2010-2011-2012-2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (NO. 1) 2013-2014

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance and Deregulation,
Senator the Honourable Penny Wong)

Table of Acronyms and Defined Terms

AI Act	*Acts Interpretation Act 1901*
CAC Act	*Commonwealth Authorities and Companies Act1997*
CRF	Consolidated Revenue Fund
Finance Minister	Minister for Finance and Deregulation
FMA Act	*Financial Management and Accountability Act 1997*
FMA Regulations	*Financial Management and Accountability Regulations 1997*
GST	Goods and Services Tax
LI Act	*Legislative Instruments Act 2003*
PB Statements	Portfolio Budget Statements

Appropriation (Parliamentary Departments) Bill (No. 1) 2013-2014

General Outline

1 This Explanatory Memorandum accompanies *Appropriation (Parliamentary Departments) Bill (No. 1) 2013-2014* (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. Appropriations for the Parliamentary Departments are not for the ordinary annual services of the Government, as is proposed in *Appropriation Bill (No.1) 2013-2014*.

3 This Explanatory Memorandum should be read in conjunction with the 2013-2014 Portfolio Budget Statements (PB Statements) for the Parliamentary Departments, which contain detail on the appropriations set out in Schedule 1 of the Bill. The PB Statements are published and tabled in the Parliament in relation to the Bill.

Structure of appropriations in the Bill

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

5 Part 1 of the Bill deals with definitions, the interpretative role of the PB Statements and the concept of notional payments.

6 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).

7 Part 3 of the Bill specifies the ways in which the amounts in Schedule 1 may be adjusted. In addition to the adjustment provisions in Part 3, clause 15 of the Bill recognises that the appropriations in the Bill may also be varied by the *Financial Management and Accountability Act 1997* (FMA Act).

8 Part 4 of the Bill deals with miscellaneous items including matters relating to Special Accounts and the appropriation of the Consolidated Revenue Fund.

Financial Impact

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

Statement of Compatibility with Human Rights

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

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 Budget Papers and the Portfolio Budget 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 the *Appropriation (Parliamentary Departments) Act (No. 1) 2013-2014*.

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", "current year", and "departmental item". Each Parliamentary Department is an agency for the purposes of the FMA Act.

Clause 4—Portfolio Statements

4 Clause 4 declares that the PB Statements are extrinsic material 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. The purpose of the PB Statements is to provide information on the proposed allocation of resources to the outcomes of the parliamentary departments. The PB 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.

Clause 5—Notional payments, receipts etc

5 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.

6 Clause 5 provides that notional transactions between agencies are to be treated as if they were real transactions. Notional transactions, therefore, require the use of a drawing right and the debiting of an appropriation made by Parliament. When an 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.

7 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. 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

8 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 the provisions in Part 3 of the Bill. In particular:

- Departmental items, administered assets and liabilities items and other departmental items may be reduced in accordance with clause 11;
- Administered items may be reduced in accordance with clause 12; and
- items may be increased by a payment from the advance to the responsible Presiding Officer in accordance with clause 13.

9 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 a Parliamentary Department 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 a Parliamentary Department, if those receipts are prescribed by the FMA Regulations, in accordance with section 31 of the FMA Act.
- 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. It might also result in amounts being transferred between Appropriation Acts.

Clause 7—Departmental items

10 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.

11 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.

12 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).

13 Departmental items include amounts specifically to meet costs associated with the acquisition and capitalised maintenance of existing departmental assets valued at $10 million or less.

14 Departmental items are not expressed in terms of a particular financial year and do not automatically lapse. Departmental items are available until they are spent or reduced in accordance with clause 11 of this Bill. 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.

15 The Finance Minister manages the payment from departmental items by the Parliamentary Departments 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.

16 Amounts appropriated for departmental items can be subject to a reduction process in accordance with clause 11 of the Bill. Under clause 11, the responsible Presiding Officer for a Parliamentary Department may make a written request asking the Finance Minister to make a determination to reduce a Parliamentary Department's departmental appropriation.

Clause 8—Administered items

17 Subclause 8(1) provides for the appropriation of administered expense 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". These items are appropriated separately for outcomes (i.e. unlike departmental items, the split across outcomes is not notional), making it clear what the funding is intended to achieve. Schedule 1 specifies how much can be expended on each outcome.

18 The appropriations for administered items in Schedule 1 represent the amounts required to meet the total estimated expenses for the administered outcomes for 2013-2014.

19 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 PB 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. The outcomes are not, however, necessarily tied to the existence of a particular agency (e.g. abolishing a department will not affect the valid operation of an appropriation for an administered item for an outcome of that department, because the purpose of the appropriation does not depend on the existence of the department).

20 Administered expenses are those administered by a Parliamentary Department. Specifically:

- administered items are tied to outcomes (departmental items are not);
- administered items must be spent in accordance with rules and conditions established by Government or Parliament; and
- there is a process in clause 12 for dealing with administered items that are not fully expensed or spent during the financial year.

21 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—Administered assets and liabilities items

22 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.

23 Clause 11 ensures that Parliamentary Departments only have access to the amount of appropriation required to fund activities in the year. Amounts appropriated for administered assets and liabilities items can be subject to a reduction process in accordance with clause 11 of the Bill. Under clause 11, the responsible Presiding Officer for a Parliamentary Department may make a written request to ask the Finance Minister to make a determination to reduce an administered assets and liabilities item of a Parliamentary Department.

24 The Finance Minister manages payments from administered assets and liabilities 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 payments.

Clause 10—Other departmental items

25 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 agencies to, for example, enable investment in assets to facilitate departmental activities.

26 Other departmental items are not expressed in terms of a particular financial year and do not automatically lapse. Other departmental items are available until they are spent or reduced in accordance with clause 11. 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. Amounts appropriated for another departmental item can be subject to a reduction process in accordance with clause 11 of the Bill.

27 The Finance Minister manages the payment from other department items by Parliamentary Departments through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act. Drawing rights control who may spend 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.

Part 3—Adjusting appropriation items

Clause 11—Reducing departmental items, administered assets and liabilities items and other departmental items

28 Departmental items, administered assets and liabilities items and other departmental items remain available until the appropriations are spent or reduced in accordance with clause 11. This clause enables surplus amounts to be reduced to promote the efficient, effective and ethical management of any surplus appropriations. Parliamentary Departments should only spend all of an appropriation item if there are government decisions to support that expenditure.

29 Examples of where clause 11 may be appropriate to reduce one of these items include:

- an excessive amount of appropriation was made in error;
- an amount is reclassified and appropriated again under another kind of appropriation (e.g. where an amount appropriated as departmental is to be reclassified as administered and a new administered appropriation is provided). The existing departmental appropriation remains legally available even though there is no government authority to spend the funds;
- efficiency savings result in a program costing less than expected; or
- a program is abolished under government policy before the appropriation is expended.

30 Subclause 11(1) enables the responsible Presiding Officer for a Parliamentary Department to ask the Finance Minister to reduce one of these items for that Parliamentary Department. Subclause 11(6) notes that a request under subclause 11(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* (LI Act), on the basis that it is requesting a determination to be made and it is the determination that has substantive effect.

31 Subclause 11(2) enables the Finance Minister to make a written determination to reduce one of those items. The Finance Minister is not obliged to act on a request to reduce excess appropriations. However, if the Finance Minister does:

- the determination must be for the amount specified in the request: subclause 11(2);
- the determination may not reduce the item below nil: subclause 11(3); and
- the item will be taken to be reduced in accordance with the determination of the Finance Minister: subclause 11(4).

32 Subclause 11(5) provides that once a determination is made under subclause 11(2), it must not be rescinded, revoked, amended or varied, other than to correct an error. Subclause 11(5) applies despite subsection 33(3) of the AI Act. This

subclause intends to exclude the operation of subsection 33(3) of the AI Act from determinations made under subclause 11(2). The purpose of subclause 11(5) is to ensure that the departmental item appropriation, when reduced under subclause 11(2), cannot be restored by means of a later determination.

33 Subclause 11(7) provides that a determination made under subclause 11(2) is a legislative instrument.

34 Despite subsection 44(2) of the LI Act*,* which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 11(7) provides that a determination reducing a departmental item under subclause 11(2) is subject to disallowance in accordance with section 42 of the LI Act. Parliament retains the power to disallow a determination to reduce a departmental item because any such determination will reduce the amount of an appropriation authorised by Parliament. Subclause 11(7) also confirms subsection 54(2) of the LI Act*,* which provides that instruments made under annual Appropriation Acts are not subject to sunsetting.

Clause 12—Reducing administered items

35 Clause 12 provides for amounts of administered items not required after the end of the current year to be extinguished. If the government then decides that amounts should be spent in a later financial year, the government must request Parliament to appropriate these amounts in future Appropriation Bills.

36 Clause 12 limits the amount that may be applied for an administered item to the amount reported for that item in a Parliamentary Department's annual report. Subclause 12(1) provides that if the amount published in the annual report is less than the amount of the item, then the administered item is taken to be reduced to the amount specified in the annual report. The amount of the item specified in Schedule 1 of the Bill may be increased or reduced by the other clauses of Part 3 of the Bill or in accordance with sections 30, 30A and 32of the FMA Act. The amount in the annual report must therefore be compared with the amount for the item in Schedule 1, together with any other adjustments that have been made to that amount.

37 Subclause 12(2) retains a power for the Finance Minister to determine that an amount published in the financial statements of a Parliamentary Department is taken to be the amount specified in the Minister's determination. The power in paragraph 12(2)(b) is to ensure that the amount published for the administered item can be corrected if, for example, the amount is erroneous or requires updating after the annual report is published.

38 Subclause 12(3) provides that a determination made under subclause 12(2) is a legislative instrument.

39 Despite subsection 44(2) of the LI Act*,* which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 12(3) provides that a determination regarding an administered item is

subject to disallowance in accordance with section 42 of the LI Act. Parliament retains the power to disallow a determination to reduce an administered item, because any such determination will reduce the amount of an appropriation authorised by Parliament. Subclause 12(3) also confirms subsection 54(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to sunsetting.

Clause 13—Advance to the responsible Presiding Officer

40 Clause 13 provides an advance to the responsible Presiding Officer for each of the Parliamentary Departments to be allocated when satisfied there is an urgent need for expenditure during the 2013-2014 financial year, for which Schedule 1 does not provide a sufficient appropriation.

41 Subclause 13(1) establishes the criteria that the responsible Presiding Officer must be satisfied about, before determining to add an amount from the advance to an item of a Parliamentary Department. The responsible Presiding Officer will consider issuing an amount under subclause 13(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[1]. Generally, the other appropriation adjustment options in Part 3 of the Bill or under sections 30, 30A and 32 of the FMA Act, must have been exhausted before the responsible Presiding Officer will make a determination under subclause 13(2).

42 Subclause 13(2) enables the responsible Presiding Officer to make a determination to allocate an amount out of the advance to an item in Schedule 1, to a new item not already in Schedule 1, or to a new outcome. Subclauses 13(3) to (5) cap the amounts that can be allocated from the advance to each of the Parliamentary Departments.

43 Subclause 13(6) provides that a determination under subclause 13(2) is a legislative instrument, which is not subject to disallowance or sunsetting.

44 Disallowance of a subclause 13(2) determination could frustrate the purpose of clause 13 which is to provide additional appropriation for urgent expenditure. Parliament authorises the advance to the responsible Presiding Officer under clause 13 so that there is an amount available to cover any potential urgent requirements that may arise. A subclause 13(2) determination will not require any additional appropriations to be authorised by Parliament. A subclause 13(2) determination also differs from a ministerial determination under clause 11 or 12. Determinations under those clauses will reduce the amount of an appropriation approved by Parliament. As noted above, those other determinations therefore will be subject to disallowance.

[1] Under the AFM guidelines, expenditure is urgent if required within two weeks. The guidelines are available at http://www.finance.gov.au/budget/budget-process/advance-to-finance-minister.html.

45 A subclause 13(2) determination is not subject to sunsetting provisions because the amount allocated from the advance to the responsible Presiding Officer will be extinguished when it is spent.

Part 4—Miscellaneous

Clause 14—Crediting amounts to Special Accounts

46 Clause 14 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) or another Act (section 21). The determination or Act that establishes the Special Account will specify the purposes of the Special Account.

Clause 15—Appropriation of the Consolidated Revenue Fund

47 Clause 15 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 FMA Act, in particular sections 30, 30A and 32 of the FMA Act (see clause 6), after the Bill receives the Royal Assent.

Schedule 1—Services for which money is appropriated

48 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 Departments.

49 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 is printed in italics under each appropriation amount to provide a comparison with the proposed appropriations. The Actual Available Appropriation does not affect the amounts available at law.

50 More details about the appropriations in Schedule 1 are contained in the PB Statements and the second reading speech.