

1961.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

FIFTY-FOURTH REPORT.

FORM OF THE ESTIMATES.
ESTIMATES OF EXPENDITURE FOR
ADDITIONS, NEW WORKS AND
OTHER SERVICES INVOLVING
CAPITAL EXPENDITURE.

By Authority:

A. J. ASHLEY, Commonwealth Government Printer, Canberra.
(Printed in Australia.)

F.7065/61.

JOINT COMMITTEE OF PUBLIC ACCOUNTS

FOURTH COMMITTEE.

F.A. Bland, Esquire, C.M.G., M.P. (Chairman)¹

F.J. Davis, Esquire, M.P. (Chairman)²

A.V. Thompson, Esquire, M.P. (Vice-Chairman)

Senator A.M. Benn
Senator H.W. Wade 5
Senator I.E. Wedgwood
Senator G.C. McKellar 6

A.I. Allan, Esquire, M.P.
L.H.E. Bury, Esquire, M.P.
J.F. Cairns, Esquire, M.P. 3
R. Cleaver, Esquire, M.P.
J.F. Cope, Esquire, M.P.
A.S. Luchetti, Esquire, M.P. 4

The Senate appointed its Members of the Committee on 19th February, 1959, and the House of Representatives its Members on 24th February, 1959.

1. Resigned 10th March, 1960.
2. Appointed 16th March, 1960; elected Chairman
17th March, 1960.
3. Resigned 30th March, 1960.
4. Appointed 30th March, 1960.
5. Resigned 16th March, 1961.
6. Appointed 16th March, 1961.

DUTIES OF THE COMMITTEE

Section 8 of the Public Accounts Committee Act 1951 reads as follows :-

8. The duties of the Committee are -
- (a) to examine the accounts of the receipts and expenditure of the Commonwealth and each state and report transmitted to the Houses of the Parliament by the Auditor-General in pursuance of sub-section (1.) of section fifty-three of the Audit Act 1901-1955;
 - (b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in these accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
 - (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
 - (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,

and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

JOINT COMMITTEE OF PUBLIC ACCOUNTS

FIFTY-FOURTH REPORT

FORM OF THE ESTIMATES : ESTIMATES OF EXPENDITURE
FOR ADDITIONS, NEW WORKS AND OTHER SERVICES
INVOLVING CAPITAL EXPENDITURE

TABLE OF CONTENTS.

	Page.
I INTRODUCTION.	1
II THE VIEWS OF DEPARTMENTS -	
(a) Department of National Development	2
(b) Department of Shipping and Transport	5
(c) Department of Works	6
(d) Department of External Affairs	7
(e) Department of the Treasury	7
III THE AUDITOR-GENERAL FOR THE COMMONWEALTH	16
IV THE SOLICITOR-GENERAL FOR THE COMMONWEALTH	17
V THE PARLIAMENT -	
(a) The House of Representatives	21
(b) The Senate	24
VI GENERAL	28
VII CONCLUSIONS	28

APPENDICES

	Report Para. No.	
APPENDIX A. Solicitor-General's Opinion dated 6th March, 1961.	42	30
APPENDIX B. Solicitor-General's Memorandum dated 15th March, 1961	42	37

JOINT COMMITTEE OF PUBLIC ACCOUNTS

FIFTY-FOURTH REPORT

FORM OF THE ESTIMATES.

ESTIMATES OF EXPENDITURE FOR ADDITIONS,
NEW WORKS AND OTHER SERVICES INVOLVING
CAPITAL EXPENDITURE.

CHAPTER I. - INTRODUCTION.

Your Committee in the Forty-Ninth Report presented on the 27th September, 1960, reported that the form and content of the financial documents presented to the Parliament would be reviewed and that, in view of the magnitude of the task involved in completing such a review a progressive approach would be made by conducting a series of enquiries over a number of years.

2. The first of these enquiries has been completed, and our Forty-Ninth Report presented the results of our investigations into the Miscellaneous Services Section of the Estimates. The second enquiry relates to the section dealing with "Additions, New Works and Other Services Involving Capital Expenditure", is the subject of this Report and was continued with public hearings being conducted on the 6th, 7th and 14th March, 1961. The following persons gave evidence before us:-

6th March, 1961.

- | | |
|-------------------|--|
| Mr F.A.J. Frawley | - Accountant, Department of National Development. |
| Mr E.A. Kuhn | - Acting Accountant, Department of Shipping and Transport. |
| Mr H.F. Yoxon | - Assistant Director-General (Administrative) Department of Works. |
| Mr R.E. Johns | - Finance Officer, Department of External Affairs. |

7th March, 1961.

- | | |
|----------------------------|---|
| Sir K.H. Bailey,
C.B.E. | - Solicitor-General for the Commonwealth. |
|----------------------------|---|

14th March, 1961.

- | | |
|----------------|--|
| Mr A.G. Turner | - Clerk of the House of Representatives. |
| Mr R.H.G. Loof | - Clerk of the Senate. |

3. In addition Your Committee was assisted by the observers from the Audit Office, Public Service Board and Department of the Treasury who attended each of the public hearings.

4. Throughout this Report commonly accepted phrases "Capital Works" or "Capital Works and Services" section etc. are used both by Your Committee and various witnesses to describe the section of the Estimates entitled "Estimates of Expenditure for Additions, New Works and Other Services Involving Capital Expenditure".

CHAPTER II - THE VIEWS OF DEPARTMENTS

5. Your Committee obtained statements from a number of Departments relating to the effect on departmental management of the separate "Works and Services" section in the Estimates and to the principles adopted in deciding the section of the Estimates in which particular items of expenditure should appear. Certain Departments further assisted Your Committee, at our request, with verbal evidence at the hearings conducted on 6th March, 1961.

(a) DEPARTMENT OF NATIONAL DEVELOPMENT

6. The Department had indicated that there was an "apparent inconsistency" in the manner of presentation of certain votes, e.g. the administrative expenses of the Atomic Energy Commission appeared in the main section of their Estimates among its departmental votes under Division No. 431 but the administrative expenses of the Snowy Mountains Hydro-Electric Authority appeared under Division No. 946 in the Capital Works section. However the different method of presentation appears to be due to the details of the separate statutes for these two Authorities. The Atomic Energy Commission is required to have its estimates of expenditure approved by the Minister and is thereby placed in respect of the organization of its accounts on a similar basis to a department. The Snowy Mountains Authority on the other hand is a constructing authority and from a governmental viewpoint all moneys advanced to it are of a capital nature - irrespective of the particular items on which the money may be spent. The total of this expenditure will be capitalized as the cost of the whole project.

Exhibit No
54/1

Q. 46

7. In addition the votes mentioned hereunder appeared in the main section of the Estimates and cover items of expenditure which are of a capital nature:-

Appropriation	Items of a Capital Nature
---------------	---------------------------

Divisions No. 411, 412 and 413

2. General Expenses

02. Office requisites, equipment, stationery and printing.	Office machines.
--	------------------

Appropriation	Items of a Capital Nature
---------------	---------------------------

Division No. 4113. Other Services

- | | |
|--|--|
| 01. Kimberley Research Station and Ord River Gauging - Contribution to cost. | (a) Buildings, plant and farm machinery.
(b) Scientific and technical equipment. |
| | Purchased from funds jointly provided by the Commonwealth and West Australian Governments. |
| 06. Gas Turbine Research - Equipment and operational expenses. | Experimental equipment for the purpose of the project. |

Under Control of Department of National Development.Division No. 499 - Department of the Navy

Advances to States under Commonwealth-State Housing Agreement.

Supplementary advances under the Agreement for the provision of houses for serving personnel of the forces.

Division No. 529 - Department of the Army

Advances to States under Commonwealth-State Housing Agreement.

Note: The principal advances are provided under Loan Fund (See page 257 of the printed estimates).Division No. 558 - Department of Air

Advances to States under Commonwealth-State Housing Agreement.

Division No. 6441. Joint Coal Board

- | | |
|---|---|
| 02. Contribution to Administrative Costs. | (a) Furniture and fittings.
(b) Motor vehicles and garage equipment. |
|---|---|

8. The Treasury observer confirmed that this practice did not offend any established principles viz.

Qs. 8, 9, 10
and 11

MEMBER. - Would you agree that from a non-governmental point of view one would expect all Commonwealth Government capital expenditure to be revealed in the Works and Services Estimates and covered by the Appropriation (Works and Services) Bills --- I am talking in general terms? --- (MR HEWITT) I would think at first glance an

uninformed person "could" draw that conclusion. I qualify that by saying that I mean by an uninformed person someone who had not studied the subject.

MEMBER. - But the very title of the Works and Services section of the whole Estimates - the same title that is taken from the Appropriation Bill - does give a lead that there you would expect to find all capital expenditure? -- (MR HEWITT) It is certainly open to that inference but I do not think there has ever been any statement or anything from which it could be said that it was implied that that is so.

and later

(MR HEWITT) It includes a wide variety of expenditure on works and services of a capital nature, but not all of them, and there are many forms of expenditure which commonly would be thought of as creating assets or charges to be written off over a series of trading periods which appear elsewhere than in the Appropriation (Works and Services) Bill. Q. 11

9. The witness Mr F.A.J. Frawley, explained that the use of the appropriation ledger prescribed under the Audit Act and Treasury Regulations, results in no difficulty being experienced at departmental level in supervising expenditure against the various votes irrespective of the section in which they were presented in the Estimates and it was this operative level which mainly concerned his department. However, he agreed that some improvement in presenting his department's votes may be possible. Q. 14

MEMBER. - What would you think of all financial interest, from the expenditure point of view, of your department, being grouped together, even to the extent of a notation of your interest, administratively, in items which are under the control, say, of the Department of Works? If you are to have a functional basis for your departmental responsibility reflected in the Estimates, do you think it is possible for that to be done? You would have your main Estimates, miscellaneous, works and services, and then a notation regarding transfers from your administrative responsibility to the Department of Works. Would that, in your opinion, be a functional presentation? --- (MR FRAWLEY) Personally, I would say that quite a number of advantages could accrue from such a presentation. I would think it would be a clearer presentation for Parliament, particularly for purposes of discussion at the committee level in both Houses. It would be a great advantage for officers inasmuch as an officer would not have to attend more than once and that is quite a consideration as far as our department is concerned because I have to come to Canberra three or four times from Melbourne to advise the Minister, if necessary. Q. 27

10. There is a vote for most Departments described as "Buildings, Works, Furniture and Fittings" appearing in the Capital Works section of the Estimates as being "under control of Department of Works".

11. In reply to a series of questions the witness indicated that he was in agreement with the general procedure whereby the acquisition and replacement of furniture were charge to a Capital vote, the alterations and additions to Commonwealth-owned buildings were charged to Capital vote and the alterations and additions to leased premises were charged to the Maintenance vote. However, the Department of Works (see paragraph 18) have indicated that there is some confusion in respect of these items and the position was confirmed by the Treasury observer.

Qs. 30-32,
41 and
42

Q. 34

Summary.

12. The evidence indicated that no administrative problems would be presented for the Department if the votes now appearing in the Capital Works section of the Estimates were to be transferred to the main section of the Estimates, that some clarity in presentation may be achieved if this were done and that it would be more convenient and economical for the Department to have all the votes grouped together at the time the Estimates were being discussed in the Parliament.

(b) DEPARTMENT OF SHIPPING AND TRANSPORT

13. Your Committee was assisted with evidence from Mr E.A. Kuhn, Acting Accountant, who was asked:

MEMBER.- You heard our previous evidence - questions and answers - on helpful grouping, which some have recommended, of a department's entire expenditure. The first section would be normal administrative expenditure under the main estimates, then miscellaneous as recommended in our 49th report and now, perhaps, capital expenditure. You are concerned about year-to-year comparisons. Would not our estimates be available in the same way as before to compare year by year? -- (MR KUHN) If you had a distinct grouping - yes. So long as they were in clearly defined groups.

Q.49

and later

MEMBER.- Your third item, Mr Kuhn, deals with the matter of additional trips to Canberra for each Appropriation Bill. The previous witness covered much the same item. Do you agree that it would be time saving and an economy if your capital works and services expenditure, clearly grouped so that it could not be lost sight of, was dealt with together with other votes for your department? --- (MR KUHN) From a departmental viewpoint, it definitely would be economical.

Exhibit No.
54/2

Q.55

MEMBER.- You feel it would be to your advantage to have your departmental representative sitting in the House when the estimates for your department were being dealt with, knowing that when the discussion on those estimates was concluded there would be no need for a second visit to Canberra but that your representative could advise the Minister, if necessary, at one appearance? --- (MR KUHN) Yes; it would be of benefit to the department.

Q.56

14. The witness indicated in reply to a series of further questions that he held similar opinions to that of the witness from the Department of National Development concerning the treatment of expenditure "under control of Department of Works" on buildings, works, furniture and fittings. Qs. 61-65

Summary.

15. Again there appeared to be no departmental objections to the transferring of the Capital Works section of the Estimates provided the distinction between the various classes of expenditure were clearly defined. Further, the adoption of such a procedure would again prove more convenient and economical when the Estimates of the Department were being discussed by the Parliament

(c) DEPARTMENT OF WORKS

16. Your Committee were assisted by Mr H. F. Yoxon, Assistant Director-General (Administrative), who advised that the transfer of the votes in the Capital Works section the main section of the Estimates would not be of any great advantage to his Department as separate officers have to be sent to Canberra when the Parliament is discussing the detailed programmes of the Works and Services as opposed to the votes for the General Administration expenses. Qs. 75 and 77

17. As a matter of administrative convenience it was immaterial in which section of the Estimates the Capital Works votes were to be shown as the Department of Works would still have the same number of votes under its control and the same records would be necessary to record the details of the particular programme for individual departments. Q. 71

18. Included in a document furnished earlier to Your Committee were the following comments: Exhibit No. 54/3

"Whilst the Department of Works is unable to comment on the necessity for this separate document, nor on the specific points on which the Treasury has been requested to supply information, the Department would appreciate consideration being given to the classification of Capital Expenditure, particularly where alterations and/or renovations of an existing building and the replacement of assets are concerned.

Frequently additions to an existing building are required and this is correctly classified as Capital Expenditure. These additions may at the same time necessitate alterations and/or renovations to the building already existing and provision is made in the Repairs and Maintenance votes for such alterations and/or renovations. All the work involved is invariably embodied in the one project and this necessitates apportionment of the expenditure between the Capital and Maintenance votes respectively.

Renovations may also be required to existing premises, not involving additions, and this may take the form of restoration to the condition originally existing but in a modern form.

It is the view of this Department that all these works might be classified as Capital Expenditure and provided for in the Estimates accordingly.

The Department of Works is responsible for the supply of Furniture and Fittings required by all Departments. These supplies may represent replacement of obsolete or worn-out articles, or they may represent additional requirements. The replacement would take the form of a more modern article; however, when supplies are requisitioned by Departments, it is not known whether replacement is involved or not, unless the requisition is endorsed. It was the practice to regard the cost of replacement articles as a charge to the Maintenance vote and the cost of additional requirements as Capital Expenditure, but lately it has been considered that all items of furniture and fittings, whether replacement articles or not, should be classified as Capital Expenditure.

19. The witness indicated that he was not aware of any existing regulation requiring the information which would be necessary to determine these matters to be endorsed on the requisitions received by his Department although such information was sometimes given or enquiries were made to obtain it. Q.91

(d) DEPARTMENT OF EXTERNAL AFFAIRS

20. The evidence given by the witnesses from the Department of External Affairs indicated that they were in agreement with the views of other Departments; that it would be more convenient to have the relevant votes transferred to the main section of the Estimates.

21. In the view of the witness, Mr R.E. Johns, Finance Officer, Department of External Affairs, the votes of his Department for overseas posts would be improved if the appropriations were shown on a functional rather than a geographical basis as the total amounts expended by the Department for various purposes would be shown more clearly and would permit of better comparisons being made of year-to-year expenditures.

(e) DEPARTMENT OF THE TREASURY

22. In response to a request by Your Committee for information concerning the origin, purpose, principles, etc. relating to this separate section of the Estimates Your Committee were assisted by the receipt of a document and by verbal evidence from Mr C.L.S. Hewitt, First Assistant Secretary, Department of the Treasury.

23. The Treasury document contained the following information:-

"....."

Exhibit No.
54/5

A diligent search of the records back to Federation discloses no complete statement of the origin and purpose of the Bill and confirms the uncertainty expressed to the Senate in 1952. Consequently, it is not possible in this statement to do more than set down the inferences that may reasonably be drawn from the contemporary documents and events.

Origin and Purpose of the Document.

The introduction of the first Supply Bill into the Senate on 13th June 1901 initiated a debate upon the powers of the Senate and whether or not certain items, namely, 'Expenses in connection with the opening of Parliament and the Royal reception' and 'Military and Naval demonstration in connection with the opening of Parliament in Melbourne and the Royal visit to Melbourne, Sydney and Brisbane' were ordinary annual services of the Government as provided in Sections 53 and 54 of the Constitution. During this debate, it was asserted that the Senate had the right to amend Bills having for their object the construction of public works and that it had the responsibility of saying whether items in the Appropriation Bill were 'ordinary annual services'. This Bill was replaced, after a request from the Senate, by one giving details of the proposed expenditure.

The discussion in the Senate clearly stimulated some thought by the Executive upon the form and content of the Appropriation Bill and the Prime Minister, on 20th June, 1901, submitted that the opinion of the Attorney-General be given on the following:

'If a Bill appropriating Revenue or Moneys for the ordinary Annual Service of the Government, includes items beyond that purpose, does it cease to be a Bill appropriating money for the ordinary Annual Service of the Government? As to section 54 - does the present Supply Bill propose appropriations beyond the ordinary Service of the Government?'

In the reply of 9th August, 1901, the Attorney-General advised:-

'No; a Bill appropriating revenue for the ordinary annual services, if it includes items beyond that purpose, does not cease to be 'a proposed law which appropriates revenue or moneys for the ordinary annual services of the Government', but such a Bill is out of order. Section 54 is equivalent to a standing order of both Houses, imposed by the authority of the Constitution.

Each House must be the judge, whenever the question arises in connection with a Bill before it, whether sec 54 has been infringed, and if so, what course is to be adopted by the House. The Senate cannot amend the proposed law by striking out the objectionable item, as that would be a violation of sec 53, though it may 'request - by message' the omission or amendment of any items or provisions therein.'

During this same period, estimates of expenditure for 1901-1902 were being prepared and deletions were made from an early draft of amounts relating to defence works and buildings, armaments, vessels, additions, repairs and furniture etc.,

provision of butts at rifle ranges and the like. The deleted items read almost word for word with items in the Revenue Estimates of the States for the year 1899-1900 and, furthermore, are largely identifiable with the first Estimates of Expenditure for Additions, New Works and Buildings subsequently tabled separately in the House of Representatives on 9th October, 1901.

The reason for these deletions is not documented, but appears to be related to the discussion in June 1901 in the Senate as is a further request, of September 1901, by the Treasurer to the Attorney-General for an opinion 'whether new buildings and additions to existing buildings should be included in the annual appropriation bill or a separate bill?'. The Treasurer remarked that 'Most of them will be in loan bills, but some wooden buildings may have to be paid out of revenue.' On 26th September, 1901 the Attorney-General gave the following opinion:

'Section 54 of the Constitution provides that 'the proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal with only such appropriations.' 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. Whether they should be so included is a question of policy merely.

If introduced in a separate bill, they will of course be subject to the Senate's power of amendment (sec 53).'

In the event, the estimates which were tabled in the House of Representatives on 8th and 9th October, 1901 provided for separate appropriations for additions, new works and buildings for the year 1901-1902. At the same time, in reply to a question in Parliament, the Treasurer recorded the Government's decision to finance the construction of some public buildings from Revenue and others from loan money. However, the loan proposals were defeated and there is a record of Parliamentary opposition in the House of Representatives to the raising of loan moneys during a period in which the Commonwealth was obliged to return surplus revenues to the States.

When the Appropriation Bills were considered in the Senate, on 3rd October, 1902, Senator Debon disclosed that he had received a letter from the Premier of Tasmania to the effect - 'If it comes to the worst, do your best in the Senate to strike out of the Estimates every item for new buildings, additions to buildings, new switchboard and everything that can be left without harm for another year or two. We cannot afford to pay for these out of the current year's revenue.'

It is inferred that after the original doubts were raised in the Senate, the Estimates were printed in accordance with the amendments that had been made deleting various items. Probably there was insufficient time, in any case, to have the Estimates re-cast and re-printed between 26th September, the date of the Attorney-General's opinion and their being tabled on 8th and 9th October, 1901. Subsequently, with the defeat of the loan proposals, there must have been a keen interest, as shown in the 1902 letter from the Premier of Tasmania, in scrutinising proposed expenditure on new buildings etc. which would reduce the amounts of surplus that would have then otherwise been available to the States. If the request to Senator Dobson accurately reflected opinion in the States, it would probably have been difficult, if not impossible, at that time to abandon the forms that were adopted in 1901 and to proceed in accordance with the opinion of 26th September, 1901.

....."

24. As the Senate has the power to amend any Bills other than the main Appropriation Bills, of which there are at present two each year, apart from the annual Supply Bill, there appears to be some substance in the thought that following Federation the States were concerned that power should remain with the Senate to delete items from other Bills authorizing expenditures in the expectation that any reductions might result in a surplus of revenues which would be returned to the States. Relevant to this matter is the extract quoted above from the letter to Senator Dobson from the Premier of Tasmania dated the 3rd October, 1902.

25. A further important quotation is the opinion of the Attorney-General on the 26th September, 1901.

26. With regard to the principles followed in determining the items which appear in the separate section of the Estimates, the document from the Treasury advised:-

"....."

The Principles followed in determining the items.

Exhibit No.
54/5

The first separate Estimates relating to the year 1901-02, were entitled 'Estimates of Expenditure for Additions, New Works and Buildings'. As the title suggests, the items were confined entirely to public works and buildings and to equipment to be installed therein. Other items of a similar nature in accounting classification, e.g. fittings, furniture, horses, etc. were included in the main Estimates. In 1903-04, several items of military equipment, e.g. arms, rifles, pistols and reserves of ammunition, were transferred to the separate Estimates.

In 1904-05 the title was altered to 'Estimates of Expenditure for Additions, New Works, Buildings, etc.', and it seems likely that the change followed the transfer to the separate document in 1903-04 of items of military expenditure such as arms, rifles,

pistols and reserves of ammunition which had been included originally in the main Estimates.

As the activities of the Commonwealth expanded, new items began to appear, notably capital expenditure for the construction of bores in the Northern Territory, the development of aerodromes, subscriptions to the share capital of business enterprises such as Commonwealth Oil Refineries Limited and provisions for machinery, plant and equipment for Government munitions factories and institutions such as the Tan Institute of Science and Industry and the Australian Broadcasting Commission.

Until 1937-38, 'fittings' and 'furniture' were included in the main Estimates, but in that year they were transferred to the Estimates for Additions, New Works, Buildings, etc., and associated with buildings under an item usually described as 'Buildings, works, sites, fittings and furniture', a form of description which, with the exception of sites, has endured.

In 1939-40 and 1940-41 expenditure of a capital nature for the Defence Services, which had been included in the Estimates for Additions, New Works, Buildings, etc., since 1904-05, was excluded as a result of a decision to finance that class of expenditure from loan moneys.

From 1941-42 all Defence expenditure was grouped in a single section of the main estimates and, with the exception of the years 1948-49 and 1949-50, that practice has continued to the present day. For reasons which do not appear to have been recorded, Defence capital expenditure of a civil nature, i. e., acquisition of sites and erection of buildings, was incorporated in the separate Estimates in 1948-49, and in 1949-50, expenditure on aircraft, naval vessels, arms, etc. was also included. It should also be noted that in each year from 1941-42 to 1946-47 and in some later years, part of the total defence expenditure was met from the Loan Fund.

In 1948-49 the description adopted in 1904-05 was varied to 'Estimates of Expenditure for Additions, New Works and Other Services involving Capital Expenditure'. There is no record in the Treasury of the reason for this change in title, nor is there any significant variation in the form and content of the document for 1948-49 by comparison with that for 1947-48. Nevertheless, it seems reasonable to infer that the change in the range of the items since 1904-05 required some more appropriate designation than the abbreviation 'etc.'

However, the change in designation and the simultaneous introduction of the abbreviation 'Capital Works and Services' is the apparent origin of some misunderstandings. The change, which was no more than an alteration in the description of the contents of these Estimates, might have occasioned the belief that all

expenditure, ordinarily comprehended in the term 'Capital Works and Services', would be found therein. In fact, no such change was made in the contents of the two sets of Estimates and many items which might be classified for accounting purposes as of a capital nature are not included in these Estimates.

Using the generally accepted accounting conventions for classification of expenditure, illustrations of items of a capital nature contained in the main Estimates for 1960-61 are:-

Appropriation

Division	105/2/06	Joint House Department - Purchase of Plant and Equipment.
"	125/2/01	National Library - Books, maps, plates and documents.
"	" 04	National Library - Purchase of copying of films.
"	" 08	National Library - Purchase of film equipment.
"	129/06	Official Establishments - Repairs, maintenance, replacements and additions to contents of buildings.
"	129/09	Official Establishments - Purchase of motor car.
Division	232/2/07	Electoral Branch - Minor building maintenance and works.
"	281/2/08	Department of Customs and Excise - Administrative - Hire, maintenance and operation of launches and the supply of equipment.
"	281/2/14	Department of Customs and Excise - Administrative - Film Censorship - Equipment.
"	297/06	Serum Laboratories - Stores and plant.
"	451-615	Defence Services - All capital expenditure for the Defence Services is included with these Divisions.
"	711-718	Postmaster-General's Department - These Divisions include all postal assets, e.g. mail handling plants, mail bags, letter receivers and boxes, bicycles, motor vehicles,

Building Branch tools and equipment, stores handling equipment (mobile cranes, fork-lift trucks, trolleys).

- Division 762/3/03 Northern Territory - Health Services - Transport equipment - Aircraft, ambulances and other transport.
- " "/04 Northern Territory - Health Services - Equipment for hospital.
- " 776/01 A.C.T. - Health Services - Canberra Community Hospital.
- " " /07 A.C.T. - Health Services - Ambulance service.
-"

27. It would appear therefore reasonably certain that the original intention was to include in the Works and Services section of the Estimates only those items relating to expenditure on buildings. These items are similar to those commonly referred to as "public works" and which are commonly included in items covered by the Public Works Bills of the various States of the Commonwealth.

28. In view of the circumstances surrounding the first introduction of these Estimates and the covering Appropriation Bill in the Senate in 1901, as outlined in the document received from the Treasury and quoted above, the introduction over the years of a number of additional items of a "capital nature" and the subsequent alteration to the title of this section of the Estimates appear to have resulted from administrative practices and possibly to some confusion as to the actual purpose of the section. Clearly, the fact that some items of expenditure may be classified according to certain accounting concepts as being of a capital nature does not necessarily furnish any valid reason for including them in this separate section. Alternatively there has not been any objection, so far as Your Committee is aware, to items which might be classified as "capital expenditure" being included in the main section of the Estimates.

29. Mr C. L. S. Hewitt of the Treasury advised Your Committee:

"..... But I do not think any one has ever purported to have suggested that one section of the Estimates contained capital expenditure and the other did not."

Q.129

and

".....the accounting is not based on commercial accounting. You do not start off by requiring a distinction between capital expenditure and other expenditure."

Q.130

30. The Treasury document in reply to a question from Your Committee concerning the advantages and disadvantages arising from separate sections in the Estimates advised:-

Exhibit No
54/5

"....."

There was some discussion in the Senate in 1952 of the advantages of a separate document; disadvantages would also arise in the repetition of Parliamentary consideration of separate Bills.

The existence of six, rather than three annual Supply and Appropriation Acts represents some minor addition to the accounting in the Treasury, e.g. the preparation of separate Warrants for signature by the Governor-General. Moreover, the separation of the appropriations is in contrast to the recommendation of the Committee for the grouping of expenditure in its report on 'Form of the Estimates: Miscellaneous Services'.

The alternative was simply put by the Attorney-General on 4th November, 1952, and consists of the amalgamation of the documents grouped in the manner already proposed by the Committee in its Forty-Ninth Report.

"....."

31. During the course of our enquiries the witness also stated:

MEMBER. - From your experience, do you think that the adoption of the suggestion that the appropriation for Works and Services be included in the Appropriation Bill instead of being covered by a separate measure would make any difference to the functioning of Parliament and the various Government departments? --- (MR HELWITT) I think it would be an improvement because at the moment there are six bills that appropriate money during the year, with six sets of procedures following from them. And with respect, I point out that periodically questions are asked why certain capital expenditure is not included in the appropriation for Capital Works and Services but are shown elsewhere. I think that it would be a step towards greater simplicity and understanding.

Q.154

32. Your Committee were assured that any alteration in the present procedure which would dispense with the separate Works and Services section need not present difficulty to members in ascertaining the total amount of expenditure now shown in the separate Works and Services section as this figure could be shown in The Budget Papers as is now being done in relation to expenditure previously appearing in the Miscellaneous Services section following on the recommendations of Your Committee in its Forty-Ninth Report.

Q.156

33. Members will be aware that expenditure represented by the items in the Estimates are all met from Revenue. Expenditure from the Loan Fund is authorised usually in a separate Loan Bill. Referring to the changes which had occurred over a period of 60 years and for which there

is no record of the particular reasons for making these changes the witness was asked:-

MEMBER.-we now have two separate sections for capital works and services. This is the apparent origin of some misunderstandings because neither section sets out all the capital works and services. To all intents and purposes, a practice has grown up over the years in which certain works and services have been included in certain documents and certain other activities which might well come within that general heading are in another section. It is very difficult to define capital works and services in terms of an instruction from the Treasury or the Government that could be followed all through. Does this section, in fact, serve any useful purpose as a separate section? It does not give Parliament a clear view of capital works and services? --- (MR HEWITT) I do not think it serves any useful purpose whatsoever.

Q.161

Summary.

34. Historically there appears to be grounds for believing that the separate Works and Services section of the Estimates arose from the interest of the States in having a separate Appropriation Bill which could be amended by the Senate in the expectation that expenditure by the Commonwealth Government might be controlled and thereby achieve a surplus of Commonwealth revenue which would be returned to the States in accordance with the terms of the Constitution. This is now patently an archaic concept. From the viewpoint of governmental accounting, argument as to what does or does not represent expenditure of a capital nature is of limited value because all the items of expenditures in the Estimates which constitute the schedules to the two Appropriation Bills are made from Revenue.

35. Regulations exist to control the recording of Government assets and these apply regardless of the particular section of the Estimates in which the expenditure is shown.

36. If the items now appearing in the Capital Works and Services section of the Estimates were to be shown separately with the votes of each Department it would be impracticable to show a total for all Commonwealth expenditure of a capital nature in the Estimates. However, that total could be shown quite clearly as a summary in the Budget Papers.

Conclusion.

37. The evidence obtained indicates that from the viewpoint of general governmental accounting and of convenience for Members and departments, the section dealing with "Additions, New Works and Other Services Involving Capital Expenditure" could be omitted.

38. As a result of thus having one Supply and two Appropriation Bills, instead of two Supply and four Appropriation Bills each year there would be some economy in departmental time, in the cost of travelling expenses for departmental officers and in the accounting within the Department of the Treasury.

CHAPTER III. - THE AUDITOR-GENERAL FOR THE COMMONWEALTH

39. In a document forwarded for the information of Your Committee the Auditor-General stated:

"As the Committee is aware, there is no statutory requirement for a separate Bill, nor is there any statutory or Treasury definition of 'capital expenditure'.

Exhibit
No. 54/6

In my predecessor's Report for 1950-51 (paragraph No. 186), he raised the question whether it was any longer necessary to have separate appropriation bills for 'Departments and Services' and 'Capital Services'. At Appendix "E" of the 1950-51 Report, is a copy of an opinion by the Solicitor General to the effect that what is generally known as capital services are constitutionally part of the ordinary services of the Government. A further reference to the matter was made in the Annual Report for 1952-53, paragraph No. 125.

At this juncture, I do not wish to add to the Reports of my predecessor except to say that whilst no auditing difficulties arise from the present procedure, it would appear that there is scope for clarity in the form in which the estimates regarding this subject are presented to the Parliament."

40. During the public hearings the Auditor-General, Mr H.C. Newman, C.B.E., assisted Your Committee with further evidence and stated, in reply to a question relating to statutory requirements as referred to in Exhibit No. 54/6.

"..... The proposition which the Committee is considering is whether a change would have any effect in relation to the audit. The Auditor-General's responsibility, as you know, in relation to an appropriation commences after the appropriation bill has become law. Whether the appropriation for works and services is grouped with the appropriation for the normal services of a department or is made the subject of a separate bill has no effect at all on audit responsibility or on the work of my office."

Q. 168

41. With regard to the use of the word "clarity" in the extract from the document quoted above, Mr Newman explained that he had in mind the fact that a clearer definition, for example, of what is capital expenditure and what is maintenance expenditure was desirable and that the Parliament might wish to have more information in respect of certain expenditures such as the omnibus item "Buildings, works, fittings and furniture."

Qs. 175, 177
and 179-
187

CHAPTER IV. - THE SOLICITOR-GENERAL FOR
THE COMMONWEALTH

42. The Opinion No. 5 of 1951 by the Solicitor-General, quoted by the Auditor-General in his document (Exhibit No. 54/8) and reproduced as Appendix E in the Auditor-General's Reports for 1950-51 dealt with a specific reference from the then Auditor-General related to four particular forms of government expenditure. In the circumstances Your Committee considered it advisable to obtain a further opinion relating generally to this particular investigation into the form of the Estimates and in view of the importance of this aspect of our enquiry and the value of the opinion it is included as Appendix A to this Report together with his supplementary advice of 15th March, 1961 (Appendix B).

Exhibit
No. 54/7

43. The Senate has equal power with the House of Representatives in respect of all proposed laws except, as relevant to this particular investigation by Your Committee, that it may not amend proposed laws appropriating moneys "for the ordinary annual services of Government". In the case of the exception it may request an amendment. This position arises from the provisions in the Constitution of the Commonwealth which reads:-

Section 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.

and

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

44. Expenditures which cannot be classified as being "for the ordinary annual services of the Government" require appropriation in separate bills, which may be amended by the Senate, and it is more convenient and economical in the case of the annual Estimates and Additional Estimates to support these separate Appropriation (Works and Services) Bills with separate sections in the Estimates as these sections form the schedules to the Appropriation Bills. The saving in printing costs and time are considerable.

45. The Solicitor-General, Sir Kenneth Bailey, C.B.E., discussed his Opinion with Your Committee on the 7th March, 1961. Following a statement that expenditure authorised under section 96 of the Constitution of the Commonwealth would not be "for the ordinary annual services of the Government" the Solicitor-General was asked:-

MEMBER. - What do you consider constitute extraordinary items of expenditure, of the kind that we should not put in the ordinary Appropriation Act? --- (SIR KENNETH BAILEY)
 Confessing that I find that the most difficult of all the legal questions in this field, I would, nevertheless, also like to change the form of it. I think that the constitutional requirement is not directed to items of expenditure but to services. Services in the constitution are primarily organizations, instrumentalities, military services, civil services, departments, and statutory corporations performing Commonwealth Government work. I think that that is what the Constitution is primarily concerned with - the ordinary annual services, not the activities or functions but the entities. I think the question may be a little easier to answer than it would be if the Constitution said, "ordinary items of expenditure". That would get you into extremely controversial matters of opinion as to what was ordinary and what was extraordinary. I think that this was the point intended to be brought out by Attorney-General Deakin at a very early stage in Commonwealth history, when he said: If these buildings are wanted in the ordinary course of business of a department, that is ordinary. It might be novel, it might be unprecedented, but if it is proper for the Department of Immigration or the Department of External Affairs, then it is ordinary from the Constitutional point of view and it can go into the ordinary annual services and in the ordinary, main, general Appropriation Act. I find it very hard to offer an illustration of what I think would be an extraordinary service. One might, for example, establish quite independently of one of the existing departments a fire and flood relief administration, or something of that sort. That, I think would not be part of the ordinary annual services of the Commonwealth. Clearly, the mere establishment of a new department of State would not be an extraordinary service. It would be in the ordinary course of what the Constitution provides for.

Q. 197

MEMBER.- In our thinking, inevitably, another concept has crept in. That is the concept of capital, as distinct from what is done every day. You would not regard capital expenditure, presumably, as extraordinary? --- (SIR KENNETH BAILEY) No. Q.198

MEMBER.- As time has gone on, a lot of these things have tended to fall into one group consisting of what a department regards as income expenditure and another of capital expenditure items. This is a division based purely on accounting concepts rather than legal concepts. Do you feel that this division is one which fits the legal concept of ordinary and extraordinary expenditure? ---(SIR KENNETH BAILEY) I think that the Constitution knows nothing of the distinction between capital and income expenditure. Q.199

MEMBER.- I come now to the term "public works". I understand that Quick and Garran, in their textbook, included public works as items of extraordinary expenditure. I was just wondering whether that sort of concept is too simple. Would you care to comment on the question whether public works should be regarded as extraordinary expenditure or whether they should be viewed as something a little more sophisticated?---(SIR KENNETH BAILEY) Perhaps the view that was taken was little more refined, but you can only read refinement into it by implication. I think in that book they really did intend to give public works as an example of an extraordinary annual service. I can only say with great respect that I think the opinion that was given was repudiated by those authors. I turned up Sir Robert Garran's memoirs the other night for the purpose of checking one or two other points, but I also noted what he said about the preparation of "Quick and Garran". He said that he had never known previously what it was to be associated with a steam roller. With a time schedule fixed by Sir John Quick this work had to be completed by a certain date before the Commonwealth came into operation and therefore it was done in a tearing hurry. I think it is proper to say that the opinion of 26th September, 1901, from which I have quoted, was initialled by Sir Robert Garran. It was signed by the Attorney-General of the day but our copy in the opinion book bears Sir Robert's initials. I have always myself regarded that as a piece of repentance on his part. Indeed, there was no authority for such a view in the State practice or the United Kingdom practice, and it is contrary to the words and also to the general constitutional principle on which sections 53 and 54 rest. Q.204

MEMBER.-You could hardly regard public works as extraordinary?---(SIR KENNETH BAILEY) I certainly would not. Q.205

46. In reply to a further question as to the fundamental difference between the two Appropriation Bills the reply was:

(SIR KENNETH BAILEY) I have expressed my own view that there is no fundamental difference because I have said that, with a couple of possible exceptions, the entire contents of the second act might have been put into the first because they answer the same fundamental constitutional description; namely, the description of appropriations for the ordinary annual services of the Government. Therefore, I say there is no fundamental difference. Q.234

(SIR KENNETH BAILEY)there is no requirement in the law that the Senate shall be in a position to amend a bill dealing with works and services. If a procedure is adopted by the Parliament, it is a matter for the Houses themselves to determine. If the Houses adopted a procedure under which the power hitherto exercised by the Senate were not exercisable, there would no doubt be much controversy in the Senate and perhaps outside. But it would not in any sense be contrary to law, and if the present Appropriation (Works and Services) Bill were reduced to extraordinary expenditure, it would clearly be in accordance with the Constitution that that could be amended by the Senate. Q.260

MEMBER.—Therefore, while the legal position remains unaltered, the position established by practice remains a matter for decision by the Houses of the Parliament themselves?--- Q.262
(SIR KENNETH BAILEY) It is a matter entirely for the Houses. I suppose that if I had restricted my memorandum to paragraph 7, it would have been entirely correct, because the reference is to their expression of view on a matter which is really a matter for political determination.

Summary:

47. Your Committee understands that the Department of the Treasury is obtaining further advice on the possibility that certain items appearing in the Appropriation Bill should appear in a separate Bill which the Senate would have power to amend.

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 Estimate 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 emphasizing the force of the word "services" in section 53 of the Constitution instead of a reference to items of expenditure and the opinion Q.197

that "the Constitution knows nothing of the distinction between capital and income expenditure". This latter opinion is relevant to the statement of the observer from the Department of the Treasury to the effect that governmental accounting is not based on commercial accounting.

Q. 199
Q. 130

CHAPTER V - THE PARLIAMENT

50. On the 14th March, 1961, Your Committee was assisted by evidence received from the Clerk of the Senate and the Clerk of the House of Representatives.

(a) THE HOUSE OF REPRESENTATIVES

51. Mr A.G. Turner, Clerk of the House of Representatives, in a document furnished to Your Committee had noted that:-

"The only Estimates transmitted to the House by the Governor-General for the period ended 30th June, 1961, were 'main' Estimates, i.e. did not include provision for works. Estimates transmitted for 1961-62 and since have been separate documents for 'main' and 'works' requirements."

Exhibit No.
54/8

and advised

"Although this does not affect the substance of the Committee's inquiry, it is pertinent to refer to a recent decision by the Standing Orders Committee in which it approved in principle the abolition of the procedure which requires the consideration of financial proposals in one or other of the financial committees before they are dealt with in the House and its replacement by a procedure based on the introduction of a Bill preceded by any financial Resolution. If the change is adopted by the House, Estimates of Expenditure in their present form will not be referred to and considered in a Committee of Supply, the proposals being initiated by the introduction of Bills in the form of the present Appropriation Bill and the Appropriation (Works and Services) Bill."

52. During his evidence Mr Turner added:

(MR TURNER) Section 56 states that no appropriation shall be passed unless its purpose has been recommended in the same session to the House by a message of the Governor-General. The Constitution does not require the presentation of the Estimates.

Q. 300

53. The document also referred to the change made in 1956-57 when, following difficulty experienced by the Chair in enforcing the relevancy rule during consideration of the "main" Estimates, the Chair decided to allow reference during the debate on those Estimates, to any matter which appeared in the Miscellaneous or Works and Services sections of the Estimates and which were administered by the Department whose Vote was before the Supply Committee.

54. When Your Committee was obtaining evidence during the enquiry into the Miscellaneous Services section of the Estimates (Your Committee's Forty-Ninth Report), Mr Turner had previously referred to this action taken by the Chair in the interests of more intelligent debate (amongst other things) and had expressed the opinion that although this had eliminated most of the previous relevancy rule difficulties it would be an added advantage to Members if all the items referring to one Department appeared together in the Estimates.

55. In reply to questions concerning the re-allocation of debating time should any alteration be made to the size of the sections in the Estimates and of the schedules to the Appropriation Bills, Mr Turner could see no reason why this should not be done but added that "it is a matter for the Government".

Q. 296

56. During the course of the evidence given by Mr Turner reference was made to the occasion which the Solicitor-General has quoted in paragraph 17 of his document (Appendix A) when the Senate sought to amend the Appropriation (Works and Buildings) Bill of 1910-11. Mr Turner advised:

"..... When the amendment was received, Mr Speaker informed the House that in his opinion the amendment was out of order as it altered the destination of the vote and would enable the money to be expended at a place not recommended in the Estimates. Whether items in the Works Bill constituted items in the ordinary annual services of the Government was not really in question and any references in debate were incidental. Our House, to my knowledge, has never discussed the right of the Senate to amend the Appropriation (Works) Bill on the ground that it might be an appropriation for the ordinary annual services of the Government."

Q. 292

57. This was the last occasion on which the Senate has sought to exercise its power to amend an Appropriation (Works and Services) Bill.

Q. 369
Exhibit No.
54/8

58. Later Mr Turner was asked:

MEMBER.- If the House of Representatives refused to recognize the Senate's right to press requests, would it mean that the House of Representatives regarded a requested amendment as having less effect than an amendment would have? --- (MR. TURNER) That would be a matter of opinion to be expressed by the House as a whole, but my conception - I say this as a lay-man - of the intention of the Constitution, in sections 53 and 54, was that the power of request was a lesser power than the power of amendment. The right to press requests has never been decided by the Houses. It has been the subject of discussion by messages between the Houses and was the subject of legal opinions, which were tabled in our House some time between 1940 and 1943, by Sir Robert Garran, Sir George Knowles, Professor Bailey and Mr Castieau. According to my recollection, they

Q. 328

said quite clearly that the Senate's power to request an amendment did not extend to the power to press a request for amendment.

and

(MR TURNER) The House has always taken the view that the Senate has no power to press a request, but for various reasons of which I am not aware in detail, the House has on a number of occasions passed a resolution which said, in effect, that without prejudice to its constitutional rights it would consider the pressed request. Q. 329

59. Should the request by the Senate not be acceded to the Senate could refuse to pass the bill and the position is outlined in the following evidence. Q. 334

MEMBER.- Does not the ultimate power lie in the Senate's ability to pass or not pass? What is the ultimate de facto difference between the Senate's having power to amend or having the power to request an amendment, when in any case the bill has to go right through both Houses and be agreed to by them? If the Senate requests an amendment, which is not agreed to by the House of Representatives, is not the Senate still in a position to throw out the whole bill? --- (MR TURNER) Yes. In either case, it is in that position. Q. 341

MEMBER.- Does not the real power lie in the fact that the Senate is not obliged to pass something to which it will not agree? Whether or not the Senate has power to request or to press a request, the de facto position is that, when the Senate says, 'We request you to alter A, B and C', whatever the House says about pressing or not pressing, if the House does not agree to the request to amend A, B and C, the Senate can throw the bill out. Ultimately, it is the Senate's power to throw the whole thing out. There are obviously formalities, but what do they amount to? Will you agree that the real power of the Senate is to throw it out and enforce its will in that way? --- (MR TURNER) Yes. That power exists at different points of time. In the case of a bill which the Senate may amend, the Senate sends a message back to the House, saying that it has agreed to the bill with the amendments which it has made. In the case of the main appropriation or taxing bill, it informs the House that it requests the House to make amendments in the bill. It has not at that stage committed itself in relation to the bill, but it retains, in the case of the request, the power to reject the bill entirely. Q. 342

MEMBER.- An amendment has a quicker passage. The House agrees or does not agree. If the Senate makes a request, whether or not the House agrees, back the bill goes to the Senate to be dealt with again, so it is a more cumbersome procedure? --- (MR TURNER) Yes. Q. 343

MEMBER.- I should like someone to explain how in fact a change to one Appropriation Bill would take away any real power of the Senate, as distinct from points of procedure.

MEMBER.- I thought perhaps you had greater negotiation power on an amendment than you would have on a request. Is that so? --- (MR TURNER) Yes.

Q. 359

60. Mr Turner's evidence related to specific questions from Your Committee and throughout the discussions, and in the Document (Exhibit No. 54/8) previously made available for our information, he emphasized that these matters affect the Parliament and relations between the two Houses and that any decisions would have to be made and agreed by both the Houses concerned.

(b) THE SENATE

61. The Clerk of the Senate, Mr R.H.C. Loof, assisted Your Committee with evidence on the procedure in the Senate for considering appropriation bills and on the Senate's powers to amend, and to request amendment to, these bills.

62. In a memorandum furnished for the information of Your Committee Mr Loof advised:

Exhibit No.
54/9

"

1. The practical effect of including votes for public works in Appropriation (Works and Services) Bills is to provide the Senate with a very wide power of amendment, that is to say, the Senate may amend such Money Bills so as to reduce the total amount of expenditure, or to change the method, object, and destination of the expenditure but not to increase the total expenditure originated in the House of Representatives.
2. If most appropriations now made by separate Acts dealing with Works and Services were regarded as expenditure on ordinary annual services of the Government and as such were included in the ordinary annual Appropriation Bills, then the Senate's power of amendment in connection with those items would be lost.

The Senate may only request amendments in Bills appropriating revenue or moneys for the ordinary annual services of the Government and although it has a right of veto over such Bills this may be exercised only in respect of the Bill as a whole.

3. The inclusion of votes for public works in separate Bills, viz., the Appropriation (Works and Services) Bills (formerly Works and Building Bills) instead of in the Bills appropriating revenue or moneys for the ordinary annual services of the Government, has been the practice for the past 59 years and appears to be in accordance with the intentions of the framers of the Constitution. The fact that certain services of a capital nature have occasionally been included in the Appropriation Act provides no basis for argument in favour of a wholesale transfer of items of a capital nature to Appropriation Bills.

.....

4. During the debate in the Senate on 20th June, 1901, (Hansard, Vol. I, p. 1312) when the meaning of 'ordinary annual services' was discussed, Senator Ewing (Western Australia) said:-

'.....it was the intention under the Constitution that the smaller States should have a hold on the purse-strings in order that they might demand a return of as much revenue as was consistent with the proper administration of affairs.'

He suggested that it was of very great importance particularly to those smaller States that the amount of power over the purse which had been given to the Senate (by Section 53 of the Constitution) should be preserved to the utmost.

....."

63. During the public hearing the further evidence received from Mr Loof included:

MEMBER.- Have you delved into discussions of parliamentary estimates and found out why a bill known as a Works Bill was first introduced as a separate bill? --- (MR LOOF) It extends back to the days when the constitution was being framed and it relates to the difference between ordinary annual services and other items. I can find only one reference in the convention debates when one member said that services which are not ordinary services would include ships' arsenals and items like that, indicating that public works and items like that, would not be ordinary annual services.

Q.379

(MR LOOF) They did not want too much money to go to the eastern States and nothing to the other States and they thought that they had a right to amend these items.

Q.385

64. The opinion would appear to be supported by the information furnished by the Treasury (paragraphs 23 and 24) concerning the origin of the Appropriation (Works and Services) Bill and Mr Loof added:

Exhibit No.
54/9

(MR LOOF) I think it was the intention of the framers of the Constitution - I can bring evidence to bear out this point - some members of the first Senate, who were members of the Convention were quite definite that provision for public works should not be included in the appropriation for the ordinary annual services.

Q.386

65. The provisions of section 94 of the Constitution relating to the return of surplus revenues are now subject to the decision of the High Court in New South Wales v Commonwealth (1908) 7 C.L.R. 179 and 14 A.L.J.R. 625. However, the evidence given during the enquiry suggests that the first members of the Senate may have been influenced by that section, by their anxiety to assure that the States received back as much surplus

revenue as possible and by a desire to assure that the distribution of Commonwealth expenditure, particularly on "public works", would not unduly favour any State or States. So far as Your Committee have been able to ascertain the term "public works", although in common use in the Colonies and later, in the States, has not been used officially in Commonwealth documents other than in the title to the Commonwealth Public Works Committee Act where the term is not defined.

66. In paragraph 45 of this Report reference has been made to the publication "The Annotated Constitution of the Australian Commonwealth" (Quick and Garran) and a revision of opinion, subsequently, by Sir Robert Garran. In reply to a further question inviting his attention to the opinion (see paragraphs 23 and 25) given by another member of the early Federal Conventions, Sir Alfred Deakin, concerning the words "ordinary annual services", Mr Loof stated:

(MR LOOF) It is very interesting to note in relation to that opinion that he used the words "Appropriations for new buildings or additions when these are required in the ordinary course of departmental business are appropriations for the ordinary annual services". I invite attention to the words "in the ordinary course of departmental business". Sir Josiah Symon, who was a lawyer and a constitutional authority, said during the 1901 debate that the items in the bill included amounts for services ordinarily performed but that it would not be an ordinarily performed service if it were a major building such as a new Parliament House or a post office. You have two authorities using the same phraseology but arriving at different conclusions.

Q. 392

67. The matter of the practical difference in the powers to amend and to request an amendment was also discussed with Mr Loof.

MEMBER. - What is the real significance of the two different powers of the Senate - the power to amend a bill and the power to request the making of an amendment in a bill that it may not amend? --- (MR LOOF) It is largely - possibly solely - a question of responsibility. In the case of an amendment bill - a bill that the Senate may amend - the Senate actually makes the amendment in the bill, reads it a third time and sends it back to the House of Representatives. Then it is the responsibility of the House of Representatives, whose bill it is, to accept the amendment or see the bill destroyed. It cannot force a direct vote of the Senate on the bill in its original form. It has to take it as the Senate has given it, and the responsibility is on the House of Representatives.

Q. 399

In the case of a request bill, the Senate makes the request in a message returning the bill to the House of Representatives. The bill is not read a third time until both Houses have finished dealing with that request - until all the matters to be dealt with have been completed. Then and only then will the Senate read the bill a third time.

If the House of Representatives will not agree to the request, the Senate can veto the bill - any bill at all. This is a great power.

I think that what might be termed rather a vital distinction between an amendment and a request - I mentioned responsibility - is that although the Senate has power to veto a 'request' bill, it will not consider every request so important that it will go to the limit of vetoing a bill. If it is a matter on which the Senate feels very strongly, and that threat of veto is imminent, the powers of the Senate in connection with requests and amendments are such that I cannot see any difference. As I have said, not every request will be treated in that way. You have a lot of lesser matters in respect of which the House of Representatives can successfully resist any requests which are made to it by the Senate where it feels that the Senate will not exercise its veto power. In the case of an amendment, the responsibility is on the other side. The House of Representatives must take the responsibility of destroying its own Bill. The Senate, in connection with its responsibility, must have in mind section 57 of the Constitution, which relates to deadlocks. If, notwithstanding that, it feels that it can veto a bill, and it is prepared to do so, its power of request is very strong.

68. In the course of his evidence Mr Loof was asked also the following series of questions:

MEMBER.- You would agree that statements made during the convention debate are not authoritative in interpreting the Constitution? --- (MR LOOF) That is so. Q.418

MEMBER.- Also, that the Constitution has to be interpreted on the words in the Constitution Act and not on any extraneous speeches? --- (MR LOOF) Yes. Q.419

MEMBER.- Would you agree that what has been done has been built up upon custom rather than upon constitutional provision? ---- (MR LOOF) The whole question, as was pointed out by the Solicitor-General, is purely a matter for the two Houses, and the two Houses apparently agreed, right back in 1901, that this was a fair split-up. The two Houses clearly thought that works and services was a matter for another bill. This split-up was recognized by the two Houses as a proper set-up in accordance with the intentions of the framers of the Constitution. Q.436

MEMBER.- There would be nothing wrong in reversing the process? --- (MR LOOF) No, but both Houses would have to agree. Q.438

Summary.

69. The Commonwealth Parliament has not made a practice of considering separate Public Works Bills although these were common in the Colonies and are still used in the States.

70. The Senate has not varied its interpretation of the "ordinary annual services of the Government" since it debated section 53 of the Commonwealth of Australia Constitution Act in 1901.

CHAPTER VI - GENERAL

71. During the course of our enquiry occasional references were made to certain specific items which appeared in one section of the Estimates but should, to conform with the provisions of section 53, be shown in another section. The observer from the Treasury advised Your Committee that the opinion of the Parliamentary Draftsman would be sought in order to determine the correct appropriation bill (and section of the Estimates) in which these items should appear. Q.456

72. The advice to be sought by the Treasury, Your Committee understand, refers to items now included in the main or ordinary Appropriation Bill and which may not be considered as being expenditure for the "ordinary annual services of the government".

73. However, irrespective of whether the interpretation of section 53 by the Solicitor-General or that by the Senate is agreed, it is clear that a number of items now appearing in the Appropriation (Works and Services) Bill could be transferred to the ordinary Appropriation Bill. An example is the recurring item "Buildings, works, fittings and furniture" but a dissection of this item would be necessary if it is desired to assure that the "buildings" involved are not "public works" which are required by the Senate to appear in a separate bill subject to amendment. As the matter would require a rather lengthy enquiry involving each individual item in the Estimates Your Committee is unable to make specific recommendations at this stage on the various items which could be transferred but the Treasury might be able to review certain of them from time to time.

74. It was clear that the classification of items into capital and revenue expenditure was not the answer to this problem and that the title "Additions, New Works And Other Services Involving Capital Expenditure" of the section in the Estimates tended to be misleading.

CHAPTER VII.- CONCLUSIONS

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. Further, the definition of the particular items to be

included in separate works and services appropriations, and not in the main appropriations of expenditure "for the ordinary annual services of the government", is a matter for the two Houses of the Parliament to establish as the relevant sections of the Commonwealth of Australia Constitution Act refer to proposed laws.

For and on behalf of the Committee




F. J. DAVIS

Chairman.

T. H. CRANSTON,

Secretary,


Joint Committee of Public Accounts,
Parliament House,
CANBERRA, . A. C. T.

15th August, 1961.

APPENDIX A.

Report Paragraph 42.

Exhibit No.
54/7

COMMONWEALTH OF AUSTRALIA.

SOLICITOR-GENERAL.

60/3311.

MEMORANDUM for -

The Chairman,
Parliamentary Joint Committee
of Public Accounts,
Parliament House,
CANBERRA. A. C. T.

Form of the Estimates.

I refer to the memorandum dated 9 December, 1960, from the Secretary to the Joint Committee of Public Accounts requesting me to furnish to the Committee my opinion on a matter relevant to an investigation that the Committee proposes to make concerning the Estimates of Expenditure for Additions, New Works and Other Services involving Capital Expenditure.

2. As a result of discussions between the Secretary to the Committee and officers of this Department, agreement has been reached as to the precise form of the question upon which you wish to be advised. The question is as follows:-

Is there any legal objection to the inclusion in an ordinary annual Appropriation Bill of all the provisions that are now customarily included in an annual Appropriation (Works and Services) Bill?

3. Even as thus phrased, the question assumes that the contents of Appropriation (Works and Services) Bills maintain a substantially identical pattern from year to year, and that an answer given in respect of any one such Bill will apply equally to those of other years. I accept that assumption as a reasonable one: but inasmuch as I have not attempted to verify it by detailed comparisons between one such Bill and another, and inasmuch as there is no constitutional or legal requirement that such Bills should be so constructed, I had best confine my answer for present purposes to the most recent example - the Appropriation (Works and Services) Bill 1960-61.

4. The short answer I would give to the Committee's question is that, subject to two possible exceptions which I discuss below, there would have been no legal objection to the inclusion in the main Appropriation Bill 1960-61 of all the provisions which were in fact included in the Appropriation (Works and Services) Bill for that year.

5. I shall assume in what follows that the Committee has had before it the opinion that I furnished to the then Auditor-General in 1951 as to the meaning and effect of the expression "appropriating revenue or moneys for the ordinary annual services of the Government". Further examination of the problem, and close consideration of the views expressed when the matter was debated in the Senate in 1952, have not led me to depart either from the answers given to the Auditor-General or from the reasoning upon which the answers rested. That reasoning seems to me equally applicable to the cognate, though not identical, question now asked me by the Committee. The precise form of the answers given in 1951, however, did turn in part on the particular questions then asked. While taking the liberty to refer generally to my Opinion No.5 of 1951, I shall therefore try to make the present advice self-contained, in essentials, setting out where necessary extracts from my earlier opinion.

6. The only relevant provisions as to Appropriation Bills are to be found in sections 53 and 54 of the Constitution. These are as follows:-

"53. Proposed laws appropriating revenue or moneys shall not originate in the Senate

The Senate may not amend 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.

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

7/ The interpretation of these provisions presents many difficulties. But it seems to be clearly enough established that constitutional provisions expressed to apply only to proposed laws, as contrasted with laws which have been passed by Parliament, are to be regarded as addressed exclusively to the Houses of the Parliament in the conduct of their own internal affairs, and are not justiciable in the courts. As Griffith C.J. said in Osborne v. The Commonwealth ((1911) 12 C.L.R. at 336) - "Sections 53 and 54 deal with 'proposed laws' - that is, Bills or projects of laws still under consideration and not assented to - and they lay down rules to be observed with respect to proposed laws

at that stage. 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". With a view to assisting the Committee, I shall make some observations on the provisions concerned. But it will be understood that it is for the Houses alone to decide what meaning and effect is to be given to the requirements of sections 53 and 54. It is for each House, moreover, to decide whether it will insist on compliance by the other with the sections, or to acquiesce in non-compliance. The law is clear that, if a proposed law is duly passed by both Houses, even a clear breach of sections 53 and 54 will not render the resultant Act invalid.

8. There is a perhaps unexpected change in grammatical construction between sections 53 and 54. Section 53 says that the Senate may not amend "proposed laws" appropriating revenue or moneys for the ordinary annual services of the Government. One might expect therefore that section 54 would go on to declare that "proposed laws" making such an appropriation should deal only with such an appropriation. But it does not. That requirement is imposed in respect only of "the proposed law" which makes such an appropriation.

9. Strictly as a matter of wording, section 54 might be thought to imply, from its pointed use of the singular number, that there will be, and perhaps must be, only one proposed law in any year that appropriates revenue or moneys for the ordinary annual services of the Government. But in practice the section has never been so regarded by the Houses. It has been understood - correctly as I would myself think, and in conformity with the usage of Parliament - as referring albeit rather loosely, to a general Appropriation Bill; no matter whether one or more than one in any given year. The rule laid down in the Acts Interpretation Act (U.K.) that words in the singular will unless the contrary intention appears include the plural may be called in aid of this interpretation. But I think that the construction adopted in practice by the Houses rests also on the broad constitutional purposes of the section - to ensure that the Senate may not be coerced into passing some extraneous proposal by its incorporation into a general Appropriation Bill, so that the proposal could not be rejected without bringing the whole administration to a standstill. The result, is of course, that the constitutional prohibition of "tacking" may not apply for example to a measure which only incidentally makes an appropriation for some purpose that falls within the ordinary annual services of the Government. But no serious consequences follow. On a literal reading of section 53, the Senate could not amend such a Bill. But it could reject the Bill in toto, without fear of paralysing the administration.

10. I addressed myself in some detail, in advising the Auditor-General in 1951, to the meaning of the expression "the ordinary annual services of the Government". Further consideration has perhaps put in clearer perspective in my own mind the importance in this expression of the word "services". It is my opinion a much wider term than "expenses" or "expenditure", and much less capable of interpretation in terms of accounting concepts. And probably it is not to be

interpreted as a mere synonym for "functions" or "activities". The "services" of a Government, civil and military, are basically its Departments of State and its statutory and other instrumentalities.

11. These considerations serve I think to strengthen the conclusions reached in my advice to the Auditor-General. From paragraph 9 I quote the following short extract:-

"Thus 'the ordinary annual services of the Government' may be described as those services provided or maintained within any year which the Government may, in the light of its powers and authority, reasonably be expected to provide or maintain as the occasion required through the Departments of the Public Service and other Commonwealth agencies or instrumentalities. Accordingly, if expenditure is to be incurred for an item which is itself such a service or is reasonably necessary for or incidental to the provision or maintenance of such a service, it may be regarded, without more, as proper for inclusion in an ordinary Appropriation Bill."

12. I am aware that there are on record observations more or less contemporary with the adoption of the Constitution which give as illustrations of objects of expenditure provision for which would fall outside the scope of the expression "the ordinary annual services of the Government" such items as buildings or a warship. I am sensible of the weight of these opinions contrary to the conclusions I have myself reached, and have not rejected them without both diffidence and respect. I offer three brief comments. First, that such views were rejected, in the first year of the Federation, by the first Attorney-General of the Commonwealth, no less experienced a Parliamentarian and no less distinguished a member of the Federal Conventions than Alfred Deakin. Second, that support for them cannot be found in the practice either of the Parliament at Westminster or of the State Parliaments before 1900. Third, that they do not accord with the usages and principles on which sections 53 and 54 are based. There is, as it seems to me, no constitutional basis for refusing to allow the Senate a power to reduce the financial provision made for the Government's employees, whilst granting it a power to reject the provision made for the buildings in which they are to work.

13. It is perhaps unnecessary for present purposes to indicate in any detail what appropriations would, on the view I have expressed, fall outside "the ordinary annual services of the Government". In this regard, grants to bodies outside the ordinary services of the Commonwealth present special difficulties. Grants under section 96 of the Constitution offer a conspicuous example.

14. Section 96 provides amongst other things that the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit. It is I think difficult, simply as a matter of language, to say that an appropriation for the purposes of that section can properly be described as an appropriation for "the ordinary annual services" of the Government of the Commonwealth. Moreover, since the

principal effect of sections 53 and 54 is to cut down the powers of the Senate in relation to appropriation for the ordinary annual services, one would hardly expect that the prohibitions set out in those sections would apply to restrict the powers of the "States House" in relation to measures that concern the States so vitally as grants under section 96. I conclude therefore that appropriations for grants under section 96 are not appropriations for the "ordinary annual services of the Government".

15. Accordingly, I have said above in my short answer to the question raised by the Committee that there are perhaps two items in the Appropriation (Works and Services) Act 1960-61 that could not properly be included in an ordinary annual appropriation Bill. The items referred to are as follows:-

Division No. 886.

01. Lemnos Mental Hospital, Western Australia - contributions towards cost of extension, alteration and replacement of equipment.

Division No. 909.

01. For expenditure under Railway Standardization (South Australia) Agreement Act.
02. For expenditure under Railway Standardization (New South Wales and Victoria) Agreement Act.

Neither item is described in sufficient detail in the Act to enable me to say categorically whether or not the appropriation made in respect of it is an appropriation for the purpose of a section 96 grant. If the items do relate to section 96 grants, they should not I think properly be included in an ordinary annual Appropriation Act. But I have not had an opportunity to ascertain the particulars in detail, and would wish what I have said to be regarded as reserving my view in respect of these two items rather than as expressing a concluded view upon them.

16. I return, by way of conclusion, to the point made in paragraph 7 above, that no court has jurisdiction to determine what may and what may not be included in an ordinary annual Appropriation Bill. In the last resort, this is a matter peculiarly for decision by each House of the Parliament and, to the extent that the Parliamentary practice is inconsistent with conclusions reached simply on the basis of legal interpretation, the parliamentary practice clearly prevails. That practice is, I understand, to be dealt with in other papers to be submitted to the Committee. I add but a few brief observations.

17. Since Federation, the invariable parliamentary practice has been to introduce, in addition to the ordinary annual appropriation Bill, a further appropriation Bill appropriating revenue primarily for capital items. Until 1947 the short title of this Bill was Appropriation (Works and Buildings) Bill. In the financial year 1948-49 and in each subsequent financial year the short title has been Appropriation (Works and

Services) Bill. These Bills, which I shall refer to by their modern title, have always been treated by the Senate as susceptible to amendment in that Chamber (see, G.B. Boydell, *The Senate - Practice and Procedure on Appropriation, Taxation and other Money Bills (1901-1910)* at pp. 11-12, J.R. Odgers, *Australian Senate Practice 1959* at p. 150) and the House of Representatives appears never to have effectively disputed the claims of the Senate in this regard (Odgers at p. 150). As the Senate is, by section 53 of the Constitution expressly deprived of the right to amend "proposed laws appropriating revenue or moneys for the ordinary annual services of the Government", it would seem to follow that, as a matter of parliamentary procedure, the annual Appropriation (Works and Services) Bill is not regarded as falling within this description.

18. In this practice, the Senate has acted in strict accordance with the view expressed by Attorney-General Deakin who, in 1901, in the Opinion to which I have referred above, said:

"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. Whether they should be so included is a question of policy merely. If introduced in a separate bill, they will of course be subject to the Senate's power of amendment (section 53)."

In effect, the Attorney-General thus treated the prohibition in section 53 of the amendment by the State of bills making appropriations for the ordinary annual services of the Government as applicable only to what I have called in paragraph 9 above a general Appropriation Bill. This is not, perhaps, literally what section 53 says. But Attorney-General Deakin's view brings into line the prohibition of tacking in section 54 with the prohibition of Senate amendments in section 53.

19. The question whether the annual Appropriation (Works and Services) Bill is a Bill that appropriates revenue or moneys for the ordinary annual services was discussed at some length in the Senate in 1952 (see Hansard Vol. 218, pp. 158 et seq.; Vol. 220 pp. 406 et seq.). I have not here attempted to recount the debate, which is admirable summarized in *Australian Senate Practice* at pp. 153-4. Suffice it to say that although the Senate was equally divided in voting on the question under consideration, the effect of the vote was to confirm that the Senate would decline to treat the annual Appropriation (Works and Services) Bill as a proposed law for the appropriation of revenue or moneys for the annual services of the Government.

20. As I see the matter therefore -

- (i) strictly on the ordinary principles of constitutional interpretation, there are no legal objections to the inclusion in an ordinary annual Appropriation Bill of all the provisions that are now customarily included in an annual Appropriation (Works

and Services) Bill, with the possible exception of certain types of grants;

- (ii) whether or not these provisions should be included in the ordinary annual Appropriation Bill is a matter of policy, not of law;
- (iii) insofar as questions of law are involved, they are matters to be determined by the Parliament, and not by the courts.

(SGD) K. H. BAILEY

6th March, 1961.

The Solicitor-General's Memorandum dated 15th March, 1961.

I have now had an opportunity to read the transcript of the evidence I gave before your Committee on 7th March, 1961, and it has occurred to me that certain of the answers that I gave to questions put to me by a Member may need some clarification. The answers concerned were those to the questions numbered 224 and 243-250. I have the feeling that, in answering the member's questions with regard to "an appropriation of loan moneys for ordinary annual services", I was perhaps not fully in rapport with the Member as to the practice of which he spoke, and in consequence did not perhaps convey a clear or consistent view on the parliamentary position.

2. In question 224, the Member referred to section 57 of the Audit Act which requires expenditure from loan funds to be authorized by an Act showing the nature of the expenditure and the amount to be expended. He asked, is it not the practice to introduce a special Loan Bill each year to carry out this requirement? I answered "yes". Having now had an opportunity of looking at the question more carefully, I realize that this answer requires qualification. Each year there certainly are Loan Acts which as the Member said in question 250, both authorize a borrowing and give authority for expenditure from the Loan Fund of a sum equivalent to the proceeds of the loan. There have been three such Acts, for example, in the current financial year. These Acts meet the requirements of section 57 of the Audit Act. But there has been no practice of passing, year by year, a general Loan Appropriation Act. Perhaps the nearest to such an Act is to be found in the Loan Act No. 2 of 1924 (No. 16 of 1924), which appropriated loan moneys for capital expenditure by quite a number of the Departments of State. More usually, however, expenditure from the Loan Fund is appropriated for a single specific purpose - e.g. housing.

3. In paragraph 8 of my memorandum dated 6 March, 1961, I drew attention to the difference in grammatical construction between sections 53 and 54 of the Constitution. Both apply to appropriations of revenue or moneys for the ordinary annual services of the Government. But whereas section 53 says that the Senate may not amend "proposed laws" making such an appropriation, section 54, which prohibits "backing", speaks only of "the proposed law" which makes such an appropriation. In paragraphs 9 and 18 of my memorandum, I went on to say that, notwithstanding this change in wording, the Houses of the Parliament have, I think, uniformly, acted in accordance with the advice given by Attorney-General Deakin in 1901, which clearly treated both section 53 and section 54 as applying only to what may be called a general Appropriation Bill, as distinct from a Bill which only incidentally makes an appropriation for some purpose that falls within the ordinary annual services of the Government.

4. I do not think that I sufficiently emphasised, in giving evidence before the Committee, the views of Attorney-General Deakin, and the distinctions which they point. The two Opinions he gave in 1901 are highly succinct, and much of their meaning is to be found only by implication or

inference. But I think myself it is quite certain that Attorney-General Deakin regarded both section 53 and section 54 as applying only to a general Appropriation Bill which included the appropriations for the ordinary running of the Departments of State and other instrumentalities - i.e. the appropriations for salaried allowances, expendable stores etc.: in effect, what we call Appropriation Bill No. 1. or No. 2. Of course, such a Bill, as he went on to point out, was not necessarily limited to those items. It could properly include capital items such as buildings for use by Departments and instrumentalities, and that whether paid for out of loan or revenue funds.

5. In consequence I think it clear that Attorney-General Deakin would not have regarded as contravening section 54 the inclusion, in an Act appropriating the Loan Fund for a specific purpose, of provisions also authorising the relevant borrowing itself. Act No. 86 of 1960 - the loan (Australian National Airlines Commission) Act 1960 - is perhaps the most recent example of such a measure. It is clear also that Attorney-General Deakin would not have regarded such an Act as one which, by reason of section 53, the Senate could not amend. Indeed, Attorney-General Deakin went further, and would have been clearly of opinion that even a general Bill appropriating the Loan Fund for a whole series of departmental purposes - such for instance as the Loan Act (No. 2) 1924 - could be amended by the Senate. The only thing which, in Attorney-General Deakin's view, would take an appropriation, even for the ordinary annual services of the Government, out of the Senate's power of amendment would be the inclusion of that appropriation in what we may conveniently, if loosely, call the main Appropriation Bill or Bills for the year.

6. In answering the Member's question 247, I expressed the opinion on 7 March last that, if appropriations of loan moneys were included in the main or ordinary Appropriation Bill, that Bill could not consistently with section 54 of the Constitution contain also the authority for the raising of the loans concerned. I see no reason to modify that view.

7. If what I have written above does not sufficiently clarify the matter for the purposes of the Committee, I would of course be glad to give further oral evidence as desired.