealth/); Glenn Ryall, 'Wilkie v Commonwealth and Parliamentary Control of Appropriations'. *Papers on Parliament No. 70*, 2019, pp. 77–97.

appropriations. This article considers what standing appropriations are and the challenge they pose, and what mechanisms exist to provide parliamentary oversight and ensure government accountability. This article limits its scope to what the Australian Senate, as the house of review, can do to ensure more effective oversight over standing appropriations, though acknowledging that there is a role more broadly for the Parliament as a whole and the government. It concludes by offering some recommendations for the Senate to improve its oversight to ensure proper parliamentary supervision and control of expenditure.

## WHAT ARE APPROPRIATIONS?

Laws that authorise expenditure comprise of annual appropriations, introduced each year in appropriation bills forming the federal budget,<sup>6</sup> and standing appropriations, which typically exist indefinitely in other legislation.<sup>7</sup> Both kinds of appropriations allow for money to be spent from the Consolidated Revenue Fund, for a purpose determined by Parliament.<sup>8</sup>

Proposals for annual appropriations are introduced into the Australian Parliament each year in main and additional appropriation bills and, as noted, account for approximately 25% of government expenditure.<sup>9</sup> As these bills appropriate money for particular entities and outcomes for a specific amount of money, the executive must periodically

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<sup>6</sup> This includes Advances to the Finance Minister (AFMs), provisions in the annual appropriation bills which enable the Finance minister to allocate additional funds up to a certain amount (in the 2024-25 financial year, this was \$1 billion across Appropriation bills No.1 and No. 2 2024-2025) to entities when satisfied there is an urgent need for expenditure and the existing appropriations are inadequate. The Australian National Audit Office undertakes independent assurance reviews on AFMs issued.

<sup>7</sup> A 'special account' is not a standing appropriation in itself but is a mechanism to increase or decrease an existing standing appropriation that exists under the *Public Governance, Performance and Accountability Act 2013*. This Act provides that if a determination made by the Finance Minister (section 78) or an Act (section 80) establishes a special account and identifies the purposes of the special account, then the Consolidated Revenue Fund is appropriated for expenditure for those purposes, up to the balance for the time being of the special account. While this mechanism raises similar oversight and accountability concerns, the focus of this paper is on standing appropriations.

<sup>8</sup> *Australian Constitution* s 81; Ryall, 'Wilkie v Commonwealth and Parliamentary Control of Appropriations', p. 82.

<sup>9</sup> Department of Finance, *Budget Paper No. 4*, p. 111. Of note, the Budget Paper No. 4 for the financial year 2024-2025 did not specify the percentage of government expenditure via standing appropriation.

request the Parliament to appropriate further monies for them.<sup>10</sup> This process forces the Parliament to continually examine these expenditures before approving them. These bills are also examined by the Senate through the Budget Estimates, a rigorous and public process in which the Senate legislation committees examine in public hearings and report on expenditure proposed under different government portfolios.<sup>11</sup> The Budget Estimates hearings form an integral part of the Parliamentary calendar, occurring three times a year. They provide rigorous accountability mechanisms by providing space for senators to directly question ministers and government officials and receive written responses if the questions are taken on notice rather than responded to immediately. This process allows for regular parliamentary scrutiny over the performance of the executive and its expenditure of monies appropriated through these bills.<sup>12</sup>

Conversely, standing appropriations authorise continuous expenditure for specific purposes over multiple years. The drafting of a standing appropriation provision is typically quite simple. For example, '[a] payment under this Act is made out of the Consolidated Revenue fund, which is appropriated accordingly'<sup>13</sup> or '[t]he Consolidated Revenue Fund is appropriated for the purposes of making a payment under [specific provision in the Act]'.<sup>14</sup> Where these appropriations are limited in amount or duration, for example in the *Fuel Security Act 2021* (Cth),

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<sup>10</sup> Daniel Weight, 'The Commonwealth Budget: a quick guide'. *Research Paper Series*, 2018, p. 8.

<sup>11</sup> Department of the Senate, 'Consideration of Estimates by the Senate's Legislation Committees'. Accessed at: [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Senate\\_Briefs/Brief05](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief05).

<sup>12</sup> John Hogg, 'Senate Estimates Committees', *Australasian Parliamentary Review* 16(2) pp. 72–172; G. Bowrey, C. Smark & T. Watts, 'Financial Accountability: The Contribution of Senate Estimates', *Australian Journal of Public Administration* 75(1) 2016, pp. 28–38.

<sup>13</sup> See, for example, section 238-12 of the *Higher Education Support Act 2003* which provides that '[a]mounts payable by the Commonwealth under this Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly'. This Act provides for grants for higher education, scholarships and assistance to students and is unlimited in amount or duration.

<sup>14</sup> For example, item 14 of Schedule 1 to the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024* inserts section 846B into the *Corporations Act 2001* to provide that '[t]he Consolidated Revenue Fund is appropriated for the purposes of making a payment under an arrangement authorised under section 846A'. In this case, the appropriation indefinitely authorises spending up to \$5 billion, to be made by a non-disallowable legislative instrument for crisis resolution over financial clearing and settlement facilities.

*[t]he Consolidated Revenue Fund is appropriated, to the extent of \$2,047 million, for the purposes of paying fuel security services payment under this Part in relation to quarters ending on or before 30 June 2030,' new legislation is required if the government wants to change the amount or duration of the standing appropriation.<sup>15</sup>*

Typically, however, standing appropriations authorise money to be appropriated for indefinite amounts and indefinite duration.<sup>16</sup> In the early 1900s, standing appropriations accounted for about 10% of all Commonwealth expenditure, and has steadily grown over the decades to approximately 80% in the early 2000s and 85% in 2011.<sup>17</sup> This has reduced since then and the 238 standing appropriations that currently exist account for approximately 75% of Commonwealth expenditure.<sup>18</sup>

Standing appropriations fund kinds of payments that are considered independent from the government's annual budget priorities. The Department of Finance provides a list of examples of when a standing appropriation may be more suitable than an annual appropriation, including to: create a legal entitlement to be provided to everyone who satisfies specific criteria; give effect to inter-governmental or industry arrangements by providing a specific amount to certain persons or bodies under stated conditions; demonstrate the independence of an entity from parliament and the executive by providing for automatic payment of the remuneration of its officeholders (for example, the salaries of judges, statutory officeholders, and the Auditor-General); demonstrate Australia's ability to meet its financial obligations independently of parliamentary approval of funds (for example, the repayment of loans); transfer the balance of a special account being ceased to a receiving body; or where implementing transitional arrangements.<sup>19</sup> In line with this, existing standing appropriations fund

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<sup>15</sup> *Fuel Security Act 2021* (Cth) s 58.

<sup>16</sup> Department of Finance, 'Chart of Special Appropriations – 30 June 2024'. Accessed at: <https://www.finance.gov.au/special-appropriations-background>.

<sup>17</sup> Rosemary Laing (ed), *Odgers' Australian Senate Practice: as revised by Harry Evans*. Canberra: Department of the Senate, 14<sup>th</sup> ed, 2016, p. 397.

<sup>18</sup> Department of Finance, 'Chart of Special Appropriations – 30 June 2024'; Department of Finance, *Budget Paper No. 4*, p. 111.

<sup>19</sup> Department of Finance, 'Special Appropriations: Background. Accessed at: <https://www.finance.gov.au/special-appropriations-background#summary>.

intergovernmental agreements,<sup>20</sup> judges' salaries,<sup>21</sup> compensation and debt repayments,<sup>22</sup> and authorise expenditure for amounts received through industry-specific levies and charges back to relevant industry bodies.<sup>23</sup> Additionally, standing appropriations are set up for a range of other payments, including funding for housing programs,<sup>24</sup> various welfare entitlements including pensions, paid parental leave and student loans,<sup>25</sup> and programs to incentivise investment in particular industries.<sup>26</sup> Including authorisation for these expenditures in standing appropriations allow the executive to 'spend unspecified amounts of money for an indefinite time into the future,'<sup>27</sup> and they 'may grow exponentially in cost over the years', for example where many more people may become eligible for a particular kind of payment than was originally considered and approved.<sup>28</sup>

The significant amount of expenditure authorised via standing appropriations is not mirrored in other jurisdictions. While Canada has a relatively commensurate proportion of expenditure through standing appropriations, known as 'statutory expenditures', at 71%, the United Kingdom authorises approximately 24% of expenditure through 'consolidated fund standing services' and New Zealand approximately 15% through 'permanent legislative authorities'.<sup>29</sup> In some of these jurisdictions, there has been some criticism from parliamentary committees and other commentators on the use of

<sup>20</sup> See, e.g., *Classification (Publications, Films and Computer Games) Act 1995* (Cth) s 90(2).

<sup>21</sup> See, eg, *High Court of Australia Act 1979* (Cth) s 13.

<sup>22</sup> See, e.g., *Native Title Act 1993* (Cth) s 54(2); *Safety, Rehabilitation and Compensation Act 1988* (Cth) ss 90D, 97N(2) and 97QC(2); *Guarantee of State and Territory Borrowing Appropriation Act 2009* (Cth) s 5.

<sup>23</sup> See, e.g., *Wine Australia Act 2013* (Cth) s 32; *Primary Industries Levies and Charges Disbursement Act 2024* (Cth) ss 37, 52 and 62.

<sup>24</sup> See, e.g., *Housing Australia Future Fund Act 2023* (Cth) ss 10 and 25.

<sup>25</sup> See, e.g., *Higher Education Support Act 2003* (Cth) s 238-12; *Social Security (Administration) Act 1999* (Cth) ss 123ZN and 242; *Paid Parental Leave Act 2010* (Cth) s 307.

<sup>26</sup> See, e.g., *Automotive Transformation Scheme Act 2009* (Cth), ss 10 and 21(5); *Clean Energy (Household Assistance Amendments) Act 2011* (Cth) sch 2 s 36(5).

<sup>27</sup> Senate Standing Committee for the Scrutiny of Bills, *Fourteenth Report of 2005 Accountability and Standing Appropriations*. Canberra: Department of the Senate, 30 November 2005, p. 272 ('*Scrutiny of Bills Report of 2005*').

<sup>28</sup> Senator Andrew Murray, *Review of Operation Sunlight: Overhauling Budget Transparency*, June 2008, p. 30 ('*Murray Review*').

<sup>29</sup> Australian National Audit Office, 'Management of Special Appropriations'. *Audit Report No. 35, 2017-18*, p. 17.

standing appropriations and the need to ensure parliamentary oversight over them.<sup>30</sup> In New Zealand, ‘permanent legislative authorities’ are limited to debt repayments and judicial salaries and these are presented with the annual appropriations for review.<sup>31</sup>

Given the amount of executive expenditure authorised through standing appropriations, relatively little attention is paid in the Australian Parliament as to whether they are suitable to provide accountability for government expenditure. During the 47<sup>th</sup> Parliament, little time has been spent debating proposals for new standing appropriations. As of August 2024, sixteen bills have been introduced with new standing appropriations,<sup>32</sup> but only two, the National Reconstruction Fund Corporation Bill 2022 and the Housing Australia Future Fund Bill 2023, engaged any debate or comment in Parliament about the suitability of the mechanism used to fund the appropriation,<sup>33</sup> with the exception of four bills recently introduced and commented on by the Scrutiny of Bills committee and discussed later in this article.<sup>34</sup> Similarly, a number of amendments made (or ‘requests for amendments’ where

<sup>30</sup> See, eg, Standing Committee on Government Operations and Estimates, *Improving Transparency and Parliamentary Oversight of the Government’s Spending Plans*. Canada: House of Commons, January 2019, p. 47; David Wilson (ed), *McGee Parliamentary Practice in New Zealand*. New Zealand: House of Representatives, 5<sup>th</sup> ed, 2023, p. 548.

<sup>31</sup> David Wilson (ed), *McGee Parliamentary Practice in New Zealand*, p. 548.

<sup>32</sup> Defence, Veterans’ and Families’ Acute Support Package Bill 2022 (Cth) sch 1 cl 160(1B); Emergency Response Fund Amendment (Disaster Ready Fund) Bill 2022 (Cth) sch 1 cl 9; Financial Sector Reform Bill 2022 (Cth) sch 3 cl 1069P; National Anti-Corruption Commission Bill 2022 (Cth) cl 280(3); National Reconstruction Fund Corporation Bill 2022 (Cth) cl 51; Safeguard Mechanism (Crediting) Amendment Bill 2022 (Cth) sch 1 cl 22XNM(4); Housing Australia Future Fund Bill 2023 (Cth) cl 10; Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (Cth) cl 60-145; Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023 (Cth) sch 1 cl 1069P(2); Housing Australia Future Fund Bill 2023 (No. 2) (Cth) cl 10; Primary Industries Levies and Charges Disbursement Bill 2023 (Cth) cls 47, 52, 62 and 86(5); Help to Buy Bill 2023 (Cth) cl 27(4).

<sup>33</sup> See, in relation to the National Reconstruction Fund Corporation Bill 2022 (Cth), Melissa McIntosh, Commonwealth, *Parliamentary Debates*, House of Representatives, 8 March 2023, p. 1531; Angie Bell, Commonwealth, *Parliamentary Debates*, House of Representatives, 8 March 2023, p. 1483; James Stevens, Commonwealth, *Parliamentary Debates*, House of Representatives, 16 February 2023, p. 1064; Sussan Penelope Ley, Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2023, p. 669. In relation to the Housing Australia Future Fund Bill 2023 (Cth), James Stevens, Commonwealth, *Parliamentary Debates*, House of Representatives, 15 February 2023, p. 890.

<sup>34</sup> Parliamentary Business Resources Legislation Amendment (Review Implementation and Other Measures) Bill 2024 sch 3 item 1; Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 sch 1 item 14 cl 846B; Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 sch 6 item 7 cl 22; Veterans’ Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024 sch 1 item 200 cl 423(da); sch 2 item 106 cl 423(caa) and sch 3 item 14 cl 423(cb).

introduced in the Senate)<sup>35</sup> that increase expenditure under an existing standing appropriation raised no discussion on the appropriateness of the original authorisation of expenditure under a standing appropriation. The relatively little time spent considering standing appropriations in bills is significant. This is because once enacted, the government is largely unaccountable for standing appropriations as they are not subject to any regular parliamentary review and bypass the scrutiny they would receive if introduced in annual appropriations.<sup>36</sup> If not coupled with sufficient executive accountability and parliamentary oversight, standing appropriations could be considered an inappropriate delegation of legislative power, posing a challenge to the Parliament as the ultimate authority on control of expenditure and the doctrine of responsible government.<sup>37</sup>

A recent example of a proposed amendment to a standing appropriation demonstrates this point. The Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 was introduced in the House of Representatives on 5 June 2024. Schedule 6 of the bill seeks to amend the *Federal Financial Relations Act 2009*. Currently, section 12 of the *Federal Financial Relations Act 2009* provides for a lump sum, as indexed each financial year, to the States for national skills and workforce development payments. It provides that the minister may, by legislative instrument, determine the manner in which the total amount is to be indexed for a particular financial year and must include a statement of the total amount for that financial year.<sup>38</sup> It further provides that financial assistance is payable to a State on condition that the financial assistance is spent on skills and workforce development.<sup>39</sup>

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<sup>35</sup> Section 53 of the Constitution provides that the Senate may not amend proposed laws imposing taxation or amend any proposed law so as to increase any proposed charge or burden on the people. As such, the Senate cannot amend these laws, but can return a bill to the House of Representatives and ‘request’ the omission or amendment of items in these bills.

<sup>36</sup> Senator Andrew Murray, *Review of Operation Sunlight*, p. iii. While through the Budget Estimates hearings standing appropriations could be examined given departmental administration of programs is subject to scrutiny, in practice the process is solely focused on the proposed annual expenditure of government departments.

<sup>37</sup> Peter Gerangelos, ‘The relationship between the executive government and parliament in Australia: Accommodating responsible government with the separation of powers’, *Journal of International and Comparative Law* 5(2) 2018, pp. 289–313; Glenn Patmore and Kim Rubenstein (eds), *Law and democracy: contemporary questions*, 1st edn. Canberra: ANU Press, 2014.

<sup>38</sup> *Federal Financial Relations Act 2009*, subsection 12(4).

<sup>39</sup> *Federal Financial Relations Act 2009*, subsection 12(6).

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The Bill seeks to repeal section 12 and replace it with a flexible funding model whereby financial assistance to the States is payable ‘in accordance with the skills and workforce development agreement’, which is currently the National Skills Agreement that took effect from 1 January 2024 and as amended from time to time.<sup>40</sup> The National Skills Agreement is a 5-year joint agreement between the Commonwealth, states and territories outlining the priorities and funding in the vocational education and training sector. The Bill seeks to provide that the financial assistance payable to a State is on condition that it be spent in accordance with the skills and workforce development agreement and subject to any other terms and conditions set out in the agreement. In order to make these payments, the bill seeks to amend the appropriation provision in section 22 of the *Federal Financial Relations Act 2009* such that national skills and workforce development payments made in accordance with the skills and workforce development agreement are to be made out of the Consolidated Revenue Fund.

Where currently we have an Act that specifies a dollar amount to be paid to the States subject to indexation, the manner of which must be set out in a legislative instrument (and therefore registered and publicly accessible on the Federal Register of Legislation), this Bill seeks to move the amounts payable to the National Skills Agreement, an agreement made between the Commonwealth, states and territories and not subject to parliamentary agreement or oversight. The National Skills Agreement can be amended at any time and could change the amounts to be paid to the States, which then would become automatically payable through the standing appropriation, again with no parliamentary agreement or oversight. The explanatory memorandum explains that this change ‘employs a flexible funding model’ and the current funding arrangements are ‘not fit for purpose’.<sup>41</sup> While there may be sound reasons to move the funding arrangement into a separate agreement, doing so has fundamentally shifted the degree of oversight and transparency over Commonwealth spending, and this proposed change is not matched with any additional oversight mechanisms (for example requirements for review or reporting). It amounts to an almost complete delegation of Parliament’s power under section 96 of the Australian Constitution for Parliament to make grants to the states and determine the terms and conditions that

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<sup>40</sup> Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 sch 6.

<sup>41</sup> Explanatory memorandum to the Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024, p. 105.

attach to them.<sup>42</sup> Aside from a Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills committee) report raising concerns about the degree of oversight and scrutiny over the appropriation mechanism in the bill,<sup>43</sup> there has been no debate or comment about this proposal in the Parliament.

While Parliament can delegate its constitutional role in making grants to the states and can authorise the executive to spend money through standing appropriations without designated means to monitor the spending, Parliament ultimately has the role to hold the executive to account and there is broadly a public expectation that this occurs. Where agreements like the National Skills Agreement are made and proposed to be included by reference into Commonwealth law to then determine spending to the States without ongoing parliamentary oversight, there is a risk that this can impact public expectations and perceptions of legitimacy for both government and the Parliament. To this end, it is helpful to consider what oversight mechanisms do exist.

## EXISTING OVERSIGHT MECHANISMS

While there is no regular ongoing review of standing appropriations, there are some mechanisms in place to consider them both in the Parliament and within government. Additionally, while this article focuses on parliamentary and government ongoing review mechanisms, some entities have considered standing appropriations over the years in discrete reviews and offered recommendations for change.

### *Discrete reviews*

The Australian National Audit Office (ANAO) has conducted two audits into standing appropriations in 2004-05 and 2018,<sup>44</sup> various parliamentary committees have

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<sup>42</sup> Subject now only to Parliament amending the bill either before passage (at the time of writing, it is before the Senate) or once enacted via an amending bill.

<sup>43</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*. Canberra: Department of the Senate, 26 June 2024, pp. 55–58; Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 9 of 2024*. Canberra: Department of the Senate, 14 August 2024, pp. 83–86.

<sup>44</sup> Australian National Audit Office, 'Financial Management of Special Appropriations'. *Audit Report No. 15*, 2004-05; Australian National Audit Office, 'Management of Special Appropriations'. *Audit Report No. 35*, 2017-18.

conducted inquiries,<sup>45</sup> and former Senator Andrew Murray reviewed the 2008 Labor Government's budget transparency agenda, *Operation Sunlight (Murray Review)*.<sup>46</sup> These reviews found that standing appropriations posed a problem for parliamentary accountability and recommended that standing appropriations be subject to regular parliamentary and government review.<sup>47</sup>

While these reports identified several issues with standing appropriations, over time some changes have been made in response. In its 2004-05 report, ANAO identified that, during 2002–03, there were 414 standing appropriations in existence. ANAO identified issues with the management of standing appropriations, including that: many had not been repealed even though no longer needed; in some instances, entities obtained more than one appropriation for the same purpose; no entity claimed responsibility over some appropriations; or multiple entities claimed they were administering the same appropriation.<sup>48</sup> However, in its 2018 report, ANAO found a number of improvements had been made, including that, amongst other improvements, entities were largely compliant with the regulatory requirements and a substantial number of unused or exhausted appropriations had been repealed.<sup>49</sup> While these issues relate to the management and internal processes of entities administering appropriations, these changes are helpful in providing some assurance over their use and, if reported back to Parliament, can aid in providing some government accountability and parliamentary oversight.<sup>50</sup> These reviews considered some of the core concerns with standing

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<sup>45</sup> Senate Standing Committee for the Scrutiny of Bills, *Fourteenth Report of 2005 Accountability and Standing Appropriations*. Canberra: Department of the Senate, 30 November 2005; Joint Committee of Public Accounts and Audit, 'Report 404: Review of Auditor-General's Reports 2003-3004 Third & Fourth Quarters; and First and Second Quarters of 2004-2005'. Canberra: Department of the Senate, October 2005; Senate Standing Committee on Finance and Public Administration, *Transparency and accountability of Commonwealth public funding and expenditure*. Canberra: Department of the Senate, March 2007.

<sup>46</sup> Senator Andrew Murray, *Review of Operation Sunlight*, pp. 29-32.

<sup>47</sup> See, for example, Australian National Audit Office, 'Financial Management of Special Appropriations'. *Audit Report No. 15, 2004-05*, pp. 16-17; Senate Standing Committee on Finance and Public Administration, *Transparency and accountability of Commonwealth public funding and expenditure*. Canberra: Department of the Senate, March 2007, p. xi-xiii; Senator Andrew Murray, *Review of Operation Sunlight*, p. 32.

<sup>48</sup> Australian National Audit Office, 'Financial Management of Special Appropriations'. *Audit Report No. 15, 2004-05*, p. 12.

<sup>49</sup> Australian National Audit Office, 'Management of Special Appropriations'. *Audit Report No. 35, 2017-18*, p. 8.

<sup>50</sup> Australian National Audit Office, 'Financial Management of Special Appropriations'. *Audit Report No. 15, 2004-05*, p. 14.

appropriations and Parliament's limited ability to scrutinise them once they exist. However, while they can provide recommendations for change, they cannot not provide a mechanism for ongoing parliamentary review of existing appropriations, and it is to that which the rest of this section considers.

### *The Scrutiny of Bills committee*

The Scrutiny of Bills committee considers all bills introduced into the Parliament against the scrutiny principles outlined in Senate standing order 24(1)(a). This includes standing orders 24(1)(a)(iv), as to whether bills 'inappropriately delegate legislative powers' and 24(1)(a)(v), 'insufficiently subject the exercise of legislative power to parliamentary scrutiny'. The Scrutiny of Bills committee therefore has a role in considering standing appropriations before they are enacted. In 2005, the Scrutiny of Bills committee conducted an inquiry into standing appropriations, finding they are 'an increasing problem for parliamentary accountability' and denies 'the Parliament the opportunity to approve expenditure through its annual appropriations processes'.<sup>51</sup> Since this inquiry, under the standing orders referenced above, the committee has listed bills which contain standing appropriations in its Scrutiny Digests to draw them to senators' attention and provide some transparency to the Parliament. The Scrutiny of Bills committee initially made numerous comments on standing appropriations. The Scrutiny of Bills committee regularly noted the inclusion of standing appropriations and in some instances wrote to the relevant minister seeking further information to justify its inclusion as a standing rather than annual appropriation,<sup>52</sup> and from mid-2008 began expressing a preference for the inclusion of sunset clauses to make standing appropriations finite.<sup>53</sup> The Scrutiny of Bills committee guidelines, a document published in 2022 outlining the committee's expectations in relation to its scrutiny

<sup>51</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny of Bills Report of 2005*, pp. 270–271.

<sup>52</sup> See, eg, Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 1 of 2006 'Aged Care (Bond Security) Bill 2005'*. Canberra: Department of the Senate, 8 February 2005, pp. 6–7; *Alert Digest 6 of 2007 'Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Bill 2007'*. Canberra: Department of the Senate, 13 June 2007, pp. 57–60; *Alert Digest 3 of 2008 'Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008'*. Canberra: Department of the Senate, 14 May 2008, p. 24.

<sup>53</sup> A sunset clause is a provision in an Act that provides that a law automatically ends on a particular date. See, eg, Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 9 of 2008 'Safe Work Australia Bill 2008'*. Canberra: Department of the Senate, 17 September 2008, pp. 16–17.

principles, further explains its expectation that where a bill establishes or expands a standing appropriation, the explanatory memorandum to the bill should address: why it is appropriate to include a standing rather than annual appropriation; whether the bill places a limitation on the amount of funds that may be appropriated; and whether the standing appropriation is subject to a sunset clause and, if not, why such a clause has not been included in the bill.<sup>54</sup> While this process draws some attention to standing appropriations introduced, in some years the Scrutiny of Bills committee has not made any comment on standing appropriations in bills beyond listing those that are introduced in its reports. The Scrutiny of Bills committee has, however, recently commented on four bills introducing new standing appropriations or expanding existing standing appropriations and sought further information from the responsible minister, asking questions relating to the appropriateness of the standing appropriation, what mechanisms exist for oversight and review, and whether consideration has been given to including a sunset clause.<sup>55</sup> These issues are yet to be considered in the Parliament further in debating the passage of a bill. However, all correspondence from ministers is published on the committee's website, providing some transparency regarding decisions made in relation to standing appropriations.<sup>56</sup>

### *Department of Finance*

An additional measure to improve transparency, since the 2008–09 Budget, is that standing appropriations are now listed in Portfolio Budget Statements. These include estimated amounts to be spent under standing appropriations and estimates for the financial year ahead for each departmental portfolio.<sup>57</sup> Actual expenditure is required

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<sup>54</sup> Senate Standing Committee for the Scrutiny of Bills, *Guidelines*. Canberra: Department of the Senate, 2<sup>nd</sup> ed, July 2022, p. 22.

<sup>55</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 6 of 2024* (Parliamentary Business Resources Legislation Amendment (Review Implementation and Other Measures) Bill 2024). Canberra: Department of the Senate, 15 May 2024, pp. 48-50; Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024* (Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024; Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024). Canberra: Department of the Senate, 26 June 2024, pp. 42-44 and 55-58; Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 9 of 2024* (Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024). Canberra: Department of the Senate, 14 August 2024, pp. 26-27.

<sup>56</sup> Department of the Senate, Parliament of Australia, 'Scrutiny Digest'. Accessed at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Bills/Scrutiny\\_Digest](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest).

<sup>57</sup> Department of Finance, *Budget Paper No. 4*, p. 112.

to be shown in agencies' annual financial statements.<sup>58</sup> The Department of Finance also maintains a Chart of Special Appropriations which outlines the number of standing appropriations that exist and lists the non-corporate government entity administering them, the Act and provision which authorises it and whether the appropriation is 'unlimited', 'limited' or 'one-off' in nature.<sup>59</sup> Where spending is different from the estimated amount no additional bill is necessary,<sup>60</sup> but nevertheless this information is important in providing some accountability to Parliament as to estimated expenditure authorised under standing appropriations and what standing appropriations currently exist. This can then help inform Parliament's consideration of a bill with a new standing appropriation or generally inform Parliament and others about current standing appropriations. However, the information is limited in the Chart of Special Appropriations in that it is not clear what each standing appropriation is authorising without reading each Act it is authorised under and it is not clear what government programs are being funded by them. Conversely, the Government of Canada lists in 'statutory forecasts' a brief description of each standing appropriation by department, agency or Crown corporation, along with the previous years' expenditure and forecast expenditure.<sup>61</sup>

### *Senate standing legislative committees*

Other mechanisms that exist include the work of the Senate standing legislative committees which consider bills referred to them by the Senate.<sup>62</sup> These committees can look at all aspects of a bill, including a standing appropriation, and can make comments when they report back to the Senate. Also, when conducting Senate Estimates, they can consider the estimated standing appropriations outlined in Budget

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<sup>58</sup> Australian National Audit Office, 'Financial Management of Special Appropriations'. *Audit Report No. 15, 2004-05*, p. 24.

<sup>59</sup> Department of Finance, 'Chart of Special Appropriations – 30 June 2024'.

<sup>60</sup> Jón R. Blöndal et al, 'Budgeting in Australia'. *OECD Journal on Budgeting* 8(2) 2008, pp. 50–51.

<sup>61</sup> Government of Canada, '2023-24 Statutory Forecasts'. Accessed at: <https://www.canada.ca/en/treasury-board-secretariat/services/planned-government-spending/government-expenditure-plan-main-estimates/2023-24-estimates/statutory-forecasts.html>.

<sup>62</sup> The Senate standing legislative committees include: Community Affairs; Economics; Education and Employment; Environment and Communications; Finance and Public Administration; Foreign Affairs, Defence and Trade; Legal and Constitutional Affairs; and Rural and Regional Affairs and Transport.

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Paper No. 4.<sup>63</sup> While in practice this does not appear to occur, there would be scope for a committee to recommend changes be made to a standing appropriation including, for example, to consider sunset or review clauses over these appropriations. The Senate committees could also seek further information on what government programs are being funded by various standing appropriations and consider how effective they are.

While these mechanisms provide various degrees of transparency and oversight, there is no dedicated mechanism to consider standing appropriations in a broader context outside of the specific bills they are located in, and there is no mechanism for regular oversight once a bill has passed to consider whether standing appropriations remain necessary or justifiable. There appears to be little engagement with the Scrutiny of Bills committee's comments on standing appropriations during debate on bills and no clear evidence of political will more broadly to ensure greater scrutiny and improve the current mechanisms in place.

## KEY FINDINGS AND RECOMMENDATIONS

Having considered the challenge to parliamentary oversight that standing appropriations pose and the limited mechanisms that currently exist to provide rigorous accountability and scrutiny, this section considers findings and recommendations for future action.

### *Include more information in ministers' second reading speeches and explanatory memoranda*

Currently, when a standing appropriation is included in a bill introduced, the minister's second reading speech usually makes no mention of it and the explanatory memorandum provides very little additional information. In the current Parliament a number of bills have been introduced with new standing appropriations, however no sunset clause has been introduced and typically little justification is provided in the explanatory memorandum as to why these standing appropriations are appropriate, whether there is any limitation on the amounts that may be appropriated, or why a

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<sup>63</sup> Department of Finance, *Budget Paper No. 4*, p. 111–122.

sunset clause was considered inappropriate.<sup>64</sup> Without adequate information in the explanatory memorandum or any attention drawn to them in a second reading speech, Parliament is not able to sufficiently understand the nature of the appropriation and whether it is fit for purpose.

It is suggested that the Scrutiny of Bills committee consider renewing and continuing its practice of seeking further information from the minister responsible for bills introducing standing appropriations, using its existing powers and practice of dialogue with proponent ministers to ask for this information to be included in explanatory memoranda.<sup>65</sup>

### *Include sunset clauses in future standing appropriations*

Currently, there is no automatic mechanism for review of standing appropriations once enacted. The inclusion of sunset clauses would require a standing appropriation to be reconsidered after a certain amount of time and re-enacted if Parliament is satisfied it continues to be appropriate. The inclusion of sunset clauses was recommended in the *Murray Review*,<sup>66</sup> however the government did not support this recommendation, stating that it could introduce uncertainty.<sup>67</sup> While sunset clauses in any legislation may lead to some uncertainty,<sup>68</sup> it is nevertheless appropriate that Parliament retains a mechanism for regular oversight over the approval of expenditure rather than leaving an ongoing expenditure which could also grow significantly from what was initially considered during enactment. As suggested in the *Murray Review*, depending on the

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<sup>64</sup> Some exceptions in the current 47<sup>th</sup> Parliament where at least some justification has been provided, though none mention sunset clauses, include the: Financial Sector Reform Bill 2022 (Cth), explanatory memorandum, p. 83; National Anti-Corruption Commission Bill 2022 (Cth), revised explanatory memorandum, p. 318; Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (Cth), explanatory memorandum, pp. 23–24; Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort Bill 2023, explanatory memorandum, p. 31.

<sup>65</sup> Department of the Senate, *Standing orders and other orders of the Senate*, October 2002, Senate standing order 24.

<sup>66</sup> Senator Andrew Murray, *Review of Operation Sunlight*, pp. 30–32.

<sup>67</sup> Australian Government, *Commonwealth Government Response to Operation Sunlight - Overhauling Budgetary Transparency*, 9 December 2008, pp. 6–7.

<sup>68</sup> Antonios Kouroutakis, *The Constitutional Value of Sunset Clauses: An historical and normative analysis*. 1st edn, Oxford: Routledge, 2016.

specific appropriation, sunset clauses could be made for a long time in the future but at least will require Parliament to reconsider the appropriation at some point.

It is suggested that any new standing appropriations be introduced with a sunset clause and for the Scrutiny of Bills committee and other Senate legislation committees to recommend this in their bill inquiries.

### *Conduct regular reviews of standing appropriations*

Regular review of standing appropriations would help in providing ongoing parliamentary oversight. The *Murray Review* recommended that the Department of Finance undertake a review, at least annually, of standing appropriations and report back to Parliament 'as to whether there is a continuing need' for them, and recommended that Parliament, through the appropriate committee, undertake periodic reviews of standing appropriations.<sup>69</sup> In response to this, the government noted the recommendation and agreed that standing appropriations should be regularly reviewed. It stated it would 'consider including formal review clauses in special appropriation legislation, requiring governments to review and report to Parliament on a periodic basis on the continuing need for the legislation and whether the existing focus of the legislation remains valid.'<sup>70</sup> This response was provided in December 2008 yet to date this has not been implemented. Formal review clauses would provide a mechanism to ensure standing appropriations remain appropriate over time. In relation to the proposal for annual review, the government response did not support this due to the high costs involved.<sup>71</sup> However, the relevant Senate legislation committees can already consider standing appropriations that fall within the departmental portfolios allocated to them as they can examine how departments administer their programs. These committees could review, during the Budget Estimates process, the amounts and purposes the standing appropriations are authorising and what programs or services are being administered to fulfil those purposes to ensure the executive remains accountable over expenditure.

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<sup>69</sup> Senator Andrew Murray, *Review of Operation Sunlight*, p. 32.

<sup>70</sup> Australian Government, *Commonwealth Government Response to Operation Sunlight*, p. 7.

<sup>71</sup> Australian Government, *Commonwealth Government Response to Operation Sunlight*, p. 7.

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It is suggested that review clauses be included in bills alongside standing appropriations and that the Senate legislation committees be required and adequately resourced to conduct regular reviews of standing appropriations within their portfolios.

### *Improve transparency over existing standing appropriations*

The information presented in Budget Paper No. 4 and the Chart of Special Appropriations provides some useful context to consider current standing appropriations,<sup>72</sup> however as noted they are limited in that it is difficult to gauge what the authorisations are for. Greater detail and transparency over existing standing appropriations will aid in the Parliament and its committees considering new standing appropriations and enable it to consider whether existing ones remain suitable.

Currently, the Scrutiny of Bills committee lists all bills introducing standing appropriations in chapter 3 of each Scrutiny Digest with a footnote on what the appropriation authorises. It is suggested that this could be compiled into a running list on its webpage and a link to this included in the committee's newsletter, *Scrutiny News*, to aid in access to this information. It could include additional information to provide greater context, such as: whether a sunset clause or a review clause is included, whether the standing appropriation is limited by amount or duration, for what purpose the standing appropriation is authorising expenditure for, and link to any relevant ministerial correspondence. Additionally, the webpage could link to the Department of Finance's webpage with the Chart of Special Appropriations and note where to find information in the budget papers. This will aid in improving access to information about existing standing appropriations and provide some context to consider them together.

Further, by publishing such a collated list, the Senate would demonstrate that it considers that standing appropriations are important, it is keeping track of what it is authorising rather than relying on government produced lists of standing appropriations, and reinforcing that it retains ultimate oversight over such authorisations.

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<sup>72</sup> *Budget Paper No. 4*, pp. 111-122; Department of Finance, 'Chart of Special Appropriations – 30 June 2024'.

## CONCLUSION

The Senate Budget Estimates process provides an important mechanism for rigorous and public parliamentary scrutiny over executive expenditure, but only specifically in relation to about a quarter of authorised expenditure. The other three quarters largely bypasses effective scrutiny and oversight, relying on nominal consideration when a standing appropriation is initially introduced in a bill and often with little to no explanation in accompanying explanatory materials. Once created, the Senate has largely relinquished its role in overseeing how the executive spends monies appropriated through standing appropriations. This article has presented a number of recommendations for immediate steps that can be taken to address this, however further research and consideration should be given to how standing appropriations are managed in other jurisdictions and what lessons can be learned. Ultimately, the considerable lack of engagement by the Parliament in overseeing executive expenditure for the majority of authorised expenditure poses a challenge to the concept of responsible government as the executive remains largely unaccountable for spending authorised by standing appropriations. This paper has provided some context as to the importance of oversight over executive expenditure authorised by standing appropriations and the recommendations seek to ensure that parliamentary attention, even if unwelcome by some, remains ever-present.