

CONSTITUTION ALTERATION (APPROPRIATIONS FOR THE ORDINARY ANNUAL SERVICES OF THE GOVERNMENT) 2001: Second Reading

[Senator MURRAY](#) (Western Australia) (4.18 p.m.) —I move:
That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.
Leave granted.

The speech read as follows—

The purpose of this bill is to provide a solution to the problem of 1975 while avoiding the pitfall of allowing a government to bypass the Senate and legislate by decree.

Ever since the events of 1975, in which a simple majority in the Senate declined to pass the annual appropriation bills until the then government submitted itself to an election, and the Governor-General intervened to change the government and thereby bring about a general election, a proposal has been mooted that the Constitution should be amended to “stop the Senate blocking supply”.

Although this proposal has been around over the intervening 25 years, explanation of what precisely it means has been lacking. The term “supply” has no fixed meaning. Sometimes the proposal is propounded with such terms as “budget measures” or “measures vital to government”, which also have no fixed meaning. Behind the proposal is a concept that the executive government cannot continue to function (that is, cannot continue to spend money on government services) if some kinds of financial legislation are not passed by the Parliament, and the Senate should be prevented from withholding those kinds of financial legislation.

As usually described, the proposal would involve amending the Constitution so that some category of legislation could be passed into law without the consent of the Senate. This would mean that the executive government of the day could legislate by decree within that category, because governments usually control the House of Representatives and governors-general assent to legislation on the advice of the government.

The problem of describing the category of legislation which could be passed in this way gives rise to a larger problem. However the category is described, it raises the possibility of a government being able to include any legislation in that category and thereby pass all of its legislation by decree.

For example, supporters of the proposal often say that appropriation bills should be passed without the consent of the Senate. An appropriation bill is a bill which includes a clause appropriating money, whether of specified or unspecified amount. Many bills appropriate money, often of unspecified amount. A government can include an appropriation clause in any bill.

Sometimes the proposal is restricted to the annual appropriation bills, but the government can include any material in the annual appropriation bills.

Sometimes the proposal refers to packages of taxation legislation, but any package of legislation can be turned into a taxation package simply by the inclusion of a bill imposing a levy or charge of some kind.

All proposals for "stopping the Senate blocking supply" so far advanced would allow a government to bypass the Senate with any legislation.

When it is recollected that governments usually control the House of Representatives on the basis of only forty-odd percent of the electors' votes, but a majority of the Senate usually represents a majority of the electors as reflected in their votes, the danger of allowing a government to bypass the Senate with any legislation is apparent.

The usual proposal also goes beyond its stated purpose of avoiding a recurrence of the 1975 situation. The objection to the Senate's action in 1975 is to its purpose (to force the government to an election) rather than to the action itself. The rejection or delay of major financial legislation, including annual appropriation bills, by the Senate for other reasons has not attracted the same objection. The first two appropriation bills in 1901 were rejected by the Senate until amended to specify particular amounts and accurately reflect the relevant constitutional provisions. Other precedents followed; in 1970 the then Opposition party in the Senate came within one vote of rejecting the annual appropriation bills because of a general objection to government policies.

This bill provides a better method for avoiding a recurrence of the events of 1975, while not allowing the government to bypass the Senate with any legislation.

It would amend the Constitution to provide that, from the commencement of a financial year, until the Senate passes the annual appropriations for that year, the government could draw on appropriations up to the amount of those for the previous year, so that the failure of the Senate to pass the annual appropriation bills would not prevent the government functioning. The bill would also restrict appropriation bills for the ordinary annual services of the government strictly to annual appropriations for that purpose, and allow the courts to declare void any appropriation bill which goes beyond that purpose.

This is necessary to make the proposal foolproof.

Currently section 54 of the Constitution restricts a bill appropriating money for the ordinary annual services of the government to appropriations for that purpose. There is no requirement, however, that a bill be restricted to appropriations for one year only; the government could put forward a bill appropriating money for the ordinary annual services for several years. The restriction on the content of the bill is also not justiciable; it relies on dealings between the Senate and the House of Representatives under section 53 of the Constitution for its interpretation. The only sanction against a government including other matters in the ordinary annual services bill is that the Senate could refuse to pass the bill until the extraneous matters were removed. This sanction would clearly be weakened if the government could draw on appropriations equal to those of the previous year while the Senate declined to pass the bill.

The bill would therefore make justiciable the prohibition in section 54 of the Constitution, so that the High Court could declare invalid any ordinary annual services bill which contained extraneous matters.

The meaning of "ordinary annual services of the government" has been fairly clearly explicated by dealings between the Senate and the government over the years, particularly in the agreement known as the Compact of 1965. The ability of the High Court to declare completely void any bill which violated the constitutional restriction would provide an effective sanction against a government attempting to bypass the Senate by including other matters in the annual appropriation bills.

The proposals contained in this bill were also in a bill first introduced by Senator Macklin (Queensland, Australian Democrats) in 1987.

I commend the bill to the Senate.

Debate (on motion by **Senator Calvert**) adjourned.