Appropriation Bill (No. 3) 2018-2019 [and]
Appropriation Bill (No. 4) 2018-2019 [and]
Appropriation (Parliamentary Departments) Bill (No. 2) 2018-2019

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Economics Section

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House: House of Representatives
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Links: The links to the Appropriation Bill (No. 3) 2018–2019, the Appropriation Bill (No. 4) 2018–2019 and the Appropriation (Parliamentary Departments) Bill (No. 2) 2018–2019 can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at March 2019.
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The Bills Digest at a glance

Appropriation Bill (No. 3) 2018–2019, Appropriation Bill (No. 4) 2018–2019 and Appropriation (Parliamentary Departments) Bill (No. 2) 2018–2019 (the Parliamentary Departments Bill) underpin the Government’s Mid-Year Economic and Fiscal Outlook, and provide appropriations from the consolidated revenue fund 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 purpose of the Appropriation Bill (No. 3) 2018–2019 (No. 3 Bill) is to seek an appropriation from the Consolidated Revenue Fund (CRF) of $2,541,754,000 ($2.5 billion) for the ordinary services of Government. Of this appropriation:

• $910,282,000 ($0.9 billion) is for the departmental activities of government entities and
• $1,631,472,000 (1.6 billion) is for activities that government entities administer on behalf of the Commonwealth Government.

The purpose of the Appropriation Bill (No. 4) 2018–2019 (No. 4 Bill) is to seek an appropriation for the other services of Government. The No. 4 Bill seeks to appropriate $752,891,000 ($752.9 million) from the CRF. The entire appropriation is for non-operating activities.

The purpose of the Appropriation (Parliamentary Departments) Bill (No. 2) 2018–2019 (Parliamentary Departments Bill) is to appropriate $4,311,000 ($4.3 million) for the Parliamentary departments.

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 CRF.

Part 3 of each Bill replenishes the Finance Minister’s Advances or the Advance to the Presiding Officers of the Parliamentary departments, as appropriate.

Part 4 of each Bill deals with several technical matters, including crediting amounts to special accounts, and formally appropriating the amounts required from the CRF.

Schedule 1 in each Bill provides detailed information about the proposed appropriations to be made to the departments and other Commonwealth entities listed.

Background

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 six

2. Ibid., Schedule 1, Summary of appropriations.
3. Ibid.
5. Ibid., Schedule 1, Summary of appropriations.
months after the last budget, whichever is later. The Government released the 2018–19 MYEFO on 17 December 2018. The 2018–19 MYEFO updated revenue and expenditure forecasts, and included the announcement of new policy measures.

These Bills will add to or alter the appropriations set out in the 2018–19 Budget Appropriation Acts – as required – to reflect all measures announced in the 2018–19 MYEFO or subsequently. Further details of those measures are included in the 2018–19 MYEFO.

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. The No. 3 and No. 4 and Parliamentary Departments Bills do not deal with standing appropriations.

**Constitutional requirements**

Section 81 of the *Constitution* provides:

> 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...

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.

**Powers of the House of Representative to appropriate**

Section 53 of the *Constitution* provides that laws appropriating money may not originate in the Senate. 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. By convention the Governor-General acts only upon the advice of the Executive, so section 56 prevents non-government members of the House of Representatives introducing Bills that would propose to appropriate money from the CRF.

**Powers of the Senate to amend**

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.

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8. J Frydenberg (Treasurer) and M Cormann (Minister for Finance and the Public Service), *2018-19 Mid-year economic and fiscal outlook*, media release, 17 December 2018.
9. J Frydenberg (Treasurer) and M Cormann (Minister for Finance and the Public Service), *Mid-year economic and fiscal outlook*, December 2018.
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’, the Bill be returned to the House with a message requesting those new measures be omitted from the Bill.

**The ‘ordinary annual services of government’ versus the ‘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.\(^{18}\) However, what constitutes the ‘ordinary annual services of the Government’ and ‘other’ services of the Government is not defined in the *Constitution*.

A working distinction between ordinary and other annual services was agreed in a ‘Compact’ between the Senate and the Government in 1965.\(^{19}\) Several amendments have been made to the Compact since 1965, and in 2010 the Senate Standing Committee on Appropriations and Staffing recommended the Senate restate the Compact in a consolidated form.\(^{20}\) On 22 June 2010, the Senate resolved as follows:

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 (but not including the acquisition of computers or the fitting out of buildings);

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

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

   (f) items regarded as equity injections and loans; and

   (g) existing asset replacement (which is to be regarded as depreciation),

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.

3. That, in respect of payments to international organisations:

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(a) the initial payment in effect represents a new policy decision and therefore should be in Appropriation Bill (No. 2); and

(b) subsequent payments represent a continuing government activity of supporting the international organisation and therefore represent an ordinary annual service and should be in Appropriation Bill (No. 1).

(4) That all appropriation items for continuing activities for which appropriations have been made in the past be regarded as part of ordinary annual services.21

Adherence to the Compact has not always been strict, and the High Court has held that any disagreements between the Houses are not justiciable.22 Any disputes are to be determined between the Houses themselves.

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.23 Generally, administered expenses are the costs of programs that agencies run for the Government, while departmental expenses are the costs incurred in running agencies.24

Appropriation Bills, therefore, distinguish between ‘administered’ expenses and ‘departmental’ expenses. An administered appropriation may be used only for the program or outcome that it is appropriated for, while a departmental appropriation may be moved between different departmental activities.25

Outcomes and programs

While the level of detail necessary for an Appropriation Act to be valid is generally low,26 in the Pharmaceutical Benefits case the High Court held:

... there cannot be appropriations in blank, appropriations for no designated purpose, merely authorising expenditure ...27

The Appropriation Bills must, therefore, also describe—in general terms—what the moneys are to be utilised for. The Bills use four methods for describing the purposes of the proposed appropriations.

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23. Australian Accounting Standards Board (AASB), Administered items, AASB 1050, December 2013.
24. The Department of Finance describes administered appropriation items as ‘normally related to activities governed by eligibility rules and conditions established by the Government or parliament such as grants, subsidies and benefit payments’, Department of Finance, ‘Guide to appropriations-RMG 100: annual appropriations: background’, Department of Finance website.
**Appropriations for ‘outcomes’ of non-corporate Commonwealth entities**

For non-corporate Commonwealth entities, the purposes of operating appropriations (both departmental and administered) are specified with reference to the ‘outcomes’ of those entities.

In 2017, the Department of Finance explained ‘outcome statements’ in the following terms:

> ... outcome statements articulate Government objectives and form an integral part of the appropriations framework. They:

1. explain the purpose for which annual appropriations are approved by the Parliament for use by entities;
2. provide a basis for budgeting and reporting against the use of appropriated funds; and
3. measure and assess entity and program non-financial performance in contributing to Government objectives.

An outcome statement should provide an immediate impression of what success looks like.\(^\text{28}\)

Outcome statements, therefore, tend to be aspirational in nature.

**Appropriations for corporate Commonwealth entities**

As corporate Commonwealth entities are legally distinct from the Commonwealth itself, money cannot be appropriated directly to those entities.\(^\text{29}\) Instead, amounts are appropriated to relevant Departments for on-payment to corporate Commonwealth entities within Departments’ portfolios.

**Non-operating appropriations**

Non-operating appropriations are amounts designated for the capital needs of entities. Typically, these amounts are equity injections into entities, or monies for the purchase or development of the assets of entities. Under the Compact, they can only ever be proposed in a Bill dealing with the ‘other’ annual services of Government.

**Appropriations for payments to the states**

Under section 96 of the Constitution, the Commonwealth may make payments to the states with or without conditions, and amounts intended for payments to the states are identified separately. Again, because of the Compact, amounts to the states can only ever be proposed in a Bill dealing with the ‘other’ annual services of Government. Amounts to the Australian Capital Territory and the Northern Territory are also included with the amounts for the states.

**Appropriations for the Parliament and the Judiciary**

In 1981, the Senate Select Committee on Parliament’s Appropriations and Staffing considered the appropriations for the Parliament, in view of the unique constitutional position of the Parliament vis-à-vis the Executive. The Committee noted section 53 of the Constitution’s reference to the ‘ordinary annual services of the Government’ before observing:

> ... the Parliament may be ordinary; it may be annual; it may even be regarded as a service; but it is not a service of the Government. It is therefore inconsistent with the concept of the separation of powers and

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the supremacy of Parliament to treat the provisions made for the Parliament as being an ordinary annual service of the Government.\textsuperscript{30}

The Committee recommended:

... all items of expenditure administered by the Executive departments on behalf of the Parliament be brought together in [a] Parliamentary Appropriation Bill ...\textsuperscript{31}

Since 1982, the appropriations for the Parliamentary departments have been provided for via a distinct Appropriation Bill.

Quarantining appropriations in this way only applies to the Parliamentary departments (of which there are currently four).\textsuperscript{32} It does not extend to other aspects of the finances of the Parliament, such as providing for the remuneration and allowances of parliamentarians.

Despite the fact that, under the Constitution, the Judiciary is also distinct from the Executive, there is no equivalent practice whereby the Judiciary is provided for via a distinct Appropriation Bill.

\textbf{Advances to the Finance Minister and the Presiding Officers}

Bills 3 and 4 and the Parliamentary Departments Bill propose to replenish any amounts drawn from the advance to the Finance Minister or responsible Presiding Officers of Parliamentary Departments. The advances, established in the first Appropriation Acts each year, are an appropriation of moneys without any particular outcome or purpose specified.

The Finance Minister may use the amount appropriated as an advance to modify the schedule to the Appropriation Act, but only 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, [...]:

(a) because of an erroneous omission or understatement; or

(b) because 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.\textsuperscript{33}

An equivalent legislative scheme exists for the Presiding Officers.\textsuperscript{34}

In order to access an advance, the Finance Minister or Presiding Officers, as the case may be, must issue a determination under the relevant Appropriation Act. A determination is a legislative instrument, but disallowance and sunsetting under section 42 and Part 4 of Chapter 3 of the \textit{Legislation Act 2003} respectively do not apply.\textsuperscript{35}

\begin{footnotesize}
\textsuperscript{31} Ibid., p. 22.
\textsuperscript{32} Namely: Department of the Senate, Department of the House of Representatives, Department of Parliamentary Services and the Parliamentary Budget Office.
\textsuperscript{33} \textit{Appropriation Act} (No. 1) 2018–2019, subsection 10(1); \textit{Appropriation Act} (No. 2) 2018–2019, subsection 12(1).
\textsuperscript{34} \textit{Appropriation (Parliamentary Departments) Act} (No. 1) 2018–2019, subsection 11(1).
\textsuperscript{35} \textit{Appropriation Act} (No. 1) 2018–2019, subsection 10(4); \textit{Appropriation Act} (No. 2) 2018–2019, subsection 12(4); \textit{Appropriation (Parliamentary Departments) Act} (No. 1) 2018–2019, subsection 11(7).
\end{footnotesize}
At the time of writing, only one relevant determination had been made. On 18 December 2018 the Finance Minister made a determination under subsection 12(1) of the Appropriation Act (No. 2) 2018–19 for $75,379,000. This amount will be replenished under the provisions of Bill No. 4.

Committee consideration

Senate Standing Committee for the Scrutiny of Bills

At the time of writing, the Bills that are the subject of this Bills Digest had not been considered by the Senate Standing Committee for the Scrutiny of Bills.

Financial implications

The No. 3 Bill proposes to appropriate $2,541,754,000 ($2.5 billion) from the CRF.

The No. 4 Bill proposes to appropriate $752,891,000 ($752.9 million) from the CRF.

The Parliamentary Departments Bill proposes to appropriate $4,311,000 ($4.3 million) from the CRF.

The total amount of money proposed to be appropriated by the three Bills is $3,298,956,000 ($3.3 billion).

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. In relation to the human rights implications of the Bills, the Government states:

The Bill seeks to appropriate money for the ordinary annual services of the Government [or services that are not considered to be ordinary annual services, or for expenditure by the Parliamentary Departments].

Accordingly, the Bill performs an important constitutional function, by authorising the withdrawal of money from the CRF for the broad purposes identified in the Bill.

However, as the High Court has emphasised, beyond this, Appropriation Acts do not create rights and nor do they, importantly, impose any duties.

Given that the legal effect of Appropriation Bills is limited in this way, the Bill is not seen as engaging, or otherwise affecting, the rights or freedoms relevant to the Human Rights (Parliamentary Scrutiny) Act 2011.

Detailed information on the relevant appropriations, however, is contained in the portfolio statements.

However, the Parliamentary Joint Committee on Human Rights has previously raised concerns about whether or not the allocation of funding proposed in Appropriation Bills might engage

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36. Advance to the Finance Minister Determination (No. 1 of 2018–19).
human rights considerations; particularly given the capacity for Appropriation Bills to give effect to a reduction in funding for programs that might be aimed at the realisation of human rights.\textsuperscript{38}

\textsuperscript{38} See for example, Parliamentary Joint Committee on Human Rights, \textit{Human rights scrutiny report}, 2, 2017, Canberra, 21 March 2017, p. 46.