Appropriation Bill (No. 3) 2012-2013 [and] Appropriation Bill (No. 4) 2012-2013

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Appropriation Bill (No. 3) 2012-2013 [and] Appropriation Bill (No. 4) 2012-2013

Date introduced: 7 February 2013
House: House of Representatives
Portfolio: Finance and Deregulation
Commencement: Royal Assent

Links: The links to the Bills, Explanatory Memoranda and second reading speeches can be found on the Bills’ home pages for the Appropriation Bill (No. 3) 2012-2013 and the Appropriation Bill (No. 4) 2012-2013, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When the Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au.

Purpose of the Bills

The Appropriation Bill (No. 3) 2012-2013 (the No. 3 Bill) seeks to appropriate $600.797 million out of the Consolidated Revenue Fund (CRF) for the ordinary annual services of the Government.

The Appropriation Bill (No. 4) 2012-2013 (the No. 4 Bill) seeks to appropriate $666.365 million out of the CRF for other services of the Government that are not the ordinary annual services of the Government.

Background

Under Division 2 of the of the Charter of Budget Honesty, which is established under the Charter of Budget Honesty Act 1998, the Government must release a Mid-Year Economic and Fiscal Outlook (MYEFO) report ‘by the end of January in each year, or within 6 months after the last budget, whichever is later.’¹ The Government released the 2012–13 MYEFO on 22 October 2012.² The 2012–13 MYEFO updated revenue and expenditure forecasts, and included the announcement of numerous new policy measures.

In response to the Report of the Expert Panel on Asylum Seekers³, (the Houston Report) the Government announced in the 2012–13 MYEFO a range of policy measures aimed at implementing the recommendations of that Report. Funding for those measures was provided separately in the

¹ Charter of Budget Honesty Act 1998, Schedule 1, Division 2.

These two Bills will add to or alter the appropriations—as required—to reflect all the other measures announced in the 2012–13 MYEFO or subsequently. Further details of those measures are included in the 2012–13 MYEFO.\(^4\)

**Appropriations**

An appropriation\(^5\) is the legal release of monies from the CRF. The annual Appropriation Acts are the authoritative source for details of annual appropriations provided to agencies. The Acts take precedence over details budget papers, portfolio budget statements and other associated materials.

There are certain unique constitutional requirements that a Bill proposing to appropriate monies must satisfy. An appropriation Bill must also seek to comply with certain presentational requirements.

**Constitutional requirements**

Section 81 of the *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...\(^6\)

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 authorising specific expenditure.

Appropriation Acts, however, 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*.\(^7\)

Proposed laws appropriating monies may not originate in the Senate.\(^8\) Further, under section 56 of the *Constitution*, all proposed laws for the appropriation of money may only be introduced following

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\(^6\) *Constitution*, section 81.


\(^8\) *Constitution*, section 53.
a recommendation by the Governor-General. As—by convention—the Governor-General only acts upon the advice of the Executive, this provision of the Constitution prevents non-government members of the House of Representatives introducing Bills that would propose to appropriate money from the CRF.

The ‘ordinary annual services of Government’ versus ‘other’ services of government

Section 54 of the Constitution requires that there be a separate law appropriating funds for the ‘ordinary annual services of Government’, and that other matters must not be dealt with in the same Bill. However, what constitutes the ‘ordinary annual services of the Government’ and the ‘other’ services of the Government is not defined in the Constitution.

In the High Court case of Combat v Commonwealth, Gleeson CJ noted:

Section 53 of the Constitution provides that the Senate may not amend proposed laws appropriating revenue or moneys for the ordinary annual services of government. Legislation appropriating funds for the costs and expenses of maintaining the ordinary annual services of government is dealt with separately from legislation dealing, for example, with extraordinary charges and appropriations. Quick and Garran wrote that “[t]he ordinary annual services include the various public departments manned and equipped to carry on the general work of the Government departments, such as customs and excise, posts and telegraphs, light-houses, light-ships, and quarantine, naval and military defence, the money to pay for which is voted by Parliament from year to year”. The authors were writing at a time when the role of the Commonwealth was more modest than at present, but the idea they convey remains true...

A working distinction between ordinary and other annual services was agreed in a ‘Compact’ between the Senate and the Government in 1965. The substance of the compact is reflected in the following 1977 resolution of the Senate:

1. To reaffirm its constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the Government.

2. That appropriations for expenditure on:

(a) the construction of public works and buildings;

(b) the acquisition of sites and buildings;

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

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

(e) new policies not previously authorised by special legislation;

are not appropriations for the ordinary annual services of the government and that proposed laws for the
appropriation of revenue or moneys for expenditure on the said matters shall be presented to the Senate in
a separate Appropriation Bill subject to amendment by the Senate.14

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

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

(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.15

Adherence to the compact has not always been strict, and the High Court has held that any
disagreements between the Houses are not justiciable.16 Any disputes are to be determined
between the Houses themselves.

The Senate’s powers

Section 53 of the Constitution provides, among other things, that the Senate may not amend
proposed laws appropriating revenue or moneys for the ordinary annual services of the
Government. The Senate may, however, return to the House of Representatives any such proposed
laws requesting, by message, the omission or amendment of any items or provisions.

However, the Senate may amend proposed laws appropriating revenue for purposes other than for
the ordinary annual services of the Government, as long as it does not ‘increase any proposed
charge or burden on the people.’17 Conceivably, the Senate could amend an appropriation Bill for
the other services of government so as to, for example, redirect the proposed appropriation to
another purpose, or reduce the proposed appropriation to nil. The Senate may also request that, if
new measures are included in a Bill for the ‘ordinary annual services of Government’, that the Bill be
returned to the House with a message requesting those new measures be omitted from the Bill.

   http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22hansard80%2Fhansards80%2F1977-02-17%2F0214%22
15. Department of the Senate, Odgers’ Australian Senate practice, twelfth edn, op. cit.
Presentational requirements

Departmental and administered expenses

Australian Accounting Standard 1050 *Administered Items* 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.

Appropriation Bills, therefore, distinguish between ‘administered’ expenses and ‘departmental’ expenses. Administered appropriation may only be used for the program or outcome that it is appropriated for, while departmental appropriation may be moved between different departmental activities.

Outcomes and programs

While the level of detail necessary for an Appropriation Act to be valid is generally low, in the *Pharmaceutical Benefits case* the High Court held that:

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

The Appropriation Bills must, therefore, also describe—in general terms—what the monies are to be utilised for. This is done by allocating both departmental and administered appropriations to specific outcomes. Each outcome pursued by an agency will have one or more programs contributing to that outcome. The Department of Finance and Deregulation describe the distinction between outcomes and programs as follows:

Government outcomes are the intended results, impacts or consequences of actions by the Government on the Australian community. Commonwealth programs are the primary vehicle by which government agencies achieve the intended results of their outcome statements.

Outcomes may have one or more programs contributing to them.

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20. See generally *Combet v Commonwealth*, op. cit.

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Advance to the Finance Minister

The Advance to the Finance Minister (AFM) is the appropriation of monies to the Finance Minister without any particular outcome or purpose specified. The AFM is established in the first two Appropriation Acts each year, and is subsequently replenished whenever supplementary Appropriation Acts are passed. The Finance Minister may allocate the monies appropriated as AFM to outcomes already provided for in that same Appropriation Act where the Finance Minister is satisfied that there is an urgent need for expenditure, in the current year, that is not provided for, or is insufficiently provided for, in the existing Appropriation Act:

- because of an erroneous omission or understatement or
- the expenditure was unforeseen until after the last day on which it was practicable to provide for it in the Bill for this Act before that Bill was introduced into the House of Representatives.

The amount of appropriation allocated to the FMA each year has typically been limited $295 million of the ordinary annual services of government, and $380 million for the other annual services of government.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government must assess the two Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Explanatory Memorandum notes that the Bills do not engage any of the applicable rights or freedoms outlined in the Human Rights (Parliamentary Scrutiny) Act 2011.

The Government considers that the two Bills are compatible.23

Financial implications

The No. 3 Bill seeks to appropriate $600 797 000 from the CRF.24 The No. 4 Bill seeks to appropriate $666 365 000 from the CRF.25 The total amount of money sought to be appropriated by the two Bills is $1 267 162 000.

Key provisions

Parts 1 of both the No. 3 and No. 4 Bills deal with preliminary matters; including when the Acts commence, and how to interpret the Acts. Clause 4 of both the No. 3 and No. 4 Bills provide that the

23. Explanatory Memoranda, Appropriation Bill (No. 3) 2012-2013, p. 4 and Appropriation Bill (No. 4) 2012-2013, p. 5.
25. Appropriation Bill (No. 4) 2012-2013, Schedule 1.
accompanying Portfolio Budget Statements may be used as extrinsic materials to interpret the Acts. 26

**Parts 2** of both the No. 3 and No. 4 Bills outline the quantum and types of appropriation from the consolidated revenue fund.

In the No. 3 Bill, the money is appropriated to departments or CAC Act bodies as either a departmental or administered appropriation—according to proposed Schedule 1 of that Bill. 27

In the No. 4 Bill, the money is appropriated to departments and CAC Act bodies as either:

- grants to the states, territories and local governments (see also clause 17 below)
- new administered programs or
- non-operating (or ‘capital’) appropriations

according to Schedule 2 of that Bill. 28 These three types of appropriations cannot be included in the No. 3 Bill as they do not relate to the ‘ordinary annual services of Government’.

**Part 3** of both the No. 3 and No. 4 Bills include mechanisms for the Finance Minister to reduce the amount appropriated, and replenish the Finance Minister’s Advances.

The reduction mechanisms effectively allow the Finance Minister to retain any monies that have been appropriated but that are no longer required due to reductions in the program costs or changes in government priorities.

The replenishment of the Finance Minister’s Advances established under *Appropriation Act (No. 1)* 2012–2013 and *Appropriation Act (No. 2)* 2012–2013 means that the Finance Minister, after the passage of the two Bills, will have the same amount of discretionary appropriation available as the Minister did at the start of the financial year.

**Part 4** of both Bills provides for several technical matters. Firstly, they ensure 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: clause 14 in the No. 3 Bill and clause 16 in the No. 4 Bill. Secondly, they contain the provisions formally appropriating monies from the CRF: clause 15 in the No. 3 Bill and clause 18 in the No. 4 Bill.

In addition, clause 17 of the No. 4 Bill provides that grants to the states, territories and local governments may be made subject to conditions determined by the Commonwealth. This section declares that the ministers mentioned in Schedule 1 of the No. 4 Bill are the relevant ministers for determining any conditions.

### Notes

26. The portfolio budget statements are relevant documents for the purposes of section 15AB of the *Acts Interpretation Act* 1901.

27. *Appropriation Bill (No. 3)* 2012–2013, Schedule 1 — Services for which money is appropriated.

28. *Appropriation Bill (No. 4)* 2012–2013, Schedule 2 — Services for which money is appropriated.
Schedule 1 in the No. 3 Bill and Schedule 2 in the No. 4 Bill provide detailed information on what the amounts of appropriations are to be made to the departments and CAC Act bodies listed.
Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2500.

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