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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (NO. 1)**  
**2015-2016**

EXPLANATORY MEMORANDUM

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

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## Table of Acronyms and Defined Terms

AI Act	<i>Acts Interpretation Act 1901</i>
APO	Advance to the responsible Presiding Officer
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
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

# Appropriation (Parliamentary Departments) Bill (No. 1) 2015-2016

## General Outline

1 This Explanatory Memorandum accompanies *Appropriation (Parliamentary Departments) Bill (No. 1) 2015-2016* (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.

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. 1) 2015-2016*. Other annual appropriations that are not for the ordinary annual services of the Government are proposed in *Appropriation Bill (No. 2) 2015-2016*. Together these three Bills are termed the Budget Appropriation Bills.

4 The 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 2015-2016 portfolio statements for the Parliamentary Departments, which contain details on the appropriations set out in Schedule 1 of the Bill.

## Structure of appropriations in 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.

7 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 way in which the amounts in Schedule 1 may be adjusted.

8 Part 4 of the Bill deals with miscellaneous items including matters relating to special accounts (clause 12), the appropriation of the CRF (clause 13) and specifies when the Bill is repealed (clause 14). In addition to the adjustment provision in Part 3, clause 13 of the Bill recognises that the appropriations in the Bill may also be varied by the PGPA 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 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 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 the *Appropriation (Parliamentary Departments) Act (No. 1) 2015-2016*.

#### **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”, “departmental item” and “non-corporate entity”. Each Parliamentary Department is a non-corporate entity for the purposes of the *Public Governance, Performance and Accountability Act 2013* (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) 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 the outcomes of the Parliamentary Departments. 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 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 74 and 75 of the PGPA Act. Specifically:

- Departmental items may be increased to take into account certain other amounts received by a Parliamentary Department, 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).
- 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.

### **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).

14 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.

15 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.

16 The Minister for Finance (Finance Minister) manages the payment from departmental items 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 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”. 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.

18 The appropriations for administered items in Schedule 1 represent the amounts required to meet the total estimated expenses for the administered outcomes for 2015-2016.

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 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.

20 Administered items are those administered by a Parliamentary Department. Specifically, administered items are tied to outcomes (departmental items are not).

21 The Finance Minister manages payments from administered items by 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 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 The Finance Minister manages payments from administered assets and liabilities items by 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 10—Other departmental items**

24 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.

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

26 The Finance Minister manages the payment from other departmental items by 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.

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

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

27 Clause 11 enables the responsible Presiding Officer to provide additional appropriations for items when satisfied there is an urgent need for that expenditure, and the existing appropriation is inadequate. This additional appropriation is referred to as the Advance to the responsible Presiding Officer (APO). Subsections 11(3) to 11(6) provide the total amounts that can be determined under the APO provision.

28 Subclause 11(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 11(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, the other appropriation adjustment options in Part 3 of the Bill or under sections 74 to 75 of the PGPA Act, must have been exhausted before the responsible Presiding Officer will make a determination under subclause 11(2).

29 Subclause 11(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.

30 Subclauses 11(3) to (6) cap the amounts that can be allocated from the advance to each of the Parliamentary Departments.

31 Subclause 11(7) provides that a determination under subclause 11(2) is a legislative instrument, which is not subject to disallowance or sunseting.

32 Disallowance of a subclause 11(2) determination could frustrate the purpose of clause 11 which is to provide additional appropriation for urgent expenditure. Parliament authorises the advance to the responsible Presiding Officer under clause 11 so that there is an amount available to cover any potential urgent requirements that may arise. A subclause 11(2) determination will not require any additional appropriations to be authorised by Parliament.

33 A subclause 11(2) determination is not subject to sunseting provisions because the amount allocated from the advance to the responsible Presiding Officer will be extinguished when it is spent.

## **Part 4—Miscellaneous**

### ***Clause 12—Crediting amounts to special accounts***

34 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 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 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***

35 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 to 75 (see clause 6), after the Bill receives the Royal Assent.

### ***Clause 14—Repeal of this Act***

36 Clause 14 specifies that the Bill, once enacted, will repeal at the start of 1 July 2018.

## **Schedule 1—Services for which money is appropriated**

37 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.

38 Schedule 1 includes, for information purposes, a figure for the previous financial year printed in italics and labelled the “Actual Available Appropriation (italic figures)—2014-2015”. That figure provides a comparison with the proposed appropriations.

39 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 PGPA Act and *Financial Management and Accountability Act 1997* (FMA Act) (as they continue to apply due to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (PGPA (C&T) Act)) plus adjustments such as APOs. In some instances the figure may also be affected by limits applied administratively by the Department of Finance.

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

41 More details about the appropriations in Schedule 1 are contained in the portfolio statements and the second reading speech for the Bill.