

Appropriation (Parliamentary Departments) Bill (No. 2) 2013-2014

Appropriation Bill (No. 3) 2013-2014

Appropriation Bill (No. 4) 2013-2014

Portfolio: Finance

Introduced: House of Representatives, 13 February 2014

Summary of committee concerns

1.13 The committee seeks clarification whether existing budgetary processes currently incorporate any explicit human rights considerations.

Overview

1.14 The Appropriation (Parliamentary Departments) Bill (No. 2) 2013-2014 appropriates additional money out of the Consolidated Revenue Fund (CRF) for expenditure in relation to the parliamentary departments. The Appropriation Bill (No. 3) 2013-2014 proposes appropriations from the CRF for the ordinary annual services of the government. The Appropriation Bill (No. 4) 2013-2014 proposes appropriations from the CRF for services that are not considered to be the ordinary annual services of the government.

1.15 The amounts proposed for appropriation are in addition to the amounts appropriated through the Appropriation Acts that implemented the 2013-2014 Budget. Together, these three bills are termed the Additional Estimates Appropriation Bills.

Compatibility with human rights

Statement of compatibility

1.16 Each of the three appropriation bills is accompanied by a brief and substantially identical statement of compatibility, that notes that the High Court has stated that beyond authorising the withdrawal of money for the broadly identified purposes, Appropriation Acts 'do not create rights and nor do they, importantly, impose any duties'.¹ The statements conclude that as their legal effect is limited in this way, the bills do not engage, or otherwise affect, human rights.² They also state that '[d]etailed information on the relevant appropriations, however, is contained in the Portfolio [Budget] Statements'.³

1 Statement of compatibility for each bill, para 3.

2 Statement of compatibility for each bill, para 4.

3 Statement of compatibility for each bill, para 5.

Committee view on compatibility

1.17 The predecessor to this committee considered the human rights implications of appropriation bills in its Third and Seventh Reports of 2013.⁴ It noted that:

Proposed government expenditure to give effect to a particular policy may have implications for both the promotion and limitation of human rights. Statements that routinely conclude that appropriation bills do not engage any human rights therefore may not be accurate in a strict sense. This would particularly be the case where specific appropriations may involve reductions in expenditure which could amount to retrogression or limitations on rights.⁵

1.18 However, our predecessor committee acknowledged the difficulties that appropriation bills present for the preparation of statements of compatibility, given their technical nature and the fact that they frequently include appropriations for a wide range of programs and activities across many portfolios. It accepted the then Finance Minister's explanation that the detail about specific appropriations is mainly contained in the individual agency's portfolio budget statement and the budget papers generally, rather than in the appropriation bill itself.

1.19 With these considerations in mind, our predecessor committee suggested that:

It appears that the most practical way to address the compatibility of appropriation bills is to ensure that human rights are appropriately incorporated in the underlying budgetary processes, including requiring portfolio budget statements to contain express human rights impact assessments. The committee encourages the government to consider this proposition, not least as it would be consistent with the government's policy objectives in implementing Australia's Human Rights Framework, that is, to ensure appropriate recognition of human rights issues in policy and legislative development.⁶

1.20 The committee notes the government's view that appropriation bills do not engage or otherwise affect any human rights, and that this view is based on the understanding that appropriation bills do not create rights or impose duties and are therefore considered to have a limited legal effect. Identical statements were made in relation to previous appropriations bills considered by our predecessor committee,⁷ which noted that:

4 See, Parliamentary Joint Committee on Human Rights (PJCHR), *Third Report of 2013*, 13 March 2013, pp 65-67; and *Seventh Report of 2013*, 5 June 2013, pp 21-24.

5 PJCHR, *Seventh Report of 2013*, 5 June 2013, p 23.

6 PJCHR, *Seventh Report of 2013*, 5 June 2013, p 23.

7 See statements of compatibility for the Appropriation (Parliamentary Departments) Bill (No. 1) 2013-2014; Appropriation Bill (No. 1) 2013-2014; and Appropriation Bill (No. 2) 2013-2014.

While appropriation bills may not create any statutory rights or duties, the committee notes that they may nevertheless have an impact on the implementation of international human rights obligations, including the obligation to progressively realise economic, social and cultural rights using the maximum of resources available.⁸

1.21 The committee notes that the statements of compatibility for these bills simply reiterate that view without addressing the committee's concerns that such bills may nonetheless engage Australia's human rights obligations.

1.22 Similarly to our predecessor committee, this committee does not consider that it will be generally necessary for it to make substantive comments on all appropriation bills. Nonetheless, in principle, appropriation bills, like all other bills, are subject to the requirements of the *Human Rights (Parliamentary Scrutiny) Act 2011* and the committee notes that there may be cases in which the committee considers it appropriate to comment on such bills.

1.23 The committee considers that it would be desirable for the government to give active consideration to requiring human rights impact assessments to be expressly incorporated in portfolio budget statements to ensure that human rights are properly reflected in the underlying budgetary processes that lead to specific appropriations. Our predecessor committee requested information with regard to whether budgetary processes took account of human rights but did not receive a response. The committee considers that such a systematic approach to the identification of human rights impacts and appropriate priorities is particularly important when government is seeking to reduce expenditure or redirect funds across the whole of government or within particular portfolios.

1.24 The committee intends to write to the Minister for Finance to seek clarification whether the current budgetary processes expressly take account of human rights factors.

