2013-2014

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

APPROPRIATION BILL (NO. 1) 2014-2015

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance,
Senator the Honourable Mathias Cormann)

Table of Acronyms and Defined Terms

AAO	Administrative Arrangements Order
AFM	Advance to the Finance Minister
AI Act	*Acts Interpretation Act 1901*
CAC Act	*Commonwealth Authorities and Companies Act 1997*
CRF	Consolidated Revenue Fund
Finance Minister	Minister for Finance
FMA Act	*Financial Management and Accountability Act 1997*
FMA Regulations	*Financial Management and Accountability Regulations 1997*
GST	Goods and Services Tax
MoG	Machinery of Government
PGPA Act	*Public Governance, Performance and Accountability Act 2013*
Portfolio Statements	Portfolio Budget Statements

Appropriation Bill (No. 1) 2014-2015

General outline

1 This Explanatory Memorandum accompanies *Appropriation Bill (No. 1) 2014-2015* (the Bill).

2 The main purpose of the Bill is to propose appropriations from the Consolidated Revenue Fund (CRF) for the ordinary annual services of the Government.

3 Appropriations for the ordinary annual services of the Government must be contained in a separate Bill from other appropriations in accordance with sections 53 and 54 of the Australian Constitution (the Constitution). Other annual appropriations that are not for the ordinary annual services of the Government are proposed in *Appropriation Bill (No. 2) 2014-2015* and *Appropriation (Parliamentary Departments) Bill (No. 1) 2014-2015*. Together these three Bills are termed the Budget Appropriation Bills.

4 The 2014-2015 Portfolio Budget Statements (Portfolio Statements) are published and tabled in the Parliament in relation to the Bill. This Explanatory Memorandum should be read in conjunction with the various 2014-2015 Portfolio Statements, which contain details on the appropriations set out in the Schedules of the Bills.

5 Importantly, the Bill has been drafted to not take account of potential amendments that may be required to implement the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Those amendments will be addressed in transitional legislation that is yet to be introduced into the Parliament. The explanatory memoranda to those transitional Bills will provide a comprehensive explanation of the approach being taken to ensure consistency between the PGPA Act and annual Appropriation Acts.

Structure of appropriations in the Bill

6 The Bill provides for the appropriation of specified amounts for expenditure by Australian Government entities, primarily being Agencies under the *Financial Management and Accountability Act 1997* (FMA Act) plus payments to bodies under the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

7 Part 1 of the Bill deals with definitions, the interpretative role of the Portfolio Statements and the concept of notional payments. Part 2 of the Bill proposes appropriations to make payments of the amounts in Schedule 1 for departmental items (clause 7), administered items (clause 8) and CAC Act body payment items (clause 9). Part 3 of the Bill specifies the ways in which the amounts in Schedule 1 may be adjusted.

8 Part 4 deals with credits to Special Accounts (clause 11), provides for amounts to be appropriated as necessary (clause 12) and specifies the cessation date of the Bill, once enacted (clause 13). In addition to the adjustment provisions in Part 3, clause 12 of the Bill recognises that the appropriations in the Bill may also be varied by the FMA Act.

Financial Impact

9 The Bill, if enacted, would appropriate the amounts specified in Schedule 1.

Statement of compatibility with human rights

1 The Bill seeks to appropriate money for the ordinary annual services of the Government.

2 Accordingly, this Appropriation Bill performs an important constitutional function, by authorising the withdrawal of money from the Consolidated Revenue Fund for the broad purposes identified in the Bill.

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

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

5 Detailed information on the relevant appropriations, however, is contained in the Portfolio Statements.

Notes on clauses

Part 1—Preliminary

Clause 1—Short title

1 This clause specifies that the short title of the Bill, once enacted, will be *Appropriation Act (No. 1) 2014-2015*.

Clause 2—Commencement

2 Clause 2 provides for the Bill to commence as an Act on the day of the Royal Assent.

Clause 3—Definitions

3 Clause 3 defines the key terms used in the Bill, such as "administered item", "Agency", "current year" and "departmental item".

Clause 4—Portfolio Statements

4 Clause 4 declares that the Portfolio Statements are relevant documents under paragraph 15AB(2)(g) of the *Acts Interpretation Act 1901* (AI Act) that may be used to ascertain the meaning of certain provisions in accordance with subsection 15AB(1) of the AI Act. Paragraph 15AB(2) of the AI Act effectively provides that the material that may be considered in the interpretation of a provision of an Act includes any document that is declared by the Act to be a relevant document.

5 The purpose of the Portfolio Statements is to provide information on the proposed allocation of resources to Government outcomes by Agencies within each portfolio. The Portfolio Statements provide information to enable Parliament to understand the purpose of appropriations proposed in the Bill. The term "Portfolio Statements" is defined in the Bill, at clause 3, to mean the Portfolio Budget Statements (tabled with this Bill).

Clause 5—Notional payments, receipts etc.

6 Clause 5 ensures that payments between Agencies result in a debit from the appropriation for the paying Agency. For example, the payments of the amounts in Schedule 1 from one FMA Act Agency to another do not require, in a constitutional sense, an appropriation, because both Agencies operate within the CRF. However, for reasons of financial discipline and transparency, the practice has arisen for these payments between Agencies to be treated as though they required an appropriation, and to debit an appropriation when such notional payments are made. This is consistent with section 6 of the FMA Act.

7 Clause 5 provides that notional transactions between Agencies are to be treated as if they are real transactions. Notional transactions, therefore, require the

use of a drawing right and the debiting of an appropriation made by Parliament. When a FMA Act Agency makes a payment, whether to another FMA Act Agency or another part of the same Agency (such as a different "business unit" within the Agency), it is to be treated as a "real" payment.

8 This means that the appropriation made by Parliament is extinguished by the amount of the notional payment, even though no payment is actually made from the CRF. Similarly, a notional receipt in such a situation is to be treated by the receiving Agency (where relevant) as if it were a real receipt.

9 This does not mean every internal transfer of public money involves a notional payment and receipt. As explained in regulation 19 of the *Financial Management and Accountability Regulations 1997* (FMA Regulations), some transfers of public money from one official account to another do not involve a notional payment or debiting an appropriation.

Part 2—Appropriation items

Clause 6—Summary of appropriations

10 Clause 6 sets out the total of the appropriations in Schedule 1 of the Bill. Importantly, the amounts in Schedule 1 may be adjusted under Part 3 of the Bill. Items may be increased by a determination under clause 10 (Advance to the Finance Minister).

11 The amounts in Schedule 1 of the Bill may be adjusted further in accordance with sections 30, 30A, 31 and 32 of the FMA Act. Specifically:

- Section 30 allows an Agency to re-credit, to an appropriation that had been relied upon for an initial payment by the Agency, an amount equivalent to the repayment. The re-crediting, or reinstatement, authorised by section 30, can result in the total amount paid from the CRF in gross terms, exceeding the amount specified in an item. Section 30 also applies to notional transactions between and within Agencies.
- Appropriations may be adjusted by amounts recoverable by an Agency from the Australian Taxation Office for Goods and Services Tax (GST), in accordance with section 30A of the FMA Act. The amounts specified in Schedule 1 exclude recoverable GST. The appropriations shown represent the net amount that Parliament is asked to allocate to particular purposes.

  Section 30A has the effect of increasing an appropriation by the amount of the GST qualifying amount arising from payments in respect of the appropriation. As a result, there is sufficient appropriation for payments under an appropriation item, provided that the amount of those payments, less the amount of recoverable GST, can be met from the initial amount shown against the item in Schedule 1. Section 30A also applies to notional transactions between and within Agencies.

- Departmental items may be increased to take into account certain other amounts received by an Agency, if those receipts are prescribed by the FMA Regulations, in accordance with section 31 of the FMA Act. For example, FMA Regulation 15 prescribes amounts that offset costs in relation to the activities of an Agency. FMA Regulation 15 also provides to increase their departmental item with amounts that relate to a trust or similar arrangement.
- Items may be adjusted to take into account the transfer of functions between Agencies, in accordance with section 32 of the FMA Act. It is possible that adjustments under section 32 may result in new items and/or outcomes being created in an Appropriation Act.

Clause 7—Departmental items

12 Clause 7 provides that the amount specified in a departmental item for an Agency may be applied for the departmental expenditure of the Agency. Clause 3 defines:

- "departmental item" to be the total amount set out in Schedule 1 in relation to an Agency under the heading "Departmental"; and
- "expenditure" to be payments for expenses, acquiring assets, making loans or paying liabilities.

13 While the departmental items in Schedule 1 may be divided between outcomes, the different amounts against outcomes are notional. The total appropriation for departmental expenses represents the departmental item.

14 Departmental items basically involve costs over which an Agency has control. Departmental appropriations can be used to make any payment related to the functions of the Agency including on purposes covered by other items whether or not they are in the Act for an Agency. Expenditure typically covered by departmental items includes employee expenses, suppliers and other operational expenses (e.g. interest and finance expenses).

15 There can also be occasions when an Agency, such as a portfolio Department, needs to cover matters in relation to other areas of the Government. Examples can include whole-of-Government activities or a portfolio Department assisting with the formation and initial costs of a new portfolio body (for which the Department might later be reimbursed). Another example would be where government has decided to implement shared services arrangements, and one Agency is providing corporate services assistance to another Agency.

16 Since 2010-11, departmental items have included amounts specifically to meet costs associated with the acquisition and capitalised maintenance of departmental assets valued at $10 million or less. Departmental items also include supplementation in circumstances when Agencies were directed by government to undertake additional responsibilities in the previous financial year. This applies when the direction was given, or a decision to propose further Appropriation Bills

is made, in a timeframe within which it is not practicable to include the expected expenses in a further Appropriation Bill for that financial year.

17 Generally, Agencies are expected to meet the cost of additionally directed activities from their existing appropriations, which may then be replenished by a departmental appropriation in the following financial year.

18 Departmental items are not expressed in terms of a particular financial year and do not automatically lapse. Because the cash to meet expenses can be required at times other than when the expenses are incurred, the departmental appropriations remain available until required. Departmental items are available until they are spent, or the Act through which they were appropriated is repealed or sunsets.

19 The Minister for Finance (Finance Minister) manages the payment from departmental items by Agencies through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act. Drawing rights control who may spend money from appropriations, and allow for conditions and limits to be set by the Finance Minister (or the Finance Minister's delegate) in relation to those activities.

Clause 8—Administered items

20 Subclause 8(1) provides for the appropriation of administered amounts to be applied by an Agency for the purpose of contributing to the outcome for an Agency. An "administered item" is defined in clause 3 to be an amount set out in Schedule 1 opposite an outcome for an Agency under the heading "Administered". Administered amounts are appropriated separately for outcomes, so, unlike departmental items, the split across outcomes is not notional. This help to make it clear what the funding is intended to achieve.

21 The appropriations for administered items in Schedule 1 represent the amounts required to meet the total estimated expenses for the administered outcomes for 2014-2015.

22 The purposes for which each administered item can be spent are further set out in subclause 8(2). Subclause 8(2) provides that where the Portfolio Statements indicate a particular activity is in respect of a particular outcome, then expenditure on that activity is taken to be expenditure for the purpose of contributing to achieving that outcome.

23 Administered items are those typically administered by an Agency on behalf of the Government (e.g. certain grants, benefits and transfer payments). These payments are usually made pursuant to eligibility rules and conditions established by the Government or the Parliament. Specifically, administered items are tied to outcomes (departmental items are not).

24 The Finance Minister manages payments from administered items by Agencies through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act. Drawing rights control who may spend money from

appropriations, and allow for conditions and limits to be set by the Finance Minister (or the Finance Minister's delegate) in relation to those activities.

Clause 9—CAC Act body payment items

25 Clause 9 provides for direct appropriations of money for CAC Act bodies to be paid from the CRF by the relevant Department. Clause 9 provides that payments for CAC Act bodies must be used for the purposes of those bodies.

26 A "CAC Act body" is defined in clause 3 to be a Commonwealth authority or a Commonwealth company within the meaning of the CAC Act. Many CAC Act bodies receive funding directly from appropriations. However, these bodies are legally separate from the Commonwealth, and as a result, do not debit appropriations or make payments from the CRF.

27 CAC Act body payments are initiated by requests to the relevant portfolio Departments from the CAC Act bodies. The Finance Minister manages appropriations for CAC Act bodies through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act. Drawing rights control who may spend money from appropriations, and allow for conditions and limits to be set by the Finance Minister (or the Finance Minister's delegate) in relation to those payments. CAC Act bodies hold the amounts paid to them on their own account.

28 Subclause 9(2) provides that if a CAC Act body is subject to another Act that requires amounts appropriated by Parliament for the purposes of that body to be paid to the body, then the full amount of the CAC Act body payment must be paid to the body. The purpose of subclause 9(2) is to clarify that subclause 9(1) is not intended to qualify any obligations in other legislation regulating a CAC Act body, where that other legislation requires the Commonwealth to pay the full amount appropriated for the purposes of the body.

29 In addition to the annual appropriations, some CAC Act bodies may also receive public money from related entities such as a portfolio Department and from special appropriations managed by those Departments. Many CAC Act bodies also receive funds from external sources.

Part 3—Advance to Finance Minister

30 Part 3 of the Bill provides for increases to the amounts specified in Schedule 1, clause 10.

Clause 10—Advance to the Finance Minister

31 Clause 10 of the Bill enables the Finance Minister to provide additional appropriations for items when satisfied that there is an urgent need for expenditure and the existing appropriation is inadequate. This additional appropriation is referred to as the Advance to the Finance Minister (AFM). Subclause 10(3)

provides that the total amount that can be determined under the AFM provision is $295 million.

32 Subclause 10(1) establishes the criteria about which the Finance Minister must be satisfied before determining to add an amount to an item of an agency.

33 The Finance Minister will only consider issuing an amount under subclause 10(1) if satisfied there is an urgent need for expenditure that is not provided for, or is insufficiently provided for in Schedule 1, because of an omission or understatement or because of unforeseen circumstances. Generally, options under sections 30, 30A and 32 of the FMA Act must have been exhausted before the Finance Minister will make a determination under subclause 10(2).

34 Subclause 10(2) enables the Finance Minister to make a determination to add an amount from the AFM to an item in Schedule 1, to a new item not already in Schedule 1, or to a new outcome.

35 A further AFM provision will be requested in the Additional Estimates Appropriation Bills for the current year if pressures at that time suggest the AFM in this Bill will be close to being exhausted before the end of the financial year.

36 Subclause 10(4) provides that a determination under subclause 10(2) is a legislative instrument, which must be tabled in Parliament but is not subject to disallowance or sunsetting.

37 A subclause 10(2) determination is not subject to disallowance as this would frustrate the purpose of the provision, which is to provide additional appropriation for urgent expenditure. Further, an AFM is not subject to the sunsetting provisions of the *Legislative Instruments Act 2003*, because the amount allocated from the AFM would be extinguished when it is spent.

Part 4—Miscellaneous

Clause 11—Crediting amounts to Special Accounts

38 Clause 11 provides that if the purpose of an item in Schedule 1 is also the purpose of a Special Account (regardless of whether the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to the Special Account. Special Accounts may be established under the FMA Act by a determination of the Finance Minister (section 20) that is disallowable by Parliament or by another Act (section 21). The determination or Act that establishes the Special Account will specify the purposes of the Special Account.

Clause 12—Appropriation of the Consolidated Revenue Fund

39 Clause 12 provides that the CRF is appropriated as necessary for the purposes of the Bill. Significantly, this clause means that there is an appropriation in law when the Act commences. That is, the appropriations are not made or

brought into existence just before they are paid, but when the Royal Assent is given. This clause indicates that the amounts appropriated may be affected by the FMA Act, in particular sections 30, 30A, 31 and 32 (see clause 6), after the Bill receives the Royal Assent.

Clause 13—Act ceases to be in force

40 Clause 13 specifies that the Bill, once enacted, will cease to be in force at the start of 1 July 2017. As the Appropriation Acts will sunset, there is no longer a requirement for the reduction of appropriations during the year. As such, the reduction sections that applied previously are no longer required (e.g. section 10 of *Appropriation Act (No. 1) 2013-2014*) and have been excluded from this Bill.

Schedule 1—Services for which money is appropriated

41 Schedule 1 specifies the appropriations proposed for the ordinary annual services of the Government. Schedule 1 contains a summary table which lists the total amounts for each portfolio. A separate summary table is included with further detail for each portfolio, with other tables detailing the appropriations for each Agency.

42 Schedule 1 includes, for information purposes, a figure for the previous financial year printed in italics under each appropriation amount labelled the "Actual Available Appropriation". That figure provides a comparison with the proposed appropriations for agencies receiving appropriations. In this way, comparator information is not provided for agencies abolished since the previous Appropriation Acts. For example, appropriations provided to the former Department of Education, Employment and Workplace Relations are not included in Schedule 1 to the Bill.

43 The Actual Available Appropriation is an estimate that does not affect the amount available at law. It is calculated for each item by adding the amounts appropriated in the previous year's annual Appropriation Acts, amounts adjusted under certain provisions of the FMA Act that are recorded in the Central Budget Management System (including section 32 transfers relating to Machinery of Government changes) plus adjustments such as AFMs and reductions by the Finance Minister.

44 In some instances the figure may also be affected by limits applied administratively by the Department of Finance. In addition, where an agency's outcome structure has changed since the last Appropriation Act, only ongoing outcomes are shown in the Bill.

45 For these reasons, the Actual Available Appropriation figures may be different from the sum of amounts provided in earlier Appropriation Acts.

46 More details about the appropriations in Schedule 1 are contained in the Portfolio Statements and the second reading speech for the Bill.

Machinery of Government changes

47 On 18 September 2013, the Governor-General in Council acting on the Prime Minister's recommendation under section 64 of the Constitution, gave authority to an Administrative Arrangements Order (AAO) which resulted in the various Machinery of Government (MoG) changes.

48 The Departments of State abolished were the Department of Education, Employment and Workplace Relations; the Department of Regional Australia, Local Government, Arts and Sport; and the Department of Resources, Energy and Tourism. The three abolished Departments of State do not appear in the Bill.

49 The Departments of State established were the Department of Education and the Department of Employment.

50 In addition, Departments of State in the first column were renamed to those listed in the second column:

Before 18 September 2013	After 18 September 2013
Department of Agriculture, Fisheries and Forestry	Department of Agriculture
Department of Broadband, Communications and the Digital Economy	Department of Communications
Department of Sustainability, Environment, Water, Population and Communities	Department of the Environment
Department of Infrastructure and Transport	Department of Infrastructure and Regional Development
Department of Finance and Deregulation	Department of Finance
Department of Health and Ageing	Department of Health
Department of Families, Housing, Community Services and Indigenous Affairs	Department of Social Services
Department of Immigration and Citizenship	Department of Immigration and Border Protection
Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education	Department of Industry

51 These MoG changes resulted in the transfer of legislative responsibility and related functions from abolished agencies to those newly established or renamed. The MoG changes also resulted in the transfer of legislative responsibility and related functions between various agencies. Full details of the MoG changes as expressed in the 18 September AAO and subsequent amending AAOs can be found at http://www.dpmc.gov.au/parliamentary/index.cfm.