
Paula Pyburne
Law and Bills Digest Section

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Date introduced: 2 April 2019
House: House of Representatives
Portfolio: Finance
Commencement: the later of Royal Assent or 1 July 2019

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the homepages for the Supply Bill (No. 1) 2019–2020; the Supply Bill (No. 2) 2019–2020; and the Supply (Parliamentary Departments) Bill (No. 1) 2019–2020 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 April 2019.
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Purpose of the Bills

This Bills Digest refers to three Bills.

The purpose of Supply Bill (No. 1) 2019–2020 (Supply Bill No. 1) is to propose appropriations in the amount of $40,757,931,000 from the Consolidated Revenue Fund (CRF) which are broadly equivalent to 5/12ths of the estimated 2019–2020 annual appropriations for the ordinary annual services of the Government—including Budget measures. The balance of the annual appropriations for the ordinary annual services of the Government for 2019–2020, including Budget measures for that year are contained in Appropriation Bill (No. 1) 2019–2020 (Appropriation Bill No. 1).1

The purpose of Supply Bill (No. 2) 2019–2020 (Supply Bill No. 2) is to propose appropriations in the amount of $4,813,161,000 from the CRF which are broadly equivalent to 5/12ths of the estimated 2019–2020 annual appropriations that are not for the ordinary annual services of the Government. The balance of the annual appropriations that are not for the ordinary annual services of the Government for 2019–2020, including Budget measures for that year are contained in Appropriation Bill (No. 2) 2019–2020 (Appropriation Bill No. 2).2

The purpose of Supply (Parliamentary Departments) Bill (No. 1) 2019–2020 (Parliamentary Departments Supply Bill) is to propose appropriations in the amount of $101,156,000 from the CRF which are broadly equivalent to 5/12ths of the estimated 2019–2020 annual appropriations for expenditure in relation to the Parliamentary Departments—including Budget measures. The balance of the annual appropriations for the Parliamentary departments for 2019–2020, including Budget measures for that year are contained in Appropriation (Parliamentary Departments) Bill (No. 1) 2019–2020.3

Due to the speed with which the Bills are expected to pass both the House of Representatives and the Senate, this Bills Digest merely sets out the nature of the Bills and the rationale for their introduction. Analysis of the contents of the various Portfolio Budget Statements will be prepared separately by the Parliamentary Library.

Structure of the Bills

Part 1 of each of the Bills 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 Supply Bill No. 1 and Supply Bill No. 2 establishes the Advance to the Finance Minister (AFM) for 2019–2020, whereas Part 3 of the Parliamentary Departments Supply Bill establishes the Advance to the responsible Presiding Officer for 2019–2020.

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

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Part 4 of the Supply Bill No. 1 and the Parliamentary Departments Supply Bill and Part 5 of the Supply Bill No. 2 provide for several technical matters, including but not limited to details relating to special accounts and formally appropriating the amounts required from the CRF.

Schedule 1 of the Supply Bill No. 1 and the Parliamentary Departments Supply Bill and Schedule 2 of the Supply Bill No. 2 provide details about the appropriations to both non-corporate entities and to corporate entities as defined by the Public Governance, Performance and Accountability Act 2013 (PGPA Act).

Schedule 1 of the Supply Bill No. 2 lists the Ministers responsible for determinations of payments to, or for, the states, Australian Capital Territory, Northern Territory and local government.

Background

About appropriations

An appropriation is the legal release of monies from the Consolidated Revenue Fund (CRF). 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.

Under the terms of the Constitution, there are certain unique requirements that a Bill proposing to appropriate monies from the CRF must satisfy.

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...

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.

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 the 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.

A working distinction between ordinary and other annual services was agreed in a ‘Compact’ between the Senate and the Government in 1965. Several amendments have been made to the Compact since 1965, and in 2010 the Senate Standing Committee on Appropriations and Staffing

4. Department of Finance (DoF), Guide to appropriations—RMG 100, DoF website, last updated 3 December 2018.
7. Constitution, section 83.
8. Constitution, section 54: ‘The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such proposed appropriation’.
recommended the Senate restate the Compact in a consolidated form. 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:
   (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.

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

The rationale for the supply bills

On 27 November 2018, the Prime Minister, Scott Morrison, announced that the Government would be handing down its budget on 2 April 2019. The need for Supply Bills arises because of the Prime Minister’s intention to advise the Governor-General to prorogue the Parliament by proclamation, formally ending the 45th Parliament. It is expected that a Federal election will be held in May 2019.

**Supply Bills**

A Supply Bill generally provides for interim appropriations out of the Consolidated Revenue Fund to fund the core activities of the government until the passage of the annual Appropriation Bills. The introduction of Supply Bills was a common occurrence from Federation until 1993, as the practice of successive Commonwealth governments was to deliver the Budget and table the annual Appropriation Bills after the commencement of the financial year on 1 July. Since 1994, however, the Commonwealth has generally delivered the Budget and tabled the annual Appropriation Bills in May, prior to the commencement of the next financial year. [14]

**Most recent use—2016**

The most recent introduction of Supply Bills into Parliament was on 2 May 2016. [15] The need for Supply Bills in that case arose because of the timing of the 2016 Federal Election, which rendered the delivery of a Budget in May 2016 impractical.

In that case, the Bills proposed to appropriate 5/12ths of the annual funding required. This provided for funding until the end of November 2016, by which time it was anticipated that the annual Appropriation Bills would have come into force.

The current Bills also appropriate 5/12ths of the annual funding required. Speaking in relation to Supply Bill No. 1, Special Minister of State, Alex Hawke stated:

> I wish to emphasise that this Bill seeks provision only to fund government expenditure on an interim basis until budget appropriation Bills have passed. Consistent with convention, the Supply Bills do not include funding for budget measures.

> This arrangement allows for Appropriation Bill (No. 1) 2019-2020, or a similar bill, to be passed by the next parliament, if necessary. [16]

**Committee consideration**

At the time of writing this Bills Digest none of the Bills had been referred to Committee for inquiry and report.

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing this Bills Digest the Senate Standing Committee for the Scrutiny of Bills had not commented on the Bills.

**Policy position of non-government parties/independents**

Whilst members of non-government parties have signalled their reactions to certain measures in the Budget, none have indicated that they will reject the Bills.

**Financial implications**

The Supply Bill No. 1 seeks to appropriate approximately $40.8 billion from the CRF. The Supply Bill No. 2 seeks to appropriate approximately $4.8 billion from the CRF. The Parliamentary Departments Supply Bill seeks to appropriate approximately $101 million from the CRF.

The total amount of money sought to be appropriated by the three Bills is $45.7 billion.

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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 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.17

Parliamentary Joint Committee on Human Rights

At the time of writing this Bills Digest the Parliamentary Joint Committee on Human Rights had not commented on the Bills.

Key issues and provisions

Supply Bill No. 1

Clauses 6–9 of Supply Bill No. 1 outline the quantum and types of appropriation from the CRF.

Clause 10 of Supply Bill No. 1 establishes the Advance to the Finance Minister for 2019–2020. The Advance to the Finance Minister is the appropriation of monies to the Finance Minister without any particular outcome or purpose specified. The Advance to the Finance Minister is established in both Supply Bill No. 1 and Supply Bill No. 2. The amount of appropriation allocated to the Advance to the Finance Minister each year has typically been limited to $295 million for the ordinary annual services of Government. This is the amount allocated in subclause 10(3) of Supply Bill No. 1. The Finance Minister tables an annual report in Parliament on the use of the Advance to the Finance Minister.18

Clauses 11–13 of the Supply Bill No. 1 provide for several technical matters, including, amongst other things, details relating to special accounts and formally appropriating the amounts required from the CRF.

Schedule 1 of the Supply Bill No. 1 provides details about the appropriations to both non-corporate entities and to corporate entities as defined by the PGPA Act.

The table below sets out in summary form, the amounts in Schedule 1 to Supply Bill No. 1, approximates the total for 2019–2020 and compares it to the appropriation in 2018–2019. When considering the figures in the table, it should be kept in mind that the appropriation set out in Supply Bill No. 1 is generally based on 5/12ths of the estimated 2019–2020 annual appropriation.

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17. The Statement of Compatibility with Human Rights can be found at page 4 of the Explanatory Memorandum to Supply Bill No. 1, at page 4 of the Explanatory Memorandum to Supply Bill No. 2 and at page 4 of the Explanatory Memorandum to the Parliamentary Departments Supply Bill.

<table>
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<td>Prime Minister and Cabinet</td>
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<td><strong>Total</strong></td>
<td><strong>$40,757,931</strong></td>
<td><strong>$95,230,047</strong></td>
<td><strong>$95,131,317</strong></td>
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</table>

21. Note that there may be some variations in totals due to rounding.
Supply Bill No. 2

Clauses 6–11 of the Supply Bill No. 2 outline the quantum and types of appropriation from the consolidated revenue fund.

Clause 12 establishes the Advance to the Finance Minister for 2019–20. (See discussion about the Advance to the Finance Minister in relation to Supply Bill No. 1 above.) The amount of appropriation allocated to the Advance to the Finance Minister each year has typically been limited to $380 million for the other annual services of Government. This is the amount allocated in subclause 12(3) of Supply Bill No. 2.

The money in the Supply Bill No. 2 is appropriated to incorporated and non-incorporated Government entities according to 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.

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

Clause 13 of Supply Bill No 2 sets appropriation limits for provisions of specific Acts. Clause 14 provides that the debt limits, set under clause 13, are adjusted to take into account any GST liability that may arise in relation to particular payments.

Clauses 15–17 of the Supply Bill No. 2 provide for several technical matters. In particular, clause 16 of the Supply 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.

The table below sets out in summary form, the amounts in Schedule 2 to Supply Bill No. 2, approximates the total for 2019–20 and compares it to the appropriation in 2018–19.

Table 2: Comparison with 2018–2019

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<td>Agriculture and Water Resources</td>
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<td>Attorney-General</td>
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<td>Communications and the Arts</td>
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<tbody>
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<td>185,759</td>
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<td>Infrastructure, Regional Development and Cities</td>
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<td>Total</td>
<td><strong>4,813,161</strong></td>
<td><strong>11,551,580</strong></td>
<td><strong>13,003,986</strong></td>
<td><strong>13,066,970</strong></td>
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**Parliamentary Departments Supply Bill**

Clause 3 of the Parliamentary Departments Supply Bill defines the term **responsible presiding officer** as being:

(a) in relation to the Department of the Senate—the President of the Senate

(b) in relation to the Department of the House of Representatives—the Speaker of that House

24. Note that there was an appropriation to the Human Services portfolio in the Appropriation Act (No. 2) 2018–2019. A corresponding amount is represented as an equity injection to the Department of Human Services in the Social Services portfolio statement in Schedule 2 to Supply Bill No. 2.

25. Monies were allocated to the Department of Industry, Innovation and Science under the Jobs and Innovation portfolio in the Appropriation Act (No. 2) 2018–2019.

26. Note that there may be some variations in totals due to rounding.
(c) in relation to the Department of Parliamentary Services—the President and the Speaker together or

(d) in relation to the Parliamentary Budget Office—the President and the Speaker together.

Clauses 6–10 of the Parliamentary Departments Supply Bill outline the quantum and types of appropriation from the consolidated revenue fund.

Clause 11 establishes the Advance to the responsible Presiding Officer for 2019–2020. The amount of appropriation is limited as follows:

- for the Department of the Senate—$300,000
- for the Department of the House of Representatives—$300,000
- for the Department of Parliamentary Services—$1 million and
- for the Parliamentary Budget Office—$300,000.

Clauses 12–14 of the Parliamentary Departments Supply Bill provides for several technical matters, including details relating to special accounts, formally appropriating the amounts required from the CRF, and the repeal of the Act at the start of 1 July 2022.

The table below sets out in summary form, the amounts in Schedule 2 to the Parliamentary Departments Supply Bill, approximates the total for 2019–2020 and compares it to the appropriation in 2018–19.

Table 3: Comparison with 2018–2019

<table>
<thead>
<tr>
<th>Department</th>
<th>Appropriation in Parliamentary Departments Supply Bill (Supply for 5/12ths of year)</th>
<th>Appropriation in Parliamentary Departments Supply Bill, converted to 12/12ths (full year)</th>
<th>Appropriation in Appropriation (Parliamentary Departments) Act (No. 1) 2018–2019</th>
<th>Actual Available Appropriation 2018–2019</th>
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<td>Department of the House of Representatives</td>
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<td><strong>Total</strong></td>
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