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BILLS DIGEST NO. 85, 2013–14

16 JUNE 2014

Appropriation Bill (No. 1) 2014-2015 [and] Appropriation Bill (No. 2) 2014-2015

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Date introduced: 13 May 2014

House: House of Representatives

Portfolio: Finance

Commencement: On Royal Assent

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the Bills’ home pages for the [Appropriation Bill \(No. 1\) 2014–2015](#) and the [Appropriation Bill \(No. 2\) 2014–2015](#), 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/>.

The Bills Digest at a glance

Appropriation Bill (No. 1) 2014–2015 and Appropriation Bill (No. 2) 2014–2015 underpin the Government's 2014–15 Budget, and provide appropriations from the Consolidated Revenue Fund (CRF) for the Government's activities.

This Bills Digest contains background material including the Constitutional and other requirements for Appropriation Bills.

Purpose of the Bill

The Appropriation Bill (No. 1) 2014–2015 (the No. 1 Bill) seeks to appropriate \$79,789,007,000 out of the Consolidated Revenue Fund (CRF) for the ordinary annual services of the Government.

The Appropriation Bill (No. 2) 2014–2015 (the No. 2 Bill) seeks to appropriate \$8,400,097,000 out of the CRF for other services of the Government that are not the ordinary annual services of the Government.

Structure of the Bill

Part 1 of each Bill deals with preliminary matters, including when the Acts commence, and how to interpret them.

Part 2 of each Bill outlines the quantum and types of appropriation from the consolidated revenue fund.

Part 3 of each Bill establish the Finance Minister's Advances for 2014–15.

Part 4 of the No. 2 Bill deals with the drawing right limits (an administrative restriction on spending, but not an appropriation).

Part 4 of the No. 1 Bill and **Part 5** of the No. 2 Bill provide for several technical matters, including details relating to special accounts, formally appropriating the amounts required from the CRF, and the conditions applying to payments to state, territory and local governments.

Schedule 1 of the No. 1 Bill and **Schedule 2** of the No. 2 Bill provide detailed information about the appropriations to be made to the departments, and *Commonwealth Authorities and Companies Act 1997* bodies ('CAC Act bodies') listed.

Schedule 1 of the No. 2 Bill 'lists the Ministers responsible for determinations on payments to or for the states, ACT, NT and local government'.¹

Background

Appropriations

An appropriation is the legal release of moneys from the CRF.² 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 ...³

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

1. Explanatory Memorandum, [Appropriation Bill \(No. 2\) 2014–2015](#), p. 15, accessed 12 June 2014.

2. See: Department of Finance and Deregulation, '[Annual appropriation rules - summarised](#)', Department of Finance and Deregulation website, 18 May 2010, accessed 3 June 2014.

3. [Constitution](#), section 81, accessed 12 June 2014.

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*.⁴

Proposed laws appropriating moneys may not originate in the Senate.⁵ 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.⁶ 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.⁷

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 '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 Garrahan 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...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;

4. *Pape v Commissioner of Taxation* [2009] HCA 23 (7 July 2009), accessed 12 June 2014.

5. *Constitution*, section 53.

6. *Constitution*, section 56.

7. IC Harris, ed., *House of Representatives practice*, fifth edn, Department of the House of Representatives, Canberra, 2005, p. 410, accessed 5 June 2014.

8. *Combet v Commonwealth* (2005) 224 CLR 494; [2005] HCA 61 (21 October 2005) at paragraph 8 and 9, emphasis added, accessed 12 June 2014.

9. See: H Evans and R Laing, *Odgers' Australian Senate practice*, thirteenth edn, The Senate, Canberra, 2012, chapter 13, accessed 5 June 2014.

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.

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.

Special or 'standing' appropriations and appropriation for the Parliamentary departments

In addition to the annual appropriation Bills, a number of other pieces of legislation contain appropriations (special or 'standing' appropriations) that enable payments to be made in relation to a variety of programs and purposes. Payments enabled by special appropriations are not affected by the passage of either of the annual Appropriation Bills. Some examples include:

- welfare payments and pensions are enabled by a special appropriation in the *Social Security Act 1999*
- Medicare payments are enabled by a special appropriation in the *Health Insurance Act 1973*
- payments of the interest and principal on Australia's debt are provided for by standing appropriations in sections 13AA, 13A, and 13B of the *Commonwealth Inscribed Stock Act 1911* and
- payments to the states and territories are provided for by a special appropriation in the *Federal Financial Relations Act 2009*.

Appropriations for the Parliamentary departments (the Department of the House of Representatives, the Department of the Senate and the Department of Parliamentary Services) are provided through a separate Bill – in this case, the Appropriation (Parliamentary Departments) Bill (No. 1) 2014–2015.

10. A Missen, 'Speech', Senate, *Debates*, 17 February 1977, p. 3, accessed 5 June 2014.

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

12. *Osborne v Commonwealth* (1911) 12 CLR 321, per Griffith CJ at 336, accessed 12 June 2014.

13. *Constitution*, section 53.

The 2014–15 Budget estimated an expenditure of \$320,643,884,000 from special appropriations in 2014–15, in comparison to appropriations of \$88,189,104,000 through Appropriation Bills No. 1 and 2, and \$206,319,000 through the Appropriation (Parliamentary Departments) Bill (No. 1) 2014–2015.¹⁴

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.¹⁵ 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.¹⁶

Outcomes and programs

While the level of detail necessary for an Appropriation Act to be valid is generally low,¹⁷ in the *Pharmaceutical Benefits case*¹⁸ 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 programmes are the primary vehicle by which government agencies achieve the intended results of their outcome statements.¹⁹

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 AFM 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. These limits are applied in the current Bills.

14. Australian Government, [Agency resourcing: budget paper no. 4: 2014–15](#), ‘Estimated Expenditure from Special Appropriations (other than the Special Accounts)’, p. 75, accessed 5 June 2014.

15. Australian Accounting Standards Board (AASB), [Administered items](#), AASB 1050, December 2007, accessed 5 June 2014.

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

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

18. *Attorney-General (Vic); Ex rel Dale v Commonwealth* (‘Pharmaceutical Benefits case’) (1945) [71 CLR 237](#), per Latham CJ at 253, accessed 12 June 2014.

19. Department of Finance, [Guidance for the preparation of the 2014–15 portfolio budget statements](#), Commonwealth of Australia, March 2014, p. 21, accessed 5 June 2014.

Financial implications

The No. 1 Bill seeks to appropriate \$79,789,007,000 from the CRF.²⁰ The No. 2 Bill seeks to appropriate \$8,400,097,000 from the CRF.²¹ The total amount of money sought to be appropriated by the two Bills is \$88,189 104,000.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights can be found at page 4 of the Explanatory Memoranda to the Appropriation Bills. As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bills' compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bills are compatible.

Key issues and provisions

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 according to proposed **Schedule 2** of that Bill as either:

- grants to the states, territories and local governments (see also **clause 16** below)
- new administered programs or
- non-operating (or 'capital') appropriations.²⁴

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 establish the Finance Minister's advances for 2014–15.

Part 4 of the No. 2 Bill deals with drawing right limits. **Clause 13** sets appropriation limits for provisions of specific Acts. **Clause 14** provides that the drawing right limits set under **clause 13** are adjusted to take into account any GST liability that may arise in relation to particular payments.

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 11** in the No. 1 Bill and **clause 15** in the No. 2 Bill. Secondly, they contain the provisions formally appropriating moneys from the CRF: **clause 12** in the No. 1 Bill and **clause 17** in the No. 2 Bill. **Clause 16** 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**.

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.

20. Appropriation Bill (No. 1) 2014–2015, item 6.

21. Appropriation Bill (No. 2) 2014–2015, item 6.

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) 2014–2015, Schedule 1— Services for which money is appropriated.

24. Appropriation Bill (No. 2) 2014–2015, Schedule 2— Services for which money is appropriated.

The Public Governance, Performance and Accountability Act

The Explanatory Memoranda for both Bills include a paragraph (No. 5) noting that the Bills have ‘been drafted to not take account of potential amendments that may be required to implement the *Public Governance, Performance and Accountability Act 2013*’.²⁵ This means that as introduced they are drafted in accordance with the *Financial Management and Accountability Act 1997*, rather than the *Public Governance, Performance and Accountability Act 2013*. The necessary amendments will be addressed in transitional legislation introduced after the Appropriation Bills.

25. Explanatory Memoranda, [Appropriation Bill \(No. 1\) 2014–2015](#) [and] [Appropriation Bill \(No. 2\) 2014–2015](#), p. 2, accessed 13 June 2014. The [Public Governance, Performance and Accountability Act 2013](#) will commence on 1 July 2014.

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