THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (NO. 2)
2018-2019

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance,
Senator the Honourable Mathias Cormann)
Table of Acronyms and Defined Terms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAA</td>
<td>Actual Available Appropriation</td>
</tr>
<tr>
<td>AI Act</td>
<td>Acts Interpretation Act 1901</td>
</tr>
<tr>
<td>PD Act (No. 1)</td>
<td>Appropriation (Parliamentary Departments) Act (No. 1) 2018-2019</td>
</tr>
<tr>
<td>APO</td>
<td>Advance to the responsible Presiding Officer</td>
</tr>
<tr>
<td>BA</td>
<td>Budget Appropriation</td>
</tr>
<tr>
<td>Commonwealth entity</td>
<td>An entity as defined in section 10 of the PGPA Act</td>
</tr>
<tr>
<td>CRF</td>
<td>Consolidated Revenue Fund</td>
</tr>
<tr>
<td>Finance Minister</td>
<td>Minister for Finance</td>
</tr>
<tr>
<td>GST</td>
<td>Goods and Services Tax</td>
</tr>
<tr>
<td>non-corporate entities</td>
<td>Non-corporate Commonwealth entities as defined in the PGPA Act or the High Court</td>
</tr>
<tr>
<td>PGPA Act</td>
<td>Public Governance, Performance and Accountability Act 2013</td>
</tr>
<tr>
<td>PGPA Rules</td>
<td>Public Governance, Performance and Accountability Rule 2014</td>
</tr>
<tr>
<td>portfolio statements</td>
<td>Portfolio Budget Statements and Portfolio Additional Estimates Statements</td>
</tr>
</tbody>
</table>
Explanatory Memorandum to Appropriation (Parliamentary Departments) Bill (No. 2) 2018-2019

General Outline

1. This Explanatory Memorandum accompanies Appropriation (Parliamentary Departments) Bill (No. 2) 2018-2019 (the Bill).

2. The main purpose of the Bill is to propose appropriations from the Consolidated Revenue Fund (CRF) for expenditure in relation to the Parliamentary Departments in addition to amounts appropriated through the Appropriation (Parliamentary Departments) Act (No. 1) 2018-2019.

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. Consequently, the Bill proposes appropriations for the Parliamentary Departments, which are not for the ordinary annual services of the Government. Annual appropriations that are for the ordinary annual services of the Government are proposed in Appropriation Bill (No. 3) 2018-2019. Other annual appropriations that are not for the ordinary annual services of the Government are proposed in Appropriation Bill (No. 4) 2018-2019. Together these three Bills are termed the Additional Estimates Appropriation Bills.

4. The Portfolio Additional Estimates Statements are published and tabled in the Parliament in relation to the Bill. This Explanatory Memorandum should be read in conjunction with the various 2018-19 portfolio statements (being the Portfolio Budget Statements that accompanied the 2018-19 Budget and the Portfolio Additional Estimates Statements) for the Parliamentary Departments, which contain details on the appropriations set out in Schedule 1 of the Bill.

Structure of the Bill

5. The Bill provides for the appropriation of specified amounts for expenditure by the Parliamentary Departments.

6. Part 1 of the Bill deals with definitions, the interpretative role of the portfolio statements and the concept of notional transactions. 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), administered assets and liabilities items (clause 9) and other departmental items (clause 10). Part 3 of the Bill specifies the Advance to the responsible Presiding Officer (APO) provision (clause 11).

7. Part 4 of the Bill deals with credits to special accounts (clause 12), provides for amounts to be appropriated as necessary (clause 13), and specifies when the Bill is repealed (clause 14). In addition to the APO provision in Part 3, clause 13
of the Bill recognises that the appropriations in the Bill may also be varied by the Public Governance, Performance and Accountability Act 2013 (PGPA Act).

Financial Impact

8 The Bill, if enacted, would appropriate the amounts specified in Schedule 1 as set out in section 6.
Statement of compatibility with human rights

The Bill seeks to appropriate money for expenditure by the Parliamentary Departments.

Accordingly, this 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, the 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.
Notes on clauses

Part 1—Preliminary

Clause 1—Short title

1 Clause 1 specifies that the short title of the Bill, once enacted, will be the Appropriation (Parliamentary Departments) Act (No. 2) 2018-2019.

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” and “departmental item”. Each Parliamentary Department is a non-corporate entity for the purposes of the PGPA Act.

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) which provides for material to be considered in the interpretation of an Act if the material is declared by the Act to be relevant material for the purposes of section 15AB(1) of the AI Act.

5 The purpose of the portfolio statements is to provide information on the proposed allocation of resources to the outcomes of the Parliamentary Departments. The term “portfolio statements” is defined in the Bill, at clause 3, to mean the Portfolio Budget Statements (that accompanied the Appropriation Bills tabled in relation to the Appropriation (Parliamentary Departments) Act (No. 1) 2018-2019) and the Portfolio Additional Estimates Statements (tabled with this Bill).

Clause 5—Notional transactions between entities that are part of the Commonwealth

6 Clause 5 provides that notional transactions between non-corporate entities are to be treated as if they are real transactions. Notional transactions, therefore, require the debiting of an appropriation made by Parliament. The payments of the amounts in Schedule 1 from one non-corporate entity to another do not require, in a constitutional sense, an appropriation, because both non-corporate entities operate within the CRF. For reasons of financial discipline and transparency, the practice has arisen for these payments between non-corporate entities 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 76 of the PGPA Act.
7 When a non-corporate entity makes a payment, whether to another non-corporate entity or another part of the same non-corporate entity (such as a different “business unit” within the entity), it is to be treated as a “real” payment. 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 non-corporate entity (where relevant) as if it were a real receipt. This does not mean every internal transfer of public money involves a notional payment and receipt.

Part 2—Appropriation items

Clause 6—Summary of appropriations

8 Clause 6 sets out the total of the appropriations in Schedule 1 of the Bill. Importantly, the amounts in Schedule 1 may be increased by a determination under clause 11 (Advance to the responsible Presiding Officer).

9 The amounts in Schedule 1 of the Bill may be adjusted further in accordance with sections 74 and 75 of the PGPA Act. Specifically:

- Section 74 of the PGPA Act, when read with Rule 27 of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule), permits non-corporate entities to retain certain types of receipts by adding them to their most recent departmental item or other type of appropriation in an Appropriation Act when prescribed.

- Appropriations may be adjusted by amounts recoverable by a non-corporate entity from the Australian Taxation Office for Goods and Services Tax (GST), in accordance with section 74A of the PGPA 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 74A 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 74A also applies to notional transactions between and within non-corporate entities.

- Items may be adjusted to take into account the transfer of functions between non-corporate entities, in accordance with section 75 of the PGPA Act. It is possible that adjustments under section 75 may result in new items and/or outcomes being created in an Appropriation Act.

10 Additionally, the Finance Minister may manage the payment from items in the Bill by the Parliamentary Departments using a discretionary power under section 51 of the PGPA Act. Section 51 allows the Finance Minister to manage
the timing and the amount of appropriated money to be made available to a Commonwealth entity, except as required by law.

**Clause 7—Departmental items**

11 Clause 7 provides that the amount specified in a departmental item for a Parliamentary Department may be applied for the departmental expenditure of the Parliamentary Department. Clause 3 defines:

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

12 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.

13 Departmental items involve costs over which a Parliamentary Department has control. Departmental appropriations can be used to make any payment related to the functions of the Parliamentary Department including on purposes covered by other items whether or not they are in the Act for a Parliamentary Department. Expenditure typically covered by departmental items includes:

- employee expenses, suppliers and other operational expenses (e.g. interest and finance expenses); and
- the acquisition and capitalised maintenance of existing departmental assets valued at $10 million or less.

14 The cash to meet departmental expenses may be required at times other than when the expenses are incurred. Departmental appropriations are available until they are spent, or until the Act through which they are appropriated is repealed. Annual Appropriation Acts have a lifespan of up to three years after which they automatically repeal.

**Clause 8—Administered items**

15 Subclause 8(1) provides for the appropriation of administered amounts to be applied by a Parliamentary Department for the purpose of contributing to the outcome for an administered item. An “administered item” is defined in clause 3 to be the amounts set out in Schedule 1 opposite an outcome for a Parliamentary Department under the heading “Administered”. Administered amounts are appropriated separately for each outcome, so, unlike departmental items, the split across outcomes is not notional. This makes it clear what the funding is intended to achieve.

16 The appropriations for administered items in Schedule 1 represent the amounts required to meet the total estimated expenses for the administered outcomes for 2018-2019.
Notes on clauses

17. 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.

18. Administered items are those administered by a Parliamentary Department 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).

**Clause 9—Administered assets and liabilities items**

19. Clause 9 provides amounts in Schedule 1 to acquire new administered assets, enhance existing administered assets and/or discharge administered liabilities relating to activities administered by the Parliamentary Departments. Administered assets and liabilities appropriations are provided for functions managed by a Parliamentary Department. Administered assets and liabilities items can also be applied for any outcomes of a Parliamentary Department.

**Clause 10—Other departmental items**

20. Clause 10 appropriates departmental non-operating appropriations in the form of equity injections, over which the Parliamentary Departments also exercise control. This clause provides that the amount specified in other departmental items for a Parliamentary Department may be applied for the departmental expenditure of the Parliamentary Department. In short, “equity injections” can be provided to non-corporate entities to, for example, enable investment in assets to facilitate departmental activities.

21. Other departmental items are not expressed in terms of a particular financial year and do not automatically lapse. For example, equity injection appropriations provide funding for the full costs of acquiring new assets some of which might not be incurred until a later financial year. Other departmental items are available until they are spent, or the Act through which they were appropriated is repealed. Annual Appropriation Acts have a lifespan of up to three years after which they automatically repeal.

**Part 3—Advance to the responsible Presiding Officer**

**Clause 11—Advance to the responsible Presiding Officer**

22. Clause 11 of the Appropriation (Parliamentary Departments) Act (No. 1) 2018-2019 (PD Act (No. 1)) enables the responsible Presiding Officer to allocate additional appropriations for items when satisfied that there is an urgent need for that expenditure, and the existing appropriation in the current year, is not provided for, or is insufficiently provided for. The allocated amount is referred to as the Advance to the responsible Presiding Officer (APO). Subsections 11(3) to 11(6)
Notes on clauses

of PD Act (No. 1) provide that the total amounts that can be determined under the APO provision are:

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

23 Clause 11 of the Bill provides that irrespective of the amounts issued from the APO before the commencement of the Bill, the amount available under section 11 of PD Act (No. 1) will be restored to the original amounts. The provision has been added to the Bill to ensure that there will be sufficient scope to provide amounts from the APO for the remainder of the financial year.

24 Subclause 11(1) specifies that if the responsible Presiding Officer has determined under subsection 11(2) of PD Act (No. 1) to increase an amount in Schedule 1 of PD Act (No. 1) from the APO, then that amount is to be disregarded when the Bill commences.

25 Subclause 11(2) prevents appropriations for the same expenditure from both the APO and the Bill. Subclause 11(2) ensures that if Schedule 1 of the Bill provides an amount for a particular expenditure and, prior to the commencement of the Bill, the responsible Presiding Officer determines an amount from the APO under section 11 of PD Act (No. 1) for the same expenditure (the advanced amount), then the appropriation in the Bill will be reduced by the amount of the advanced amount. The appropriated amount cannot be reduced below nil. For example, if the Bill provides $20 million for a programme and an advanced amount of $5 million is determined by the responsible Presiding Officer under PD Act (No. 1) for a particular payment under that programme, then the amount appropriated by the Bill, once enacted, will be reduced by $5 million (i.e. appropriating only $15 million for the programme).

26 The responsible Presiding Officer may continue to make determinations under subsection 11(2) of PD Act (No. 1) to add an amount from the APO to an item of a Parliamentary Department if the criteria in subsection 11(1) of that Act are satisfied.

27 The Bill provides the responsible Presiding Officer for the Parliamentary Budget Office is the President of the Senate and the Speaker of the House of Representatives, which aligns with the process that applies to the Department of the Parliamentary Services.

Part 4—Miscellaneous

Clause 12—Crediting amounts to special accounts

28 Clause 12 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
Notes on clauses

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 PGPA Act by a determination of the Finance Minister (section 78) that is disallowable by Parliament or by another Act (sections 79 and 80). The determination or Act that establishes the special account will specify the purposes of the special account.

Clause 13—Appropriation of the Consolidated Revenue Fund

Clause 13 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 by the Bill may be affected by the PGPA Act, in particular sections 74 and 75, after the Bill receives the Royal Assent.

Clause 14—Repeal of this Act

Clause 14 provides that the Bill, once enacted, will repeal at the start of 1 July 2021.

Schedule 1—Services for which money is appropriated

Schedule 1 specifies the services of the Parliamentary Departments for which amounts will be appropriated. Schedule 1 contains a summary table which lists the total amounts for the Parliamentary Departments and separate tables detailing the appropriations for each Parliamentary Department. More details about the appropriations in Schedule 1 are contained in the portfolio statements and the second reading speech for the Bill.

Schedule 1 includes, for information purposes, the amount appropriated in PD Act (No. 1) labelled “Budget Appropriation (italic figures) – 2018-2019”, and a figure for the previous financial year labelled “Actual Available Appropriation (light figures) – 2017-2018”. The Budget Appropriation (BA) and Actual Available Appropriation (AAA) are estimates that do not affect the amount available at law. These figures provide a comparison with the proposed appropriations.

The BA and AAA are calculated for each item by adding the amounts appropriated in the relevant year’s annual Appropriation Acts, plus any APOs, and any adjustments under sections 51 and 75 of the PGPA Act. In some instances, the figure may also be affected by limits applied administratively by the Department of Finance. In addition, where an entity’s outcome structure has changed since the last Appropriation Act, only ongoing outcomes may be shown in the Bill.