

## Chapter 2 - Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on 23 June 2014. The committee has concluded its examination of these matters on the basis of responses received by the proponents of the bill or relevant instrument makers.

### **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*

#### **Purpose**

2.1 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.

2.2 The Appropriation Bill (No. 3) 2013-2014 proposes appropriations from the CRF for the ordinary annual services of the government.

2.3 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.

2.4 The amounts proposed for appropriation are in addition to the amounts appropriated through the appropriation Acts that implemented the 2013-14 Budget. Together, the three bills are termed the bills.

#### **Background**

2.5 The committee reported on the bills in its *Third Report of the 44th Parliament*.

2.6 The bills were subsequently passed by the Parliament and received Royal Assent on 9 April 2014.

#### **Committee view on compatibility**

##### ***Budgetary processes***

##### ***Consideration of human rights***

2.7 The committee sought clarification from the Minister for Finance as to whether the current budgetary processes expressly take account of human rights factors.

## Minister's response

Thank you for your letter of 4 March 2014 about the statements of compatibility with human rights in the Explanatory Memoranda that accompanied the Additional Estimates Appropriation Bills.

Given that the legal effect of Appropriation Bills is extremely limited, I can confirm to the committee that I do not consider that these Bills engage, or otherwise affect, the rights, obligations or freedoms relevant to the *Human Rights (Parliamentary Scrutiny) Act 2011*.

I note that a similar question along these lines was raised by your predecessor committee last year.

My predecessor, Senator the Hon Penny Wong, replied on 10 May 2013 advising that it is neither practicable nor appropriate for the Explanatory Memoranda to Appropriation Bills to set out a concise assessment of how human rights are affected by all of the Government's Budget decisions. This remains the case.

The approach of requiring human rights impact assessments to be incorporated in portfolio budget statements, suggested in your committee's report, is also neither practicable nor appropriate.

This is also true in relation to whether complex budgetary processes can expressly take account of human rights factors. Taking that approach would entrench an extensive drafting exercise and the need to obtain detailed assessments from all agencies across the Australian Government.

That said, however, the budgetary processes do, by their nature, require an assessment of all factors that might relate to the relevant policies, including environmental, legal, economic, social and moral factors. Human rights factors are also part of these many factors taken into account.

If it would assist your committee further, I would be pleased for officials from the Department of Finance to brief the committee on aspects of the Appropriation Bills and their Explanatory Memoranda.<sup>1</sup>

## Committee response

### **2.8 The committee thanks the Minister for Finance for his response and has concluded its examination of these bills.**

2.9 However, in the committee's view, the fact that appropriation Acts viewed in isolation may not directly affect rights or obligations under domestic law is not determinative of whether they engage human rights for the purposes of the *Human Rights (Parliamentary Scrutiny Act) 2011*.

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1 See Appendix 2, Letter from Senator the Hon Mathias Cormann, Minister for Finance, to Senator Dean Smith, 17 March 2014.

2.10 As the committee has noted previously, both the promotion and limitation of human rights may result from the adoption of legislative frameworks and the allocation of funds necessary to give effect to policy. This is because, in such cases, the appropriation of funds or additional funds to support the implementation of policies ultimately facilitates actions which may give rise to human rights compatibility concerns and, indeed, involve the failure by Australia to fulfil its obligations under the treaties listed in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

2.11 Notwithstanding the committee's view that appropriations bills may engage and potentially limit human rights, the committee acknowledges the minister's view that such bills present particular difficulties given their technical nature and the fact that they frequently include appropriations for a wide range of programs and activities across many portfolios.

2.12 The committee notes the minister's advice that human rights factors are among many factors taken into account in budgetary processes. As the committee has noted, the assessment of such factors might be provided for in portfolio budget statements. However, in the committee's view, further consultation is required as to how such consideration of human rights factors in budgetary processes may be subjected to human rights assessments to support the committee's examination of appropriations bills for compatibility with human rights.

**2.13 In light of the above, the committee thanks the Minister for Finance for his offer of a meeting with departmental officials, and welcomes the opportunity to continue to progress towards practical and substantive human rights assessments of appropriations bills.**