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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

APPROPRIATION BILL (NO. 5) 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
Act (No. 1)	<i>Appropriation Act (No. 1) 2014-2015</i>
Act (No. 3)	<i>Appropriation Act (No. 3) 2014-2015</i>
AFM	Advance to the Finance Minister
AI Act	<i>Acts Interpretation Act 1901</i>
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
Commonwealth entity	An entity as defined in section 10 of the PGPA Act
CRF	Consolidated Revenue Fund
Finance Minister	Minister for Finance
FMA Act	<i>Financial Management and Accountability Act 1997</i>
GST	Goods and Services Tax
LI Act	<i>Legislative Instruments Act 2003</i>
MoG	Machinery of Government
non-corporate entities	Non-corporate Commonwealth entities as defined in the PGPA Act or the High Court
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA (C&T) Act	<i>Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014</i>
PGPA Rules	<i>Public Governance, Performance and Accountability Rule 2014</i>
portfolio statements	Portfolio Budget Statements, Portfolio Additional Estimates Statements and Portfolio Supplementary Additional Estimates Statements

Appropriation Bill (No. 5) 2014-2015

General Outline

1 This Explanatory Memorandum accompanies *Appropriation Bill (No. 5) 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 in addition to amounts appropriated through the Appropriations Acts that implemented the 2014-2015 Budget and the 2014-2015 Mid-Year Economic and Fiscal Outlook.

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. 6) 2014-2015*. Together these Bills are termed the Supplementary Additional Estimates Appropriation Bills.

4 The Portfolio Supplementary 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 2014-2015 portfolio statements (being the Portfolio Budget Statements that accompanied the 2014-2015 Budget, the Portfolio Additional Estimates Statements and the Portfolio Supplementary Additional Estimates Statements) which contain details on the appropriations set out in the Schedules of the Bills.

5 Importantly, the Bill has been drafted to take account of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which came into effect on 1 July 2014 and replaces the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). As part of the transition of the Acts appropriating money, the Bill includes notes to provide clarity around provisions within the FMA Act that continue to operate until the completion of the actions involved.

Structure of appropriations in the Bill

6 The Bill provides for the appropriation of specified amounts for expenditure by Australian Government entities, primarily being non-corporate Commonwealth entities (non-corporate entities) under the PGPA Act. These entities were previously Agencies under the FMA Act or bodies under the CAC Act and transitional amendments were made to the 2012-2013, 2013-2014 and 2014-2015 Appropriation Acts to replace references to or reliance on provisions in the FMA and CAC Acts with equivalent provisions in the PGPA Act.

7 During the transition, it is important that Australian Government entities, whether classified or recognised as an Agency under the FMA Act, a

Commonwealth authority or Commonwealth company under the CAC Act, or a Commonwealth entity under the PGPA Act, continue to have access to such resources as has been appropriated under the relevant Appropriation Acts as intended by Parliament.

8 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) and corporate entity items (clause 9). Part 3 of the Bill specifies the way in which the amounts in Schedule 1 may be adjusted.

9 Part 4 deals with credits to special accounts (clause 11), provides for amounts to be appropriated as necessary (clause 12), and specifies when the Bill ceases to be in force (clause 13). In addition to the adjustment provision in Part 3, clause 12 of the Bill recognises that the appropriations in the Bill may also be varied by both the PGPA Act and the FMA Act, as it continues to apply due to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (PGPA (C&T) Act).

Financial Impact

10 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. 5) 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”, “corporate entity”, “non-corporate entity”, 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 Commonwealth entities 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 (that accompanied the Appropriation Bills tabled at the last Budget), the Portfolio Additional Estimates Statements (that accompanied the Appropriation Bills tabled at the last Additional Estimates) and the Portfolio Supplementary Additional Estimates Statements (tabled with the Bill).

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

6 Clause 5 ensures that payments between non-corporate entities result in a debit from the appropriation for the paying non-corporate entity. For example, 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. However, 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 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. 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.

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 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

9 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.

10 The amounts in Schedule 1 of the Bill may be adjusted further in accordance with sections 30A and 31 of the FMA Act, which continue to apply due to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (PGPA (C&T) Act), as well as sections 74 and 75 of the PGPA Act. Specifically:

- Appropriations may be adjusted by amounts recoverable by an Agency (or non-corporate entity) 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 non-corporate entities.

- Departmental items may be increased to take into account certain other amounts received by a non-corporate entity, if those receipts are prescribed by the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), in accordance with section 74 of the PGPA Act. Section 74 of the PGPA Act 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. For example, PGPA Rule 27 prescribes amounts that offset costs in relation to the activities of a non-corporate entity and amounts that relate to an employee's leave (including amounts received under the paid parental leave scheme that was established on 1 January 2011).

- 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.

Clause 7—Departmental items

11 Clause 7 provides that the amount specified in a departmental item for a non-corporate entity may be applied for the departmental expenditure of the non-corporate entity. Clause 3 defines:

- “departmental item” to be the total amount set out in Schedule 1 in relation to a non-corporate entity 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 non-corporate entity has control. Departmental appropriations can be used to make any payment related to the functions of the non-corporate entity including on purposes covered by other items whether or not they are in the Act for an entity. Expenditure typically covered by departmental items includes employee expenses, suppliers and other operational expenses (e.g. interest and finance expenses).

14 There can also be occasions when a non-corporate entity, 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 non-corporate entity is providing corporate services assistance to another non-corporate entity.

15 Since 2010-2011, 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 non-corporate entities 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.

16 Generally, non-corporate entities 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.

17 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 the Act through which they were appropriated is repealed or sunsets. 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.

18 The Minister for Finance (Finance Minister) manages the payment from departmental items by non-corporate entities 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.

19 Until 30 June 2015, the Finance Minister may also manage payments through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act, which continue to apply because of Part 2 of Schedule 2 to the PGPA (C&T) 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 a non-corporate entity for the purpose of contributing to the outcome for a non-corporate entity. An “administered item” is defined in clause 3 to be the amounts set out in Schedule 1 opposite an outcome for a non-corporate entity under the heading “Administered”. Administered amounts are appropriated separately for outcomes, so, unlike departmental items, the split across outcomes is not notional. This helps to make it clear what the funding is intended to achieve. Schedule 1 specifies how much can be expended on each outcome.

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 administered by a non-corporate entity 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 the payment from administered items by non-corporate entities 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.

25 Until 30 June 2015, the Finance Minister may also manage payments through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act, which continue to apply because of the PGPA (C&T) 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—Corporate entity items

26 Clause 9 provides for direct appropriations of money for corporate entities to be paid from the CRF by the relevant Department. Clause 9 provides that payments for corporate entities must be used for the purposes of those entities.

27 A “corporate entity” is defined in clause 3 to be a corporate Commonwealth entity or a Commonwealth company within the meaning of the PGPA Act. Many corporate entities receive funding directly from appropriations. However, these entities are legally separate from the Commonwealth, and as a result, do not debit appropriations or make payments from the CRF.

28 Corporate entity payments are initiated by requests to the relevant portfolio Departments from the corporate entity. The Finance Minister manages appropriations for corporate entities through a discretionary power to control the timing and amount made available under section 51 of the PGPA Act, except as required by law.

29 Until 30 June 2015, the Finance Minister may also manage payments through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act, which continue to apply because of the PGPA (C&T) 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. Corporate entities hold the amounts paid to them on their own account.

30 Subclause 9(2) provides that if a corporate entity is subject to another Act that requires amounts appropriated by Parliament for the purposes of that entity to be paid to the entity, then the full amount of the corporate entity payment must be

paid to the entity. 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 corporate entity, where that other legislation requires the Commonwealth to pay the full amount appropriated for the purposes of the entity.

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

Part 3—Advance to the Finance Minister

Clause 10—Advance to the Finance Minister

32 Section 10 of the *Appropriation Act (No. 1) 2014-2015* (Act (No. 1)) 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). Subsection 10(3) of Act (No. 1) provides that the total amount that can be determined under the AFM provision is \$295 million.

33 Clause 10 of the Bill provides that irrespective of the amounts issued from the AFM before the commencement of the Bill, the amount available under section 10 of Act (No. 1) will be restored to the original amount of \$295 million. The provision has been added to the Bill to ensure that there will be sufficient scope to provide amounts from the AFM for the remainder of the financial year.

34 Subclause 10(1) specifies that if the Finance Minister has determined under subsection 10(2) of Act (No. 1) to increase an amount in Schedule 1 of Act (No. 1) from the AFM, then that amount is to be disregarded when the Bill commences. From the date this Bill commences as an Act the total amount that can be determined under the AFM will again be \$295 million.

35 Subclause 10(2) prevents appropriations for the same expenditure from both the AFM and the Bill. Subclause 10(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 Finance Minister determines an amount from the AFM under section 10 of 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 grants programme and an advanced amount of \$5 million is determined by the Finance Minister under Act (No. 1) for a particular grant 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 grants programme).

36 The Finance Minister may continue to make determinations under subsection 10(2) of Act (No. 1) to add an amount from the AFM to an item of a Commonwealth entity if the criteria in subsection 10(1) of that Act are satisfied.

Part 4—Miscellaneous

Clause 11—Crediting amounts to special accounts

37 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 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 12—Appropriation of the Consolidated Revenue Fund

38 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 PGPA Act and the FMA Act (as it continues to apply because of the PGPA (C&T) Act), in particular sections 30A and 31 (see clause 6), after the Bill receives the Royal Assent.

Clause 13—Act ceases to be in force

39 Clause 13 provides 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. 5) 2013-2014*) and have been excluded from this Bill.

Schedule 1—Services for which money is appropriated

40 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 Commonwealth entity.

41 Schedule 1 includes, for information purposes, the amount appropriated in Act (No. 1) and *Appropriation Act (No. 3) 2014-2015* (Act (No. 3)), which is printed in italics and labelled as “Actual Available Appropriation (italic figures)—2014-2015”. The amount printed as the Actual Available Appropriation is an estimate that does not affect the amount available at law.

42 Schedule 1 also includes, for information purposes, a figure for the previous financial year printed in light figures labelled the “Actual Available Appropriation (light figures)—2013-2014”. That figure provides a comparison with the proposed appropriations for entities receiving appropriations. 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 PGPA Act and FMA Act (as they continue to apply due to the PGPA (C&T) Act) plus adjustments such as AFMs. In addition, where an entity's outcome structure has changed since the last Appropriation Act, only ongoing outcomes are shown in the Bill. In some instances the figure may also be affected by limits applied administratively by the Department of Finance.

43 The Actual Available Appropriation is an estimate that does not affect the amount available at law. For these reasons, the Actual Available Appropriation figures may be different from the sum of amounts provided in earlier Appropriation Acts.

44 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

45 Since the commencement of Act (No. 1), there have been changes to Departments and Commonwealth entities pursuant to the Machinery of Government (MoG) changes from the Administrative Arrangements Order (AAO) of 23 December 2014.

46 On 23 December 2014, the Governor-General in Council acting on the Prime Minister's recommendation under section 64 of the Constitution renamed the Departments of State in the first column to the names in the second column:

Before 23 December 2014	From 23 December 2014
Department of Education	Department of Education and Training
Department of Industry	Department of Industry and Science

47 These AAOs were implemented through section 75 determinations. The determination altered references to the names of Departments and Outcome 3 of the Department of Education and Training in Schedule 1 of Act (No. 1) to reflect these AAOs.

48 The MoG changes also resulted in the transfer of legislative responsibility and related functions between various Commonwealth entities. Full details of the MoG changes as expressed in the 23 December AAO can be found at <http://www.dpvc.gov.au/pvc/publication/administrative-arrangements-order-made-23-december-2014>.

49 These changes were reflected in Act (No. 3), and are also reflected in this Bill.