



Appropriation Bill (No. 1) 2013-2014 [and] Appropriation Bill (No. 2) 2013-2014

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Appropriation Bill (No. 1) 2013-2014 [and] Appropriation Bill (No. 2) 2013-2014

Date introduced: 14 May 2013

House: House of Representatives

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 Bills home page for the [Appropriation Bill \(No. 1\) 2013-2014](#) and the [Appropriation Bill \(No. 2\) 2013-2014](#), or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When 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 Bill

The Appropriation Bill (No. 1) 2013-2014 (the No. 1 Bill) seeks to appropriate \$78 181 907 000 out of the Consolidated Revenue Fund (CRF) for the ordinary annual services of the Government.

The Appropriation Bill (No. 2) 2013-2014 (the No. 2 Bill) seeks to appropriate \$4 776 465 000 out of the CRF for other services of the Government that are not the ordinary annual services of the Government.

Background

Appropriations

An appropriation¹ is the legal release of moneys from the CRF. The annual Appropriation Acts are the authoritative source for details of annual appropriations provided to agencies. The Acts take precedence over budget papers, portfolio budget statements and other associated materials.

There are certain unique constitutional requirements that a Bill proposing to appropriate moneys must satisfy. An appropriation Bill must also 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...²

1. See: Department of Finance and Deregulation, 'Annual appropriation rules - summarised', Department of Finance and Deregulation website, 18 May 2010, viewed 28 May 2013, <http://www.finance.gov.au/budget/budget-process/annual-appropriation-rules.html>

Section 83 of the *Constitution* provides that no money may be withdrawn from the CRF 'except under appropriation made by law'.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 moneys 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 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*.³

Proposed laws appropriating moneys may not originate in the Senate.⁴ Further, under section 56 of the *Constitution*, all proposed laws for the appropriation of money may only be introduced following a recommendation by the Governor-General.⁵ 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.⁶

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.⁷ However, what constitutes the 'ordinary annual services of the Government' and 'other' services of the Government is not defined in the *Constitution*.

In the High Court case of *Combet 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

2. *Constitution*, section 81. The *Constitution* is accessible at: <http://www.comlaw.gov.au/Details/C2004C00469>

3. *Pape v Commissioner of Taxation* [2009] HCA 23 (7 July 2009), See also: <http://www.austlii.edu.au/au/cases/cth/HCA/2009/23.html>

4. *Constitution*, section 53.

5. *Constitution*, section 56.

6. IC Harris, *House of Representatives practice*, fifth edn, p. 410, viewed 28 May 2013,

http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/practice

7. *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.'

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...⁸

A working distinction between ordinary and other annual services was agreed in a 'Compact' between the Senate and the Government in 1965.⁹ 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;

(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.¹⁰

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.¹¹

Adherence to the compact has not always been strict, and the High Court has held that any disagreements between the Houses are not justiciable.¹² Any disputes are to be determined between the Houses themselves.

8. *Combet v Commonwealth* (2005) 224 CLR 494; [2005] HCA 61 (21 October 2005) at paragraph 8 and 9, emphasis added, see also: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2005/61.html>

9. See: Department of the Senate, *Odgers' Australian Senate practice*, thirteenth edn, Commonwealth of Australia, Canberra, 2012, chapter 13, viewed 28 May 2013, http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/odgers/chap13

10. A Missen, Senate, *Debates*, 17 February 1977, p. 184, viewed 28 May 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22hansard80%2Fhansards80%2F1977-02-17%2F0214%22>

11. Department of the Senate, *Odgers' Australian Senate practice*, op. cit.

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.

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.'¹³ 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', the Bill be returned to the House with a message requesting those new measures be omitted from the Bill.

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.¹⁴ Generally, administered expenses are the costs of 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. An administered appropriation may only be used for the program or outcome that it is appropriated for, while a departmental appropriation may be moved between different departmental activities.¹⁵

12. *Osborne v Commonwealth* (1911) 12 CLR 321, per Griffith CJ at 336, <http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/cases/cth/HCA/1911/19.pdf>

13. *Constitution*, section 53.

14. Australian Accounting Standards Board, *Administered items*, AASB 1050, December 2007, viewed 28 May 2013, http://www.aasb.gov.au/admin/file/content105/c9/AASB1050_12-07.pdf

15. *Combet v Commonwealth*, op. cit., at paragraph 123.

Outcomes and programs

While the level of detail necessary for an Appropriation Act to be valid is generally low¹⁶, in the *Pharmaceutical Benefits case*¹⁷ 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 moneys 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 describes 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.¹⁸

Advance to the Finance Minister

The Advance to the Finance Minister (AFM) is the appropriation of moneys 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 moneys 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 the 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 to \$295 million for the ordinary annual services of government, and \$380 million for the other annual services of government.

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

17. *Attorney-General (Vic); Ex rel Dale v Commonwealth* ('*Pharmaceutical Benefits case*') (1945) 71 CLR 237, per Latham CJ at 253, <http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/cases/cth/HCA/1945/30.pdf>

18. Department of Finance and Deregulation, *Guidance for the preparation of the 2013–14 portfolio budget statements*, Commonwealth of Australia, March 2013, p. 20, viewed 27 May 2013, [http://www.finance.gov.au/budget/budget-process/docs/Guidance for the Preparations of the 2013-14 Portfolio Budget Statements.pdf?v=1](http://www.finance.gov.au/budget/budget-process/docs/Guidance%20for%20the%20Preparations%20of%20the%202013-14%20Portfolio%20Budget%20Statements.pdf?v=1)

Financial implications

The No. 1 Bill seeks to appropriate \$78 181 907 000 from the CRF.¹⁹ The No. 2 Bill seeks to appropriate \$4 776 465 000 from the CRF.²⁰ The total amount of money sought to be appropriated by the two Bills is \$82 958 372 000.

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 therefore considers that the two Bills are compatible.²¹

Key provisions

Part 1 of each of the No. 1 and No. 2 Bills deals with preliminary matters, including when the Acts commence, and how to interpret the Acts. **Clause 4** of each of the No. 1 and No. 2 Bills provides that the accompanying Portfolio Budget Statements may be used as extrinsic materials to interpret the Acts.²²

Part 2 of each of the No. 1 and No. 2 Bills outlines the quantum and types of appropriation from the consolidated revenue fund.

In the No. 1 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.²³

In the No. 2 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.²⁴

19. Appropriation Bill (No. 1) 2013-2014, item 6, Schedule 1.

20. Appropriation Bill (No. 2) 2013-2014, item 6, Schedule 1.

21. Explanatory Memorandum, Appropriation Bill (No. 1) 2013-2014, p. 3, viewed 3 June 2013, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5042_ems_44adf63a-68b5-4432-828d-889d802b5b8c%22; Explanatory Memorandum, Appropriation Bill (No. 2) 2013-2014, p. 4, viewed 3 June 2013, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5041_ems_47012e9f-1629-47b7-a388-f17c2d61f3dd%22

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

23. Appropriation Bill (No. 1) 2013-2014, Schedule 1— Services for which money is appropriated.

These three types of appropriations cannot be included in the No. 1 Bill as they do not relate to the 'ordinary annual services of Government'.

Part 3 of both the No. 1 and No. 2 Bills includes mechanisms for the Finance Minister to reduce the amount appropriated, and for replenishing the Finance Minister's Advances.

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

Part 4 of Bill No. 2 deals with drawing right limits. **Clause 16** sets appropriation limits for provisions of specific Acts. **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 moneys to the states and territories.

Part 4 of Bill No. 1 and **Part 5** of Bill No. 2 provide 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. 1 Bill and **clause 18** in the No. 2 Bill. Secondly, they contain the provisions formally appropriating moneys from the CRF: **clause 15** in the No. 1 Bill and **clause 20** in the No. 2 Bill. **Clause 19** of Bill No. 2 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 the relevant outcome.

Schedule 1 in the No. 1 Bill and **Schedule 2** in the No. 2 Bill provide detailed information about the appropriations to be made to the departments and CAC Act bodies listed.

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