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Appropriations and the powers of the Senate: a quick guide

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Appropriations generally

The key concept underpinning the laws associated with appropriations is that the Government (the Executive) may not spend money without the authorisation of the Parliament (the Legislature).

Thus, an appropriation is the legal release of monies from the Consolidated Revenue Fund (CRF). Appropriation Acts, however, do not create a constitutional source of power for the Commonwealth to spend money; they merely release that money from the CRF. The Commonwealth's power to spend money must be found in other parts of the *Constitution* such as section 51.¹

Under the terms of the *Constitution*, a Bill proposing to appropriate monies from the CRF must satisfy certain unique requirements. An Appropriation Bill must also comply with certain presentational requirements.

Constitutional requirements

Section 81 of the *Constitution* provides:

All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund [CRF], to be appropriated for the purposes of the Commonwealth ...²

Section 83 of the *Constitution* provides that no money may be withdrawn from the CRF 'except under appropriation made by law'.³ The effect of these two sections is that all monies received by the Commonwealth must be paid into the CRF, and must not be spent before there is an appropriation authorising specific expenditure.

'Expenditure' when used in this context means cashflows into or out of the CRF; rather than whether or not a transaction is classified as an 'expense' for accounting purposes. For example:

1. *Pape v Commissioner of Taxation* (2009) 238 CLR 1, [2009] HCA 23.

2. *Australian Constitution*, section 81.

3. *Ibid.*, section 83.

- the purchase of an asset by the Commonwealth will require an appropriation to the value of the cash required to purchase the asset, even though the transaction would not be classified as an 'expense' for accounting purposes while
- the accounting expense associated with decline in the value of an asset (depreciation) does not require an appropriation as it involves no cashflow into or out of the CRF.

Annual appropriations and special appropriations

There are two broad types of appropriation mechanism: annual appropriations, which are the subject of the Appropriation Acts tabled on Budget night and special appropriations, which are found in other legislation.

Annual appropriations

Annual appropriations are provided for by the annual Appropriation Bills and appropriate defined amounts of money for specific purposes across each portfolio.

There are two types of annual Appropriation Bills:

- odd numbered Bills for the 'ordinary' annual services of the Government and
- even numbered Bills for the 'other' annual services of the Government.

The distinction between the 'ordinary' annual services of the Government and the 'other' annual services of the Government is discussed below.

Typically, on Budget night, the Treasurer will table three Bills:

- Appropriation Bill (No. 1)
- Appropriation Bill (No. 2) and
- Appropriation (Parliamentary Departments) Bill (No. 1).

Funding requirements usually change after the Budget is brought down in May. This may be because the Government has made new policy commitments that need to be funded, or because earlier appropriations may be insufficient for existing programs. As a result, governments may seek parliamentary approval for additional spending later in the year. These 'additional estimates' are incorporated into Appropriation Bills No. 3 and No. 4 and Appropriation (Parliamentary Departments) Bill No. 2. These Bills are the counterparts of Appropriation Bills No. 1 and No. 2 and Appropriation (Parliamentary Departments) Bill No. 1, respectively.

The Government can introduce as many Appropriation Bills as it believes necessary. A third pair of appropriation Bills for the 2017–18 year was introduced on 8 May 2018.⁴

'Ordinary annual services of the Government' and 'other' annual services of the Government

Section 54 of the *Constitution* requires that there be a separate law appropriating funds for the 'ordinary annual services of the Government', and that other matters must not be dealt with in the same Bill.⁵

The reason for this distinction arises because, while the Senate may amend proposed laws appropriating revenue for purposes other than for the ordinary annual services of the

4. [Appropriation Bill \(No. 5\) 2017–2018](#), [Appropriation Bill \(No. 6\) 2017–2018](#).

5. [Australian Constitution](#), section 54: 'The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such proposed appropriation'.

Government, section 53 of the *Constitution* provides that the Senate may not amend proposed laws appropriating revenue or monies for the ordinary annual services of the Government. However, section 53 does allow the Senate to return such proposed laws to the House of Representatives together with a request for the omission or amendment of any provision in the law.

Neither the 'ordinary annual services of the Government' nor the 'other' annual services of the Government are defined in the *Constitution*.

A working distinction between 'ordinary' and 'other' annual services was agreed in a Compact between the Senate and the Government in 1965.⁶ Several amendments have been made to the Compact since 1965 and in 2010 the Senate Standing Committee on Appropriations and Staffing recommended that the Senate restate the Compact in a consolidated form.⁷ On 22 June 2010 the Senate resolved as follows:

(1) To reaffirm its constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the Government.

(2) That appropriations for expenditure on:

- (a) the construction of public works and buildings;
- (b) the acquisition of sites and buildings;
- (c) items of plant and equipment which are clearly definable as capital expenditure (but not including the acquisition of computers or the fitting out of buildings);
- (d) grants to the states under section 96 of the Constitution;
- (e) new policies not previously authorised by special legislation;
- (f) items regarded as equity injections and loans; and
- (g) existing asset replacement (which is to be regarded as depreciation),

are not appropriations for the ordinary annual services of the Government and that proposed laws for the appropriation of revenue or moneys for expenditure on the said matters shall be presented to the Senate in a separate appropriation bill subject to amendment by the Senate.

(3) That, in respect of payments to international organisations:

- (a) the initial payment in effect represents a new policy decision and therefore should be in Appropriation Bill (No. 2); and
- (b) subsequent payments represent a continuing government activity of supporting the international organisation and therefore represent an ordinary annual service and should be in Appropriation Bill (No. 1).

(4) That all appropriation items for continuing activities for which appropriations have been made in the past be regarded as part of ordinary annual services.⁸

Adherence to the Compact has not always been strict, and the High Court has held that any disagreements between the Houses are not justiciable.⁹ Any disputes, therefore, are to be determined between the Houses themselves.

6. J Odgers, *Odgers' Australian Senate practice*, 14th edn, Department of the Senate, Canberra, 2016, p. 386.

7. Senate Standing Committee on Appropriations and Staffing, *Ordinary annual services of the government: 50th report*, The Senate, Canberra, June 2010.

8. Australia, Senate, *Journals*, 127, 2008–10, 22 June 2010, pp. 3642–3.

It is the tendency of governments of all political persuasions to include as many measures as possible in the Bill for the ordinary annual services of the Government to avoid those measures being altered by the Senate.

The Senate's powers

Legislation relating to money Bills is subject to some different rules to normal legislation.

Section 53 of the *Constitution* prevents proposed laws appropriating monies originating in the Senate.¹⁰ Further, under section 56 of the *Constitution*, all proposed laws for the appropriation of monies may only be introduced into the House of Representatives following a recommendation by the Governor-General.¹¹ As the Governor-General only acts upon the advice of the Executive, this provision of the *Constitution* prevents non-government members of the House of Representatives from introducing Bills that would propose to appropriate money from the CRF.¹²

As noted, section 53 of the *Constitution* provides that the Senate may not amend proposed laws appropriating revenue or monies for the ordinary annual services of the Government. The Senate may, however, return such proposed laws to the House of Representatives and request, by message, the omission or amendment of any items or provisions.

The Senate may amend proposed laws appropriating revenue or monies for purposes other than for the ordinary annual services of the Government, as long as it does not 'increase any proposed charge or burden on the people'.¹³ Conceivably, the Senate could amend an appropriation Bill for the other annual services of the Government in order to, for example, redirect the proposed appropriation to another purpose, or reduce the proposed appropriation to nil.

Where a Bill for the ordinary annual services of the Government includes amounts that the Senate considers should, because of the Compact, be included in a Bill for the other annual services of the Government, the Senate may elect to deal with that Bill as if it were a Bill for the other annual services of the Government. In other words, the Senate may treat such a Bill as being susceptible to amendment.¹⁴

Presentational requirements

Departmental and administered expenses

Australian Accounting Standard 1050 Administered Items requires that government agencies distinguish between revenues and expenses that they administer for the Government, and those over which they have some control.¹⁵ Generally, **administered expenses** are the costs of providing the programs that agencies run for the Government, while **departmental expenses** are the costs incurred in running agencies.

Appropriation Bills, therefore, distinguish between 'administered' expenses and 'departmental' expenses. Administered appropriations may only be used for the program or outcome for which it

9. *Osborne v Commonwealth* (1911) 12 CLR 321, [1911] HCA 19, per Griffith CJ at [336].

10. *Ibid.*, section 53.

11. *Ibid.*, section 56.

12. B Wright and P Fowler, *House of Representatives practice*, 6th edn, Department of the House of Representatives, Canberra, 2012, p. 424.

13. *Australian Constitution*, section 53.

14. Wright and Fowler, *House of Representatives practice*, op. cit., p. 430.

15. Australian Accounting Standards Board (AASB), *Administered items*, AASB 1050, December 2013.

is appropriated, while departmental appropriation may be moved between different departmental activities.¹⁶

Special appropriations

Annual appropriations account for about 20 per cent of Commonwealth spending.

The other 80 per cent of Commonwealth spending is effected by special appropriations. Special appropriations are limited by purpose, not by time or quantum. They are sometimes referred to as ‘standing appropriations’ as they do not expire with the effluxion of time. A special appropriation does not have to be separated out of general policy legislation, and does not contain dollar limits where the other provisions of the legislation provide sufficient precision regarding the purpose for which the monies may be drawn. For example, section 7 of the [Asian Development Bank \(Additional Subscription\) Act 1977](#) provides for a special appropriation in the following terms:

Appropriation

There may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, the moneys necessary for the purpose of making any payment that is to be made by Australia:

- (a) in pursuance of an agreement made under this Act; or
- (b) under a promissory note issued under this Act.

Similarly, section 125 of the [Health Insurance Act 1973](#) appropriates such monies as are needed to make Medicare payments. It provides:

All amounts payable by the Commonwealth under Part II or under an arrangement in force under section 129A shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

Most significant programs are established under standalone legislation and include a specific appropriation to provide monies for that program.

To change the amount of money that will be provided by a special appropriation, the criteria that must be met to use the special appropriation need to be changed. Where those criteria are set out in legislation, the Parliament must pass an amendment to that legislation.

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16. *Combet v Commonwealth* (2005) 224 CLR 494, [2005] HCA 61, per Gummow, Hayne, Callinan and Heydon JJ at [123].