Contents

Purpose ................................................................................................................................. 3
Background ............................................................................................................................. 3
Constitutional aspects ......................................................................................................... 3
  Sections 81 and 83 of the Australian Constitution ................................................................. 3
  Appropriation Acts ............................................................................................................. 3
The ‘ordinary’ versus other annual services of government ......................................................... 4
  Other annual services ......................................................................................................... 5
Appropriations through the year .............................................................................................. 6
  Budget ................................................................................................................................. 6
  Additional Estimates ......................................................................................................... 6
  Supplementary Additional Estimates .................................................................................. 6
Terms used in the Bill .............................................................................................................. 7
  Departmental and administered expenses ........................................................................... 7
    Reduction processes ......................................................................................................... 7
  Outcomes and programs .................................................................................................... 8
  Advance to the Finance Minister ........................................................................................ 8
Portfolio Budget Statements .................................................................................................. 8
  Portfolio Additional Estimates Statements ......................................................................... 9
  Portfolio Supplementary Additional Estimates Statements .................................................. 9
CAC Act body .......................................................................................................................... 9
Special Accounts .................................................................................................................. 9
Drawing Right Limit ........................................................................................................10
Financial implications ..................................................................................................10
Key provisions ............................................................................................................10
  Part 1—Preliminary ....................................................................................................10
  Part 2—Appropriation items ....................................................................................10
  Part 3—Adjusting appropriation items .....................................................................11
  Part 4—General drawing rights limits ......................................................................12
  Part 5—Amendment of the Commonwealth Inscribed Stock Act 1911 ...............12
  Part 6—Miscellaneous .............................................................................................14
Schedule 1 ....................................................................................................................14
Schedule 2 ....................................................................................................................14
Appropriation Bill (No. 2) 2012–2013

Date introduced: 8 May 2012

House: House of Representatives (Section 53 of the Constitution requires that Bills appropriating revenue or imposing taxation originate in the House)

Portfolio: Finance and Deregulation

Commencement: On Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/bills/. When Bills have been passed they can be found at the ComLaw website, which is at http://www.comlaw.gov.au/.

Purpose

To make a further annual appropriation of an additional $7.2 billion for services that are not considered part of the ordinary annual services of government. The Bill also proposes to alter the debt limit in the Commonwealth Inscribed Stock Act 1911.

Background

Constitutional aspects

Sections 81 and 83 of the Australian Constitution

Section 81 of the Australian Constitution provides that:

> All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund [CRF], to be appropriated for the purposes of the Commonwealth...¹

Section 83 of the Constitution provides that no money may be withdrawn from the CRF ‘except under appropriation made by law’.

The effect of these two sections is that all monies received by the Commonwealth must be paid into the CRF, and must not be spent before there is an Appropriation Act authorising the expenditure.

Appropriation Acts

Acts authorising expenditure are either:

- annual appropriation Acts or

¹ Constitution, section 81.

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special, sometimes called ‘standing’, appropriation Acts.

Special, or standing, appropriations—which account for more than 80 per cent of expenditure—are expenditure authorised by particular Acts for particular purposes. An example of a special appropriation is the Tax Benefits A and B paid under the A New Tax System (Family Assistance) (Administration) Act 1999. They do not lapse each year.

The remainder of government expenditure is funded by annual appropriations. Appropriation Bill (No. 2) 2012–13 (the Bill) is an annual appropriation Bill.

Importantly, Appropriation Acts do not create a source of power for the Commonwealth to spend money; they merely release that money from the CRF. The Commonwealth’s power to spend money must be found in other parts of the Constitution.²

The ‘ordinary’ versus other annual services of government

Section 54 of the Constitution requires that there be a separate law appropriating funds for the ‘ordinary’ annual services, and that other matters may not be dealt with by such a Bill.³ There must be, therefore, separate annual appropriation Bills for the ordinary annual services, and for any other annual services.

The distinction between ordinary and other annual services was set out in a ‘Compact’ between the Senate and the Government in 1965. The 1965 Compact provided that the following are not regarded as part of the ordinary annual services of government:

(a) the construction of public works and buildings;

(b) the acquisition of sites and buildings;

(c) items of plant and equipment which are clearly definable as capital expenditure;

(d) grants to the States under section 96 of the Constitution; and

(e) new policies not previously authorised by special legislation…⁴

In 1999 the Compact was altered to reflect accrual accounting. The adjustments provided that:

(i) items regarded as equity injections and loans be regarded as not part of ordinary annual services

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³ Constitution, section 54: ‘The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.’

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(ii) all appropriation items for continuing activities for which appropriations have been made in the past be regarded as part of ordinary annual services

(iii) all appropriations for existing asset replacement be regarded as provision for depreciation and part of ordinary annual services. 5

Adherence to the compact has not always been strict. 6

Appropriation Bills for the other annual services of the Government may be amended by the Senate, however, not so as to increase a proposed burden on the people. 7

Other annual services

Other services fall into three categories:

- administered expenses in the form of some payments to the states, territories and local governments, which are paid under section 96 of the Constitution
- administered expenses for new outcomes and
- ‘non-operating’ costs (sometimes called ‘capital’ costs).

Payments to the states, territories and local governments

How Federal Government payments are made for the states, territories and local governments is somewhat confusing. First, a distinction needs to be made between payments made ‘to’ the states and territories (states) and those made ‘through’ the states. Payments ‘to’ the states are funds that the states use for their own purposes, for example, government schools and hospitals. Payments ‘to’ the states are the largest component of payments for the states, and the great bulk of these are made under the Federal Financial Relations Act 2009. Payments made ‘through’ the states are funds that the states pass on to other bodies, for example, ‘on-going’ grants for non-government schools (see below).

Payments to local governments fall into two categories: financial assistance grants and grants made directly to local governments. Financial assistance grants for local governments are paid under the Local Government (Financial Assistance) Act 1995. An example of a grant paid directly to local governments is payments under the roads to recovery program.

In summary, payments for the states have four components:

- payments ‘to’ the states for their own purposes
- payments ‘through’ the states
- financial assistance grants for local governments and

5. Ibid.
6. Ibid.
7. Constitution, section 53.

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• payments made directly to local governments.

**New administered outcomes**

By their nature, payments for new administered outcomes cannot be classified as ordinary annual services and so are appropriated as an ‘other’ service.

**Non-operating costs**

Non-operating costs are:

• ‘equity injections’ into agencies to fund, for example, major investment in new assets to produce departmental outputs

• ‘administered assets and liabilities’ appropriations which fund, for example, the purchase of new administered assets and the reduction/extinguishment of administered liabilities and

• payments to bodies established under the *Commonwealth Authorities and Companies Act 1997* (CAC Act bodies) for their non-operating costs.

** Appropriations through the year**

**Budget**

Each year, Appropriation Bill (No. 1) is introduced with the Budget and appropriates funds for the ‘ordinary annual services of the Government’. Appropriation Bill (No. 2)—which is also introduced with the Budget—appropriates funds for other annual services. A third Appropriation Bill—Appropriation (Parliamentary Departments) Bill (No. 1)—funds the parliamentary departments.

**Additional Estimates**

Funding requirements usually change after the Budget is brought down. The Government may agree to additional funding if the amounts in the three Budget Appropriation Acts are inadequate. If so, the Government has to seek parliamentary approval for the additional expenditure. The process whereby additional funds are provided is called ‘additional estimates’ and usually begins around November of the Budget year. The approved additional funding is incorporated into Appropriation Bills (No. 3) and (No. 4) and Appropriation (Parliamentary Departments) Bill (No. 2). These Bills are the counterparts of Appropriation Bills (No. 1) and (No. 2) and Appropriation (Parliamentary Departments) Bill (No. 1) respectively.

**Supplementary Additional Estimates**

In some years, the Government may decide to introduce further Appropriation Bills following the additional estimates process. When this occurs, this is often done at the same time as the next year’s Budget Bills are tabled. Additional Appropriation Bills tabled late in the year allow the Government to fund new programs announced in the budget, but which commence before the start

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of the next financial year, and make other technical adjustments in anticipation of the next year’s Budget.

Terms used in the Bill

Departmental and administered expenses

The Australian Accounting Standards Board requires that government agencies distinguish between revenues and expenses that they administer for the Government, and those over which they have some control. Generally, administered expenses are the costs of providing the programs that agencies run for the Government, while departmental expenses are the costs incurred in running agencies. Examples of departmental expenses include salaries, supplies of goods and services, and other day-to-day operating expenses. Agencies have some discretion about how they expend departmental appropriation, and amounts of departmental appropriation not used in the year of their appropriation may be retained and used in later years.

Appropriation Bills, therefore, must distinguish between ‘administered’ expenses and ‘departmental’ expenses.

Most administered expenses—or programs—are funded through special appropriations that do not lapse every year; however, some programs are funded through the annual Appropriation Bills. The Bass Strait Passenger Vehicle Equalisation Scheme is an example of an administered expense funded as an ordinary annual service.

Reduction processes

Appropriations can be reduced. It is sometimes the case that an appropriation for a departmental expense exceeds what is needed. However, departmental items do not automatically lapse if they are not spent. In these circumstances, a ‘reduction process’ to extinguish the unspent amount is available. Under this process, on request in writing from a minister, the Finance Minister may issue a determination to reduce the agency’s departmental expenses appropriation. In simple terms, the Finance Minister may decide to withhold departmental monies not required by a department, and reduce its appropriation accordingly.

Appropriations for administered expenses are also subject to an annual process to extinguish amounts that are not required. The amount identified as expenditure on administered expenses in agencies’ financial statements—as published in their annual reports—is the basis for this process.

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A process exists for reducing payments to bodies to which the *Commonwealth Authorities and Companies Act 1997* (CAC Act) applies (see below). This process is almost identical to that for departmental items.

**Outcomes and programs**

In the *Pharmaceutical Benefits case* the High Court held that:

...there cannot be appropriations in blank, appropriations for no designated purpose, merely authorizing expenditure...

Accordingly, the Appropriation Bill aligns both departmental and administered expenses to specific outcomes. An example is of such an outcome is Outcome 1 in the Attorney-General’s Department (AGD):

Outcome 1: A just and secure society through the maintenance and improvement of Australia’s law and justice framework and its national security and emergency management system.

Further, individual programs contribute to outcomes. For example, ‘Program 1.3 Justice Services’ contributes to AGD’s Outcome 1. An individual outcome may include multiple programs.

**Advance to the Finance Minister**

The advance to the Finance Minister (AFM) provides flexibility in the budget process by authorising the Finance Minister to expend money when the Finance Minister is satisfied that there is an urgent need for expenditure during the financial year for which there is not a sufficient appropriation. The Finance Minister can expend money from the AFM only if the proposed expenditure meets certain criteria, namely, there is an urgent need for the expenditure that is not provided for, or is insufficiently provided for, because of an omission or understatement or because of unforeseen circumstances.

**Portfolio Budget Statements**

When the Budget is brought down, the Government releases Portfolio Budget Statements. They contain, amongst other things, information on all sources of funding for an agency—including annual Appropriation Bills—and how the agency proposes to spend those funds. The Portfolio Budget

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Statements are ‘relevant documents’ for the purposes of paragraph 15AB(2)(e) of the Acts Interpretation Act 1901. This means that the Portfolio Budget Statements can be used to help interpret Appropriation Acts.

**Portfolio Additional Estimates Statements**

Portfolio Additional Estimates Statements are the counterparts of Portfolio Budget Statements and contain explanations of the funding sought through the additional estimates Appropriation Bills.¹⁴

**Portfolio Supplementary Additional Estimates Statements**

If an additional appropriation Bill is tabled after Additional Estimates, further Supplementary Additional Estimates Statements will be provided for relevant departments.

**CAC Act body**

As noted above, a CAC Act body is a Commonwealth authority or company established under the Commonwealth Authorities and Companies Act 1997 (CAC Act). Examples of CAC Act bodies are the Australian War Memorial and the Australian Broadcasting Corporation. CAC Act bodies are legally and financially separate from the Commonwealth and so do not debit appropriations or make payments from the CRF. Payments to CAC Act bodies used to be made ‘directly’ to the bodies. Since 2008–09, in recognition of the fact that CAC Act bodies are legally and financially separate, payments to CAC Act bodies have been made ‘indirectly’ through portfolio departments. For example, funding for the Australian Broadcasting Corporation and the Special Broadcasting Corporation are made through the Department of Broadband, Communications and the Digital Economy, this being the relevant portfolio department. The department then passes the funds to the CAC Act bodies.

**Special Accounts**

A Special Account is an appropriation mechanism that notionally sets aside an amount within the CRF to be spent for specific purposes. The appropriation authority is section 20 or 21 of the Financial Management and Accountability Act 1997 (FMA Act). The type of appropriation provided by a Special Account is a special appropriation. The appropriation amount is limited to the balance of the Special Account and this remains available until the Special Account is abolished. An example of a Special Account is that established for the Future Fund. A Special Account can be established by:

- a legislative instrument made by the Finance Minister under section 20 of the FMA Act or
- under a separate enabling Act.

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Drawing Right Limit

Once money is appropriated from the CRF it is not immediately available for expenditure. The Finance Minister must issue a ‘drawing right’ under Division 2 of the FMA Act. Some legislation creating special accounts both appropriates money from the CRF for the special account, and also places limits on how quickly it may be spent. This is done through a drawing right limit.

Financial implications

The Bill appropriates about $7.2 billion for the other annual services of government. Schedule 2 of the Bill shows the amounts and the portfolios for which funds are appropriated.

Key provisions

Many of the key provisions of Appropriation Acts are similar from year to year.

Part 1—Preliminary

Part 1 of the Bill contains formal clauses, such as when the Bill commences and the definitions used.

Part 2—Appropriation items

Clause 6—Summary of appropriations appropriates $7 246 259 000 for other annual services.

Clause 7 deals with payments to the states, territories and local governments. Subclause 7(1) provides that where an amount is identified as a payment to the states, territories and local governments and the amount is for an agency outcome, the amount can be applied for the purpose of achieving that outcome. Subclause 7(2) provides that if the Portfolio Statements indicate that certain activities were intended to be for a particular outcome, then expenditure on those activities is taken to be contributing to the outcome.

Clause 8 deals with ‘administered items’. Subclause 8(1) provides that the amount identified for an administered item in an outcome can be used to contribute to that outcome. The wording of subclause 8(2) is identical to that in subclause 7(2).

As noted above, administered assets and liabilities appropriations are a non-operating cost. Clause 9 deals with administered assets and liabilities items. Subclause 9(1) provides that the amount, identified for an agency’s administered assets and liabilities in the Schedules in various Appropriation Acts, may be applied to achieving any of the agency’s outcomes. The wording of subclause 9(2) is identical to that in subclauses 7(2) and 8(2).

As noted above, ‘other’ departmental non-operating appropriations comprise equity injections, loans and previous years’ outputs. Clause 10 authorises funding for departmental non-operating costs by providing that the amount specified in another departmental item for an Agency may be applied for the departmental expenditure of the Agency as a whole.

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Clause 11 deals with ‘CAC Act body payments items’. Subclause 11(1) provides that an amount appropriated for a CAC Act body payment item may only be applied for payment to the CAC Act body named in the appropriation. Subclause 11(2) provides that if an Act provides that a CAC Act body must be paid amounts that are appropriated by the Parliament for the purposes of the body, and Schedule 2 contains a CAC Act body payment item for that body, then the body must be paid the full amount specified in the item. Schedule 2 shows the names of the CAC Act bodies and the amounts to be paid to each.

Part 3—Adjusting appropriation items

Clause 12 deals with adjustments to payments to the states, territories and local government, and to administered items. Subclause 12(1) provides that the amount by which payments to the states, territories and local government and for administered items is taken to be reduced is the difference between what has been appropriated and what has been spent, the latter being the amount shown in agencies’ financial statements. However, paragraph 12(2)(a) gives the Finance Minister power to determine that subclause 12(1) does not apply or that subclause 12(1) applies as if the amount in the annual report were the amount that the Finance Minister determines (paragraph 12(2)(b)). However, while the Finance Minister’s determinations are legislative instruments and are disallowable, the determinations are not subject to the sunsetting provisions of the Legislative Instruments Act 2003 (subclause 12(3)). In short, this means that the Finance Minister’s determinations are disallowable by Parliament, but if they are not disallowed they will not expire.

Subclause 13(1) enables the Prime Minister, the minister responsible for an agency, or the Chief Executive of the agency—where the Finance Minister is responsible for the agency—to seek a reduction in administered assets and liabilities and other departmental items, while subclause 13(2) empowers the Finance Minister to make a determination in response to the request. However, the determination cannot reduce the appropriation below zero (subclause 13(3)). Requests are not legislative instruments (subclause 13(6)). However, while the Finance Minister’s determinations are legislative instruments and are disallowable, the determinations are not subject to the sunsetting provisions of the Legislative Instruments Act (subclause 13(7)). Again, this means that the Finance Minister’s determinations are disallowable by Parliament, but if they are not disallowed they will not expire.

Clause 14 deals with reductions to CAC Act body payment items. The wording in clause 14 is almost the same as in clause 13. However, whereas a request can come from the Chief Executive of an agency for which the Finance Minister is responsible in the case of clause 13, a similar request must come from the Secretary of the Department in the case of CAC Act bodies (paragraph 14(1)(c)). Subclause 14(6) confirms that a reduction can be made for a CAC Act body even though it has been allocated funds under subsection 11(2).

As noted above, the Advance to the Finance Minister (AFM) provides flexibility in the budget process by authorising the Finance Minister to expend money, by determination, in certain circumstances. Clause 15 deals with the AFM. Subclause 15(1) sets out the criteria that Finance Minister must satisfy before making a provision of monies from the AFM.
Subclause 15(2) is a deeming provision. It provides that Schedule 2 of the Bill is to be taken as having been amended in accordance with any determination made by the Finance Minister.

Subclause 15(3) sets the maximum amount of the AFM as $380 million.

Subclause 15(4) makes any determination a legislative instrument, but provides that the determination is not disallowable, and that it will not expire.

Part 4—General drawing rights limits

Clause 16 deals with drawing rights limits.

Subclauses 16(1) to (3) set the maximum amounts that may be drawn in 2012–13 from the monies previously appropriated to the three funds established under the Nation-building Funds Act 2008. Subclauses 16(4) and 16(5) set the maximum amount that may be drawn in 2012–13 from the CRF under the Federal Financial Relations Act 2009 by way of GST payments to the states and territories and as National Partnership Payments respectively.

Clause 17 provides that the drawing right limits set under section 16 are adjusted to take into account any GST liability that may arise from the payment of monies to the states and territories.

Part 5—Amendment of the Commonwealth Inscribed Stock Act 1911

The Commonwealth Inscribed Stock Act 1911, amongst other things, sets a limit on the face value of the total amount of Commonwealth stock or securities (Commonwealth Government Securities, or CGS) on issue. This is often referred to as the ‘debt limit’. Currently, the limit is set at $250 billion, and its alteration has been the subject of some debate.

Clause 18 of the Bill proposes to alter the limit under the Commonwealth Inscribed Stock Act to $300 billion. In the second reading speech the Assistant Treasurer, David Bradbury, cited two reasons for the increase to the debt limit:

The two key drivers of within-year fluctuations in CGS on issue are: the timing difference between government revenue collections and expenditure outlays throughout the financial year, and the timing of bond maturities.

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15. The face value is the notional value of the debt; however, the market value of the CGS on issue at any one time may be higher or lower than the notional value.


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In relation to the timing mismatch between government revenue collections and expenditure, the Assistant Treasurer said:

...fluctuations in cash requirements within a financial year are a normal feature of the government's annual financing task.

...While government expenditure outlays occur relatively evenly across the financial year, revenue collections tend to be higher toward the end of the financial year. As a consequence of this timing mismatch, expenditure tends to exceed receipts for the majority of the financial year.\(^\text{18}\)

In relation to bond maturities, the Assistant Treasurer said:

In advance of the maturity of a bond line it is necessary to increase the volume of Treasury notes on issue in order to fund the maturity of a bond line.

This means that in the lead-up to a bond line maturing, there is a temporary increase in the total amount of CGS on issue owing to the combined value of the Treasury notes and the maturing bond line. The amount of CGS on issue falls, on the maturity date of the bond, by the face value of that bond. It is critical that the government maintains a clear and unambiguous message that debt market operations will not be impeded, for example by short-term borrowing constraints such as the legislative debt limit.\(^\text{19}\)

While it is doubtful whether the amendment proposed in clause 18 is an ‘appropriation’, as the Bill does not relate to the ‘ordinary’ annual services of government, the anti-tacking provision in section 54 of the Constitution does not apply.\(^\text{20}\) However, the Assistant Treasurer moved a motion for a cognate debate in the House on all the Appropriation Bills tabled as part of the 2012–13 Budget, including this Bill. That motion was agreed.\(^\text{21}\) The effect of that motion was that no amendments could be moved without the agreement of a Minister, meaning that the House cannot propose amendments to the Bill without the agreement of the Government. It would appear that, under the terms of that motion, should the House wish to prevent the increase of the debt limit it could only vote against all the Appropriation Bills.

It should be noted, however, that clause 18 could be amended in the Senate. As the Bill does not relate to the ordinary annual services of government, the Bill may be amended by the Senate as long as any amendment does not ‘increase any proposed charge or burden on the people.’\(^\text{22}\)

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18. Ibid.
19. Ibid.
20. Section 54 of the Constitution is set out at footnote 3.
22. Constitution, section 53.

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Clause 19 of the Bill provides that the amendment applies to all CGS, irrespective of when the CGS were issued.

Part 6—Miscellaneous

Clause 20—Crediting amounts to Special Accounts provides that if an appropriation is made for purposes that are covered by a Special Account, then the Special Account is replenished by the same amount as the appropriation.

Section 96 of the Constitution allows Parliament to provide financial assistance to the states on such terms and conditions as the Parliament thinks fit. Clause 21—Conditions et cetera, applying to state, Australian Capital Territory, Northern Territory and local government items seeks to ensure that payments made by the states, territories and local governments from financial assistance provided by the Commonwealth accord with the conditions established by the Minister listed in Schedule 1 in relation to the relevant outcome.

Clause 22—Appropriation of the Consolidated Revenue Fund provides that the CRF is appropriated as necessary for the purposes of the proposed Act including the operation of the proposed Act as affected by the FMA Act.

Schedule 1

Schedule 1 identifies some payments to states and territories that are subject to conditions. Columns 1 and 2 identify those payments and columns 3 and 4 identify which minister may determine the conditions under which the payments are made, and the amount of any payments.

Schedule 2

Appropriations are set out in Schedule 2, the summary of which is shown below.

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### SUMMARY

Summary of Appropriations (plain figures)—2012-2013  
Actual Available Appropriation (italic figures)—2011-2012

<table>
<thead>
<tr>
<th>Portfolio</th>
<th>Payments to States, ACT, NT and local government</th>
<th>New Administered Outcomes</th>
<th>Non-operating</th>
<th>Total</th>
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Continued
SUMMARY

Summary of Appropriations (plain figures)—2012-2013
Actual Available Appropriation (italic figures)—2011-2012

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<td>101,568</td>
<td>101,568</td>
</tr>
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<td><strong>Total: Bill 2</strong></td>
<td><strong>649,912</strong></td>
<td><strong>45,000</strong></td>
<td><strong>6,551,347</strong></td>
<td><strong>7,246,259</strong></td>
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<td>967,868</td>
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<td>6,574,272</td>
<td>7,542,140</td>
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</table>

Further detailed information on specific areas of expenditure is contained in the Budget Papers and associated materials.

**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.