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Performance Audit

Management of Special Appropriations

Across Entities

Australian National Audit Office

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Senior Executive Director
Corporate Management Branch
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Or via email:
communication@anao.gov.au.

Canberra ACT

17 April 2018

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit across entities titled *Management of Special Appropriations.* The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—http://www.anao.gov.au.

Yours sincerely

Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Phone: (02) 6203 7300
Fax: (02) 6203 7777
Email: ag1@anao.gov.au

ANAO reports and information about the ANAO are available on our website:
http://www.anao.gov.au

Audit team

David Monk
Nathaniel Loorham
Annum Babar
Julia Lu
Ashish Bajpai
Steven Favell
Hannah S. Climas
Paul Bryant

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Summary

Background

1. Section 81 of the Constitution creates the Consolidated Revenue Fund (CRF) and requires all Commonwealth receipts to be paid into it. Section 83 of the Constitution requires all payments out of the CRF to be supported by a legal appropriation. Appropriations 'segregate' or 'earmark' money from within the CRF for the government to use, and allow the Parliament to exercise a level of control over government by attaching conditions according to which funds must be used.

2. Special appropriations provide funding allocations outside of annual appropriation Acts. Generally they are found in a provision or provisions of an individual Act, rather than in the Appropriation Acts presented to the Parliament each year.

3. Special appropriations are the dominant appropriation mechanism in Australia. In 2016–17, 77 per cent of spending was appropriated through a special appropriation. In comparison, in 1910 special appropriations accounted for 10 per cent of all Commonwealth payments, and in 1949–50 accounted for 49 per cent.

4. Commonwealth entities are responsible for the special appropriations listed in either the Acts that the entity is named in, or the Acts they have responsibility for under the relevant Administrative Arrangements Order. The Department of Finance (Finance) has ultimate responsibility for financial accountability, efficiency, governance and financial management frameworks within the Commonwealth Government.

Rationale for undertaking the audit

5. Special Appropriations were selected for audit on the basis of the volume of government payments made through this mechanism. In 2016–17, $353.5 billion of Commonwealth expenses were supported via special appropriation.[1] This appropriation type is generally used for government payments which cannot be capped as they are entitlement based (such as social security payments), or meet other criteria as set by government. Unlike annual appropriations, the value of which is considered and agreed by Parliament annually as part of the budget process, special appropriations are only considered once by Parliament and are not brought back for consideration unless legislative policy changes are considered.

6. A performance audit was last conducted into special appropriations in 2004.[2]

Audit objective and criteria

7. The objective of the audit was to examine entity compliance with the regulatory requirements for the establishment and ongoing management of special appropriations.

1 Australian Government, *Agency Resourcing: Budget Paper No. 4: 2017–18*, 2017, p. 100.

2 ANAO Audit Report No. 15 2004–05 *Financial Management of Special Appropriations*, 2004.

8. To form a conclusion against the audit objective, the ANAO adopted the following high level criteria:

- Have appropriate processes and guidance been established, in line with regulatory requirements, for agencies in giving advice to government when a special appropriation is being recommended?
- Do entities have effective arrangements in place for the ongoing management and monitoring of special appropriations in line with regulatory requirements?

Conclusion

9. Entities were found to be compliant with the regulatory requirements for the establishment and ongoing management of special appropriations.

10. Central agencies have published a range of guidance on creating special appropriations. Entities successfully took a risk-based approach to the development of new special appropriations, characterised by greater consideration of appropriation type in higher risk cases.

11. Entities were effective in linking payments to the correct appropriation and in managing other entities' use of appropriations for which they were responsible.

12. Since 2012, a substantial number of unused or exhausted appropriations have been repealed.

13. There was a lack of consistency and compliance in entity approaches to reporting requirements regarding any special appropriations which had not been drawn on in a particular reporting period ('unused appropriations').

14. The required approach for entities to report unused special appropriations in the Special Appropriations Table in Budget Paper No. 4 is not sufficiently clear.

15. Entities made reasonable attempts to implement Finance-issued guidance on compliance with section 83 and have been appropriately reporting potential section 83 breaches.

Supporting findings

The development and design of new special appropriations

16. Whole-of-government guidance for special appropriations has been published. This is contained in documents owned by Finance and the Department of the Prime Minister and Cabinet (PMC). To enhance the guidance, Finance could elaborate on what 'other circumstances' will make an annual appropriation unsuitable (and hence, justify when a special appropriation should be used). Finance could also, in a central location, reference the various guidance documents to achieve greater consistency and accessibility across the guidance as a whole.

17. As part of new policy proposals, entities must stipulate a likely appropriation mechanism (special appropriation, annual appropriation or special account). Entities have taken a risk-based approach to this, spending greater resources on determining the appropriation type when the policy parameters were more complex. Entities have implemented this effectively.

Management and reporting of special appropriations

18. Entities demonstrated that they tracked cash against a specific appropriation at payment.

19. Finance's agreements with entities that use special appropriations and the delegation from Social Services to the Department of Human Services (Human Services) in the Bilateral Management Arrangement were kept up to date and properly constructed in relation to their reporting responsibilities.

20. Current legislation includes a number of Acts with exhausted/unused special appropriations. The risk to the Commonwealth associated with this is reduced due to the presence of controls in the Finance Central Budget Management System (CBMS), which prevent unauthorised drawdowns. Additionally, a number of Acts have been repealed following a stocktake conducted in 2012.

21. Between 2012–13 and 2015–16, each entity's audited financial statements included a specific table for special appropriations applied.

22. There was a lack of consistency and compliance in entity approaches to financial statement reporting requirements regarding unused special appropriations (excluding Human Services, which did not have unused special appropriations in the scope period).

23. The basis for determining which unused special appropriations are reported in the Special Appropriations Table in Budget Paper No. 4 is unclear; there are inconsistencies in the extent to which unused special appropriations are being reported. The ANAO has suggested that Finance clarify which unused special appropriations are to be reported in the Table.

Section 83 of the Constitution and special appropriations

24. Entities have appropriately identified and reported potential breaches of section 83 of the Constitution. Finance has issued risk-based guidance to entities regarding compliance with this requirement.

25. For special appropriations with specific or objective criteria that rely on information from recipients, it is possible that entities may make overpayments that breach section 83 of the Constitution. It is important that entities have systems in place to identify any overpayments of special appropriations to ensure that these breaches have a low financial risk and impact.

26. Social Services uses Finance's guidance to conduct risk assessments in relation to its special appropriations and associated legislation, but has not shown evidence that it has attempted the treatments suggested by Finance beyond concluding that further work would provide no additional benefit. The other two entities were found to have made reasonable attempts to implement Finance's guidance.

Recommendation

Recommendation no.1 **Paragraph 3.24**	In order to promote greater consistency across entities in financial reporting and compliance with the Financial Reporting Rule, the ANAO recommends that the Department of Finance clarify reporting requirements when a special appropriation is unused in both the reporting and comparative years. **Department of Finance's response:** *Agreed.*

Summary of entity responses

27. The proposed audit report was provided to the Department of Finance. Extracts were provided to the Department of Human Services, the Department of Industry, Innovation and Science, and the Department of Social Services. All entities formally responded. The summary responses are provided below, with full responses provided at Appendix 1.

Department of Finance

Finance supports the findings and key learnings in the audit report. The report confirms that entities have been managing, monitoring and reporting their special appropriations consistent with regulatory requirements.

Department of Human Services

The Department of Human Services (Human Services) welcomes the audit's overall conclusions and findings. Human Services notes that the report has concluded that its management and reporting of special appropriations, including those delegated from the Department of Social Services, has been effective and in line with regulatory requirements.

Department of Industry, Innovation and Science

The department notes the findings in the report and acknowledges that it is managing its special appropriations effectively. The department is also pleased to note the ANAO's positive acknowledgement of the approach it has followed in its development of the special appropriation for the Northern Australia Infrastructure Facility Bill 2016.

Department of Social Services

The Department of Social Services (the Department) notes the audit's overall conclusion that the Department was compliant with the regulatory requirements for the establishment and ongoing management of special appropriations.

The Department also notes that the audit found that the current controls around the payments administered by the Department of Human Services are appropriate.

Key learnings for all Australian Government entities

28. Below is a summary of key learnings and areas of good practice identified in this audit report that may be considered by other Commonwealth entities:

Governance and risk management

Entities responsible for issuing whole-of-government guidance should ensure that it is clear, consistent and straightforward to apply. Entities should avoid all-encompassing criteria in guidance, such as generic 'other circumstances' classes, as this reduces the effectiveness of specific criteria that reflect underlying principles or intentions.

Guidance should be reviewed regularly to ensure it addresses contemporary issues, remains relevant, considers lessons learned from implementation, and reflects feedback from entities using the guidance.

Policy / program design

When entities are developing new policies and programs, selecting the most appropriate appropriation type, taking into account Finance guidelines, may require detailed discussions with Finance, and the position may change over time if the policy is adapted. Entities should seek Finance advice as early as practicable during the policy or program design phase and seek to reconfirm the advice as the policy is amended over time.

Audit findings

1. Background

Appropriations in Australia

Historical development

1.1 Appropriations 'segregate' or 'earmark' money in a central fund for government utilisation.[3] They do not create duties or obligations[4], but instead allow the Parliament to exercise a level of control over government by attaching conditions to which funds must be used.[5] The most fundamental condition is purpose.[6] An appropriation's purpose may involve elements such as a specific policy objective, function, or a section of the population satisfying a particular criterion in order to receive monies. The breadth of the purpose is for Parliament to determine.[7]

1.2 The specific ability to establish appropriations, and the requirements associated with this, were inserted into State constitutions such as Victoria and NSW in the 19th century. Variants were also inserted into the laws of the United Kingdom that governed the colonies at the time. The *Australian Courts Act 1828* introduced a requirement that any law which levied a tax must expressly state the purpose for which the revenue would be appropriated and applied.[8]

1.3 The Australian Constitution includes two key appropriation provisions. Section 81 creates a central fund and requires that all government receipts be paid into it:

> 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 in the manner and subject to the charges and liabilities imposed by this Constitution.

1.4 Section 83 requires that any utilisation of the monies from this central fund be supported by an Act of Parliament. It states in part, 'No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law'.

Types of appropriations

1.5 Annual appropriation bills are introduced to the Australian Parliament two to three times per year. They outline the amounts allocated to each entity to support the achievement of their designated outcome(s). Most of entities' running costs (departmental amounts) are funded through

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3 *NSW v The Commonwealth (Surplus Revenue Case)* (1908) 7 CLR 179, pp. 190–91 and p. 200; *Victoria v The Commonwealth (AAP Case)* (1975) 134 CLR 338, p. 411; *Pape v The Commissioner of Taxation* [2009] HCA 23, [78–80], [176–77] and [292].

4 *Surplus Revenue Case,* pp. 190 and 200, *Commonwealth of Australia v The Colonial Ammunition Company* (1923) 34 CLR 198, pp. 222–25; *AAP Case,* pp. 387, 393 and 411.

5 *Commonwealth of Australia v The Colonial Combing, Spinning and Weaving Company* (1922) 31 CLR 421, p. 449; *Commonwealth of Australia v The Colonial Ammunition Company* (1923) 34 CLR 198, p. 224; *AAP Case,* p. 384; *Pape,* [60], [80] and [294].

6 *Surplus Revenue Case,* p. 200; *Victoria v The Commonwealth (Pharmaceutical Benefits Case)* (1945) 71 CLR 237, p. 253; *Wilkie v The Commonwealth* [2017] HCA 40, [69–71].

7 *AAP Case*, pp. 394, 404 and 422; *Combet v The Commonwealth* [2005] HCA 61, [26–27] and [160]; *Wilkie,* [71].

8 G Appleby, 'There must be limits: The Commonwealth spending power', *Federal Law Review,* 37 (1), 2009, pp. 93–132.

annual appropriations. Entities also receive significant funding for grants and subsidies (administered amounts) through annual appropriations.[9]

1.6 Funding allocations outside of the annual appropriation Acts are referred to as special appropriations. These funding allocations are generally for administered purposes. Once the Parliament passes the relevant legislation, these appropriations do not require further annual scrutiny from the Parliament in order to continue to be valid. The purpose is usually described in the same Act as the appropriation, but can be found in other Acts or regulations.[10]

1.7 Purposes can be specific—for example if the appropriation is based on precise payment criteria—or can be more general. An example of a general purpose is section 41 of the *Northern Australia Infrastructure Facility Act 2016,* which appropriates the CRF 'for the purposes of providing grants of financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure.' This section limits the appropriation to $5 billion.

1.8 An example of a special appropriation with more specific criteria is the Newstart Allowance. Part 2.12 of the *Social Security Act 1991* sets out detailed criteria for eligibility to the allowance. Section 242 of the *Social Security (Administration) Act 1999* appropriates the CRF for the purposes of the social security law, which includes the legislated criteria. In this case, the size of the appropriation adjusts to meet demand. The power to spend and the authority to appropriate correspond closely to each other.

1.9 A distinct type of special appropriation is a special account, which occurs when part of the CRF is allocated to a particular purpose. Legislation sets out the specific circumstances under which the special account can be credited, and sections 78 and 80 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) appropriate the CRF for the purposes in each special account. Special accounts are most frequently used to hold funds levied by groups outside the Commonwealth, such as community and industry bodies.

Use of special appropriations over time

1.10 The use of special appropriations increased significantly during the twentieth century. A 2005 report by the Senate Standing Committee on the Scrutiny of Bills provided the following data.

Table 1.1: Percentage of Commonwealth payments using a special appropriation, selected years

Year	Percentage
1909–10	10
1929–30	38
1949–50	49
1969–70	56
1992–93	74
2002–03	80

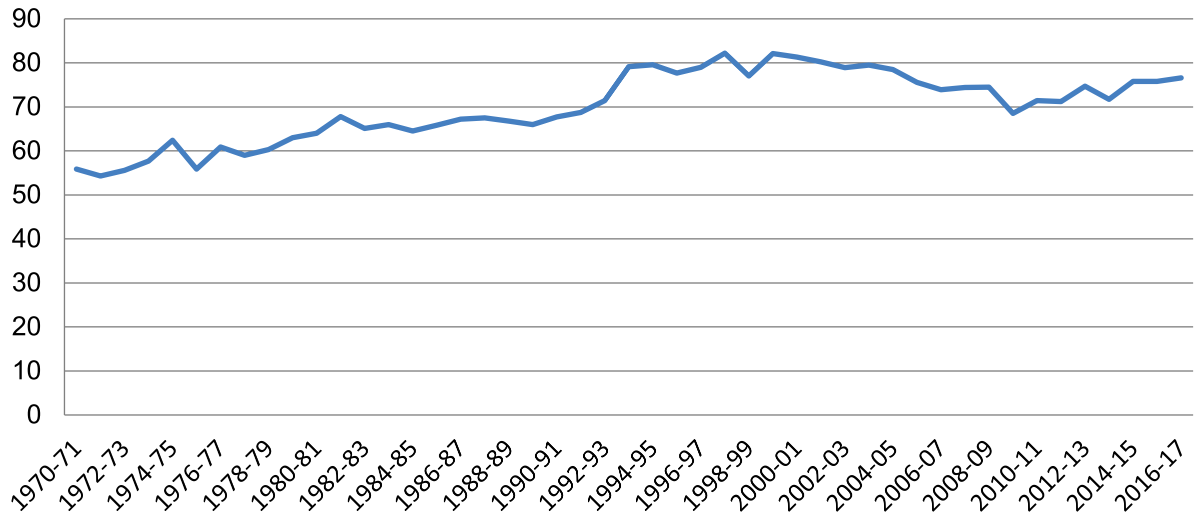
Source: Senate Standing Committee for the Scrutiny of Bills, *Accountability and Standing Appropriations,* Fourteenth Report, 2005, p. 270.

9 See also BC Wright (ed.), *House of Representatives Practice,* 6th edition, 2012, pp. 428–38.

10 See also BC Wright (ed.), *House of Representatives Practice,* 6th edition, 2012, p. 423.

1.11 The Senate Committee report shows steady growth in the use of special appropriations from 1909–10 to 2002–03. To obtain greater detail, annual data was generated for the period 1970–71 through to 2016–17. The results are in Figure 1.1.

Figure 1.1: Percentage of total Commonwealth payments funded from a special appropriation, 1970–71 to 2016–17



Source: ANAO analysis. Special appropriation data sourced from Budget Papers. For 1998–99 to 2006–07, special appropriations data obtained from Portfolio Budget Statements and annual reports because there was no consolidated table of special appropriations in the Budget Papers. Payments data obtained from Australian Government, *Budget Paper No. 1, 2017–18*, 2017.[11 12]

1.12 The figure shows a steady increase in the use of special appropriations until the 1990s. Since then, use has plateaued at between 70 per cent and 80 per cent. Special appropriations have for some time been the main method of appropriating the CRF.

1.13 It is possible to match events against movements in the time series. Up until 1992–93, Medicare Agreements were funded through annual appropriations. From 1993–94 onwards they were funded by a special appropriation. This of itself increased the percentage of Commonwealth payments funded by a special appropriation by 4 per cent. Also in that year, greater debt charges increased the ratio by another 1 per cent.[13] The dip in the percentage to 70 per cent in 2009–10 was caused by reforms to payments to the States and Territories and discontinuing fiscal stimulus payments from 2008–09 that were part of the response to the Global Financial Crisis.[14]

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11 Some special appropriations were excluded from the analysis because they did not represent an external payment, for example tax refunds (netting off revenue) and allocating cash to investment vehicles such as the Consolidated Loan and Investment Reserve and the National Debt Sinking Fund.

12 Finance conducted similar calculations for 2012–13 to 2016–17. From 2012–13, Finance's figures were 76 per cent, 74 per cent, 77 per cent, 77 per cent and 76 per cent. Finance used actual underlying cash payments data from the Consolidated Financial Statements as well as year-end appropriations data from CBMS. Finance's results for the relevant five year period are more accurate because it used final amounts, rather than a May estimate (Budgets have been published in May since 1994). On average, Finance's data was approximately 1 per cent higher than in the Figure above for the relevant years.

13 Australian Government, *The Commonwealth Public Account 1993–94: Budget Paper No. 2*, 1993, pp. 54, 58 and 206.

14 Significant changes were implemented across the Families, Health and Treasury portfolios; Australian Government, *Agency Resourcing: Budget Paper No. 4: 2009–10*, 2009, pp. 21 ,22, 24, 43, 45 and 58; Australian Government, *Agency Resourcing: Budget Paper No. 4: 2010–11*, 2010, p. 68.

1.14 The growth in the use of special appropriations may be related to increased spending on health and social security entitlements programs, which in Australia have typically used special appropriations. In 1970–71, spending on these programs supported by special appropriations was 4 per cent of Gross Domestic Product and 20 per cent of Commonwealth payments. In 1990–91 this increased to 8 per cent and 35 per cent respectively. The values for 2010–11 were 11 per cent and 45 per cent.

Overseas comparisons

1.15 There are substantial differences in the methods used to appropriate from central public funds. Data for five countries is shown in Table 1.2.

Table 1.2: Use of special appropriations in selected countries

Country	Type of special appropriation	Policy areas of most frequent use	Percentage of overall government expenditure
Australia	'Special appropriations', which are permanent appropriations created in general legislation.	Social security, health, and veterans' benefits	77
United Kingdom	Payments through the National Insurance Fund and for Consolidated Fund Standing Services.	Social security, debt servicing and European Union payments	24
United States	'Mandatory spending', which is authorised and required by existing laws rather than subject to the annual budget process.	Social security, Medicare and some veterans' benefits	62
Canada	'Statutory appropriations', which are authorised by continuing legislative authority.	Transfers to the Provinces and transfers to individuals	71
New Zealand	'Permanent Legislative Authorities' in general legislation.	Debt servicing and salaries of independent officers	15

Source: ANAO analysis of various international and Australian references. See Appendix 2.

1.16 The use of special appropriations in the United States and Canada is similar to that in Australia. They comprise the majority of government payments, and are especially used for social security. New Zealand and the United Kingdom have a much lower use of special appropriations. Contrary to the other jurisdictions, New Zealand appropriates social security pensions annually rather than through a permanent arrangement.[15]

15 See Appendix 2.

Payments

The payments framework

1.17 The authority to make payments on behalf of the Commonwealth operates separately to appropriations. The Administrative Arrangements Orders (AAOs) allocate accountability for legislation to ministers, and allocate responsibility for the implementation of such legislation to the relevant portfolio departments. Portfolio legislation provides entities with the legal authority to make payments. The High Court case of *Williams* recognised that the Constitution provides the Executive with authority to make payments for the day to day operations of government.[16]

1.18 Section 23 of the PGPA Act gives the Accountable Authorities of non-corporate Commonwealth entities the power to make commitments on behalf of the Commonwealth.[17]

1.19 Corporate Commonwealth entities are created by Acts, which bestow them powers to do all things necessary or convenient to carry out their functions. Such powers may include making payments on behalf of the Commonwealth.

Decentralised payments

1.20 Prior to June 1999, Australian government payments were made by the relevant central agency – which was the Department of the Treasury until 1976, and then subsequently the Department of Finance (Finance). As part of broader reforms in the late 1990s, including the introduction of accrual accounting, responsibility for the management of banking and payment processes was devolved to individual entities.[18] Entities now access cash from the Cash Management component of the Central Budget Management System (CBMS), which Finance manages.

1.21 This reflects more broadly the relationship between Finance and Commonwealth entities. Finance is responsible for the Commonwealth financial management framework and guidance, and entities are responsible for complying with these requirements. Division 2 of the PGPA Act places a range of responsibilities on accountable authorities to properly manage their entities. Accountable authorities are usually the entity's chief executive officer or governing board.

Past reviews of special appropriations

1.22 Recent reviews considering special appropriations are listed on Table 1.3. The ANAO completed a report in 2004, which had all six recommendations accepted by government. This was followed by reports by three parliamentary committees, all of which either had recommendations accepted by government, or commenced a new practice of their own.

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16 *Williams v Commonwealth of Australia* [2012] HCA 23; and A Twomey, 'Post-Williams Expenditure–When Can the Commonwealth and States Spend Public Money without Parliamentary Authorisation?' *University of Queensland Law Journal,* 2014, pp. 9–28.

17 Further information about making commitments on behalf of the Commonwealth is available from Department of Finance, *RMG 400 – Commitment of relevant money* [Internet], 2017, available from <https://www.finance.gov.au/resource-management/accountability/commitment/> [accessed 19 March 2018].

18 M Kennedy, *Cheques and Balances* [Internet], Parliament of Australia, Research Paper no.16 2001–02, 2002, available from <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0102/02rp16> [accessed 7 August 2017].

Table 1.3: Recent reviews considering special appropriations

Year	Author	Topic/title	Accepted recommendations or outcomes
2004	ANAO	*Financial Management of Special Appropriations*	Six recommendations accepted, including that: entities link payments to a specific valid appropriation; that entities agree on how to coordinate the administration and reporting of a special appropriation where it is used by more than one entity; and Finance review its reporting requirements for unused special appropriations.
2005	Joint Committee of Public Accounts and Audit	*Report 404: Review of Auditor-General's Reports 2003–2004 Third & Fourth Quarters, and First and Second Quarters of 2004–2005*	That Finance continue providing advice to entities on special appropriations, and that the Attorney-General's Department and Finance resolve which entity should administer the special appropriation in relation to mirror taxes.[a]
2005	Senate Standing Committee on the Scrutiny of Bills	*Accountability and Standing Appropriations*	Committee commenced examining explanatory memoranda of bills with special appropriations for an explanation of their inclusion. Ministers are approached for further information, where warranted.
2007	Senate Standing Committee on Public Finance and Administration	*Transparency of Commonwealth Spending*	From 2008, the Budget Papers have reported special appropriations in a single table.
2008	Senator Andrew Murray	*Review of Operation Sunlight*	The 2017 edition of the Legislation Handbook recommends that drafters consider a financial limit or sunset provision for new special appropriations.

Note a: The States and Territories cannot constitutionally apply taxes to places owned by the Commonwealth. Section 6 of the *Commonwealth Places (Mirror Taxes) Act 1998* applies State taxes as Commonwealth law, which the States then collect on behalf of the Commonwealth. The collected taxes form part of the CRF and the appropriation in section 23 permits the Commonwealth to supply these funds to the States; Joint Committee of Public Accounts and Audit, Parliament of Australia, Report 404: *Review of Auditor-General's Reports 2003–2004 Third & Fourth Quarters, and First and Second Quarters of 2004–2005*, 2005, pp. 181–82.

Source: See Appendix 2.

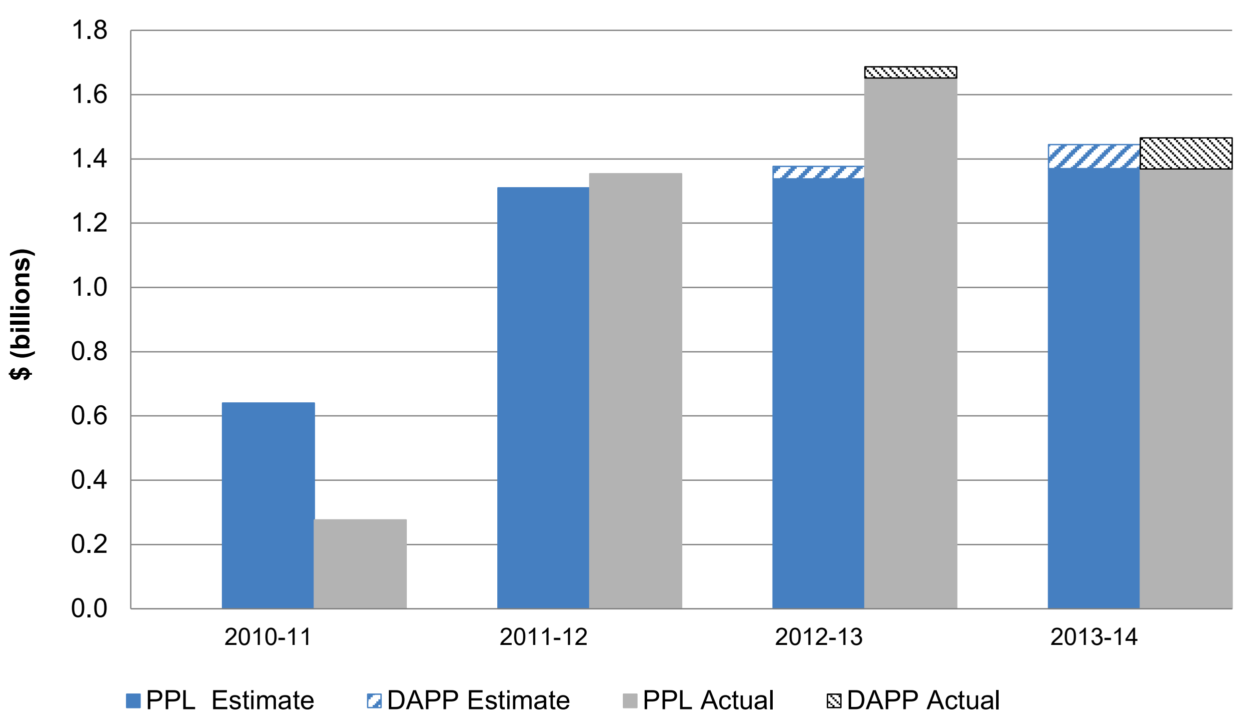
1.23 The three most recent of these reports noted that special appropriations are not subject to regular parliamentary scrutiny and can have permanent effect without needing further parliamentary approval.[19] To address this, the Senate Standing Committee on Public Finance and Administration recommended that government arrange for special appropriations to be subject to regular parliamentary and government review. The Government noted the recommendation and

19 Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Fourteenth Report of 2005: Accountability and Standing Appropriations,* 2005, p. 270; Senate Standing Committee on Finance and Public Administration, Parliament of Australia, *Transparency and Accountability of Commonwealth Public Funding and Expenditure,* 2007, pp. 15–19; and Senator Andrew Murray, *Review of Operation Sunlight: Overhauling Budgetary Transparency,* 2008, pp. 29–32.

stated it was considering inserting review clauses into new special appropriations.[20] Senator Murray recommended that special appropriations be subject to regular review within government and by the Parliament, including annual reviews by Finance. The Government noted the recommendation, but disagreed with the need to conduct annual reviews due to cost.[21]

1.24 Noting these concerns, the ANAO examined the accuracy of new special appropriations costings over the forward estimates.[22] The most instructive analysis related to the *Paid Parental Leave Bill 2010* (later Act), which found that this bill's original costings proved to be largely accurate. This included an additional payment type being added to the Act (Dad and Partner Pay) following an amendment by the Parliament.[23] A summary of this analysis is below in Figure 1.2.

Figure 1.2: Comparison of estimates and actuals for paid parental leave ($ billions)



Source: ANAO analysis of financial statements and Portfolio Budget Statements for the Department of Families, Housing, Community Services and Indigenous Affairs, the Department's costing data, and the Explanatory Memorandum for the Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Bill 2012.

20 Senate Standing Committee on Finance and Public Administration, Parliament of Australia, *Transparency and Accountability of Commonwealth Public Funding and Expenditure,* 2007, pp. 15–19; and Commonwealth of Australia, Commonwealth Government Response to Senate Report, *Transparency and Accountability of Commonwealth Public Funding and Expenditure,* 2009.

21 Senator Andrew Murray, *Review of Operation Sunlight: Overhauling Budgetary Transparency,* 2008, pp. 29–32; and Commonwealth of Australia, *Government response to Review of Budget Transparency,* 2008.

22 Analysis was also conducted for the Steel Transformation Plan Bill 2011 and the Business Services Wage Assessment Tool Payment Scheme Bill 2014. For other bills within scope of the audit, analysis was not practical for a range of reasons, including that a bill might not become law, or that the bill continued a previous arrangement.

23 *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012.*

Audit approach

Criteria

1.25 The audit objective was to examine entity compliance with regulatory requirements for the establishment and ongoing management of special appropriations.

1.26 To form a conclusion against this objective, the ANAO adopted two high-level criteria:

- **Criterion 1**: Have appropriate processes and guidance been established, in line with regulatory requirements, for agencies in giving advice to government when a special appropriation is being recommended?
- **Criterion 2**: Do entities have effective arrangements in place for the ongoing management and monitoring of special appropriations in line with regulatory requirements?

Scope

1.27 Four entities were selected for the audit:

- Finance is responsible for the financial framework, as well as being responsible for a number of special appropriations;
- the Department of Social Services (Social Services) has responsibility for the largest volume of special appropriations, measured by dollar;
- the Department of Human Services (Human Services) pays almost all of Social Services' special appropriations on its behalf; and
- the Department of Industry, Innovation and Science (Industry) was selected in order to provide coverage outside the human services sector.

1.28 Criterion 1 focused on the creation of new special appropriations, which are presented to the Parliament in bills and typically arise as the result of government developing new policy. In order to obtain sufficient coverage, the time period of 2010 to 2016 was selected. This produced 13 bills with special appropriations introduced by Finance (six), Industry (two) and Social Services (five). Some bills with the same special appropriation were introduced more than once. Where this occurred, the first bill was used.

1.29 The time period for criterion 2 was 2012–13 to 2015–16. A four-year period was selected to provide reasonable assurance in relation to the criterion.

1.30 Special accounts were excluded from the audit. Although they are a type of special appropriation, they operate differently and have their own requirements.

1.31 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately $436,931.02.

1.32 The team members for this audit were David Monk, Nathaniel Loorham, Annum Babar, Julia Lu, Ashish Bajpai, Steven Favell, Hannah S. Climas and Paul Bryant.

2. New special appropriations

Areas examined

This chapter examines whether Finance, in its role as a central agency, established and communicated suitable guidance for the creation of new special appropriations. It continues by examining whether Finance, Social Services, and Industry effectively considered appropriation type when developing policy.

Conclusion

Central agencies have published a range of guidance on creating special appropriations. Entities successfully took a risk-based approach to the development of new special appropriations, characterised by greater consideration of appropriation type in higher risk cases.

Area for improvement

Special appropriations guidance could be enhanced by elaborating on what 'other circumstances' will make an annual appropriation unsuitable, and therefore justify the use of a special appropriation. The guidance could also be enhanced by centrally referencing it to achieve greater consistency and accessibility.

Has Finance established and communicated suitable guidance for the creation of appropriations?

Whole-of-government guidance for special appropriations has been published. This is contained in documents owned by Finance and the Department of the Prime Minister and Cabinet (PMC). To enhance the guidance, Finance could elaborate on what 'other circumstances' will make an annual appropriation unsuitable (and hence, justify when a special appropriation should be used). Finance could also, in a central location, reference the various guidance documents to achieve greater consistency and accessibility across the guidance as a whole.

2.1 Finance is responsible for 'financial accountability, efficiency, governance and financial management frameworks'[24] within the Australian Government. As part of this role it produces guidance to help Commonwealth entities[25] comply with the Australian Government Financial Framework (the Framework)—an established set of rules for the use and management of public resources, underpinned by the *Public Governance, Performance and Accountability Act 2013*.[26] Examples of guidance are the Resource Management Guide (RMG) series, Estimates Memoranda[27] and other standalone materials (e.g. *Charter of Budget Honesty – Policy Costing Guidelines*).[28]

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24 Administrative Arrangements Order, 1 September 2016, p. 17.

25 Department of Finance, *Governance structures in the public sector* [Internet], 2017, available from <https://www.finance.gov.au/resource-management/governance/overview/> [accessed 11 October 2017].

26 Australian Government, *Explanatory Memorandum, Public Governance, Performance and Accountability Bill 2013*, 2013, p. 1.

27 Estimates Memoranda are internal guidance, advice and instructions for entities on Budget matters, provided by Finance.

28 Department of Finance, *Charter of Budget Honesty – Policy Costing Guidelines* [Internet], 2016, available from <http://www.finance.gov.au/publications/charter-of-budget-honesty/> [accessed 11 October 2017].

2.2 Various elements of special appropriations are covered in existing Finance and other central agency guidance. Table 2.1 contains examples of guidance applicable to special appropriations.

Table 2.1: Guidance documents applicable to special appropriations

Guidance	Date	Coverage of special appropriations
RMG 100: Guide to Appropriations	August 2017	Provides the background to special appropriations, an overview of repayments by the Commonwealth under s77 of the Constitution, and an overview of special accounts. Contains five circumstances where a special appropriation will be generally be used.
RMG 206: Model Accountable Authority Instructions	2016	Outlines how Accountable Authority Instructions should be drafted to take into account special appropriations when making an arrangement for the receipt, custody or expenditure of Commonwealth money by a person outside the Commonwealth.
Budget Process Operational Rules	August 2017 (updated annually)	Rules endorsed annually by the Government for the Budget process. Requires new special appropriations to be costed and have a constitutional risk rating before progressing for consideration.
PMC's Legislation Handbook	February 2017 (updated edition)	Requires that the Finance Minister must be consulted on new special appropriations. Also requires that a sunset arrangement be considered for special appropriations. Contains six circumstances supporting the creation of new special appropriations, similar to those found in RMG 100.

Source: ANAO analysis of Finance documentation.

2.3 Finance's guidance in *RMG 100: Guide to Appropriations* provides a list of general categories when a special appropriation may be used. These are:

- where it is desirable to create a legal entitlement to pay everyone that satisfies specific criteria (for example, the age pension);
- if it is necessary to pay a specific amount to a state, territory or local government under an inter-governmental agreement;
- where it is important to demonstrate the independence of an entity from parliament and the executive by providing for automatic payment of the remuneration of its officeholders (for example, the salaries of judges, statutory officeholders, and the Auditor-General);
- if it is considered necessary to demonstrate Australia's ability to meet its financial obligations independently of parliamentary approval of funds (for example, the repayment of loans); or
- other circumstances which arise where funding via an annual appropriation is not appropriate.[29]

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29 Department of Finance, *RMG 100: Guide to Appropriations* [Internet], 2017, available from <http://www.finance.gov.au/resource-management/appropriations/guide-to-appropriations/> [accessed 11 October 2017].

2.4 The language of *RMG 100* indicates that the first four circumstances were not intended to be an exhaustive list of instances where special appropriations could be used. Some special appropriations fit within 'other circumstances', including:

- funding departmental running costs for a non-corporate Commonwealth entity—in this case one-off costs to manage the sale of Medibank Private (Finance used item 8 of Schedule 2 of the *Medibank Private Sale Act 2006* for this purpose);
- funding the departmental running costs of a corporate Commonwealth entity (sections 64 to 66 of the *Australian Renewable Energy Agency Act 2011* were used to fund the Australian Renewable Energy Agency);
- to establish an infrastructure fund (section 41 of the *Northern Australia Infrastructure Facility Act 2016*);
- to establish a mechanism so that a corporate Commonwealth entity could receive industry levies on behalf of the Commonwealth, pay them to a Commonwealth Department, and then receive them back again as its operational budget (arrangements for the National Offshore Petroleum Safety and Environmental Management Authority under the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*); and
- for a payment scheme (following a court decision against the Commonwealth)[30] to support eligible intellectually impaired workers employed by an Australian Disability Enterprise, who had their pro-rate wage determined using the Business Services Wage Assessment Tool (section 99 of the *Business Services Wage Assessment Tool Payment Scheme Act 2015*).

2.5 Given the range of purposes for which special appropriations are being created, an opportunity exists for Finance to improve its guidance. In particular, it could elaborate on what 'other circumstances' will result in an annual appropriation being less suitable, and hence indicating where a special appropriation might be used instead. There is currently a broad 'catch-all' circumstance for which entities have limited assistance. Reference to the characteristics of each appropriation type, as outlined in Table 2.2 below, may assist.

30 *Nojin v Commonwealth of Australia* [2012] FCAFC 192.

Table 2.2: Characteristics of appropriation types

Annual Appropriations	Special Appropriations	Special Account
Characteristics		
• Must be approved by the Parliament each year as part of the Budget process • Automatically lapse after three years • Amounts are allocated at the outcome level, which are often broad statements • Have limits that cannot be exceeded • If exhausted an additional appropriation (e.g. during Additional Estimates) will be needed for the activity to continue; otherwise an alternative way to fund the expenditure will need to be found or the activity should cease	• Can only be used for the specific expenditure purposes set out in the Act • Special appropriations are usually ongoing, meaning that they are not approved by Parliament each year • Flexible in that demand driven expenditure can be increased or decreased quickly • Remain active indefinitely, unless a legislative time limit applies • There is a risk that expenditure can grow substantially over time without Parliamentary approval • Have greater legal/compliance risk than annual appropriations	• Limited to specific purposes—the enabling Act or Finance Minister's determination states the purposes for which they may be used • Limited to a specific amount—special accounts cannot have a negative balance • Are often used to collect industry-specific fees or levies which are to be reinvested in that industry • Greater legal/compliance risks than an annual appropriation (e.g. either by going into a negative balance or using funds for an incorrect purpose) • Remain active until repealed, abolished or ceased, even if the purpose for the account has passed
Example		
Appropriation Acts (No. 1/3/5) are used each year to pay for the ordinary annual services of the Australian Government (for example, the Australian Public Service).[a] Appropriation Acts (No. 2/4/6) are used to pay for expenditure which is not for the ordinary annual services of government (e.g. new government programs).	Generally used for administered activities (e.g. activities delivered for or on behalf of the Australian Government). Unlimited special appropriations are used to pay benefits under the *Social Security (Administration) Act 1999*.[b] This allows benefits to be paid without the risk of the appropriations exhausting.	The *Reef Trust Special Account 2014* allows specific amounts to be credited and debited from it for purposes relating to the Great Barrier Reef World Heritage Area.[c]

Note a: See *Appropriation Act (No. 1) 2016–2017*.

Note b: *Social Security (Administration) Act 1999*, sections 123ZN and 242.

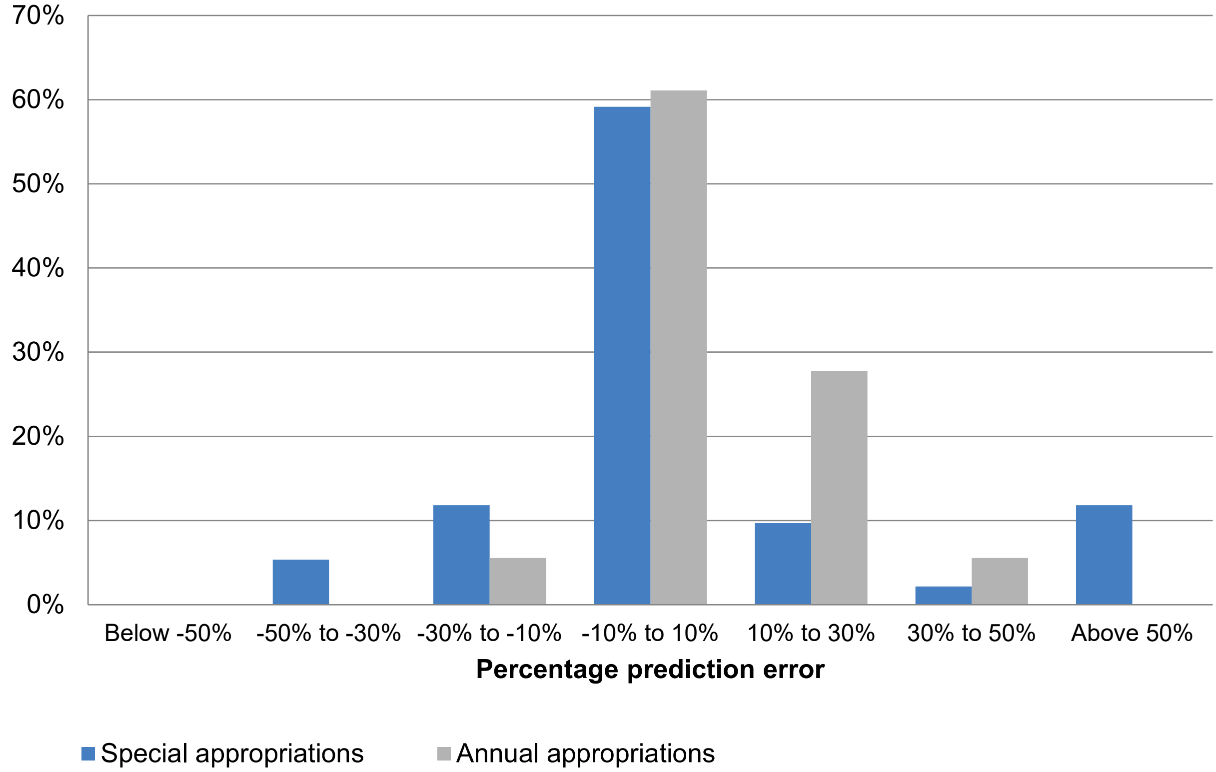
Note c: Established by the *PGPA Act (Reef Trust Special Account 2014) Determination 01*, which sets out what amounts may be credited and debited; available from <https://www.legislation.gov.au/Details/F2014L01218>.

Source: ANAO analysis.

2.6 The guidance could also be enhanced by consolidating the various relevant guidance documents (see Table 2.1) in a central location. Providing references and hyperlinks in specific guidance, such as RMG 100, to other special appropriations guidance, for example PMC's *Legislation Handbook* (which primarily focuses on developing legislation but nonetheless contains specific considerations for special appropriations), would reduce the risk that relevant materials are overlooked when considering appropriation type.

2.7 A variance analysis was conducted to determine if there was a material difference in the predictability of annual versus special appropriations, and whether this may have influenced choice of appropriation type for programs in the past. The Acts considered were those containing special appropriations and Appropriations Acts 1 and 2 for annual appropriations. The results are presented in Figure 2.1. It shows that successful predictions, where spending was within +/- 10 per cent of the prediction, occurred approximately 60 per cent of the time for both annual appropriations and special appropriations. Prediction success has generally been the same for special and annual appropriations.

Figure 2.1: Distribution of prediction error for special and annual appropriations by Act[a], four entities, 2011–12 to 2014–15



Note a: To ensure accuracy, where an entities' outcome substantially changed (making the data incomparable) that year's annual appropriation data was omitted from the analysis. Further, to fully capture spending under annual appropriations, a Budget year required financial statements for the following three years. Therefore, the time period was set to 2011–12 to 2014–15.

Source: Special Appropriations Table in Australian Government, *Agency Resourcing*: *Budget Paper No. 4*, and financial statements in entities' annual reports, various years.

2.8 In November/December 2017, Finance updated *RMG 100* to provide further guidance around creating a special appropriation. New content is:

- that a special appropriation may be suitable for emergency payments where an Advance to the Finance Minister will not assist, for example because of the large amounts involved in natural disaster relief or financial crises[31];

31 This example of using a special appropriation is included in the Legislation Handbook; Department of Prime Minister and Cabinet, *Legislation Handbook,* 2017, p. 32.

- the principle that a special appropriation is unlikely to be suitable where the amounts are not material or the need is unlikely to be ongoing;
- the principle that a special appropriation may be suitable when it provides additional transparency by placing authority for a program and the appropriation in the same Act; and
- the principle that 'annual appropriations are the default appropriation type for all proposed Government spending'.[32]

Have entities effectively aligned policy development and appropriation?

As part of new policy proposals, entities must stipulate a likely appropriation mechanism (special appropriation, annual appropriation or special account). Entities have taken a risk-based approach to this, spending greater resources on determining the appropriation type when the policy parameters were more complex. Entities have implemented this effectively.

Selecting an appropriation type

2.9 To inform the development of legislation entities must, as part of the new policy proposal process, stipulate how a policy is to be appropriated. Finance has advised that government takes a risk-based approach to this, using less resources determining appropriation type when it is readily apparent, and more when it is less clear. Use of a special appropriation will be most obvious when the circumstances align with one of those listed in Finance's guidance RMG 100 (see 2.3). In other cases entities can consult and collaborate with Finance, who has specialist appropriations knowledge.

2.10 Entities effectively applied the risk-based approach to new special appropriations. For the 13 special appropriations bills examined in the audit, Finance had high-level consultation and collaboration regarding appropriation type for four of them. The policy parameters for these were generally more complex, with greater effort needed to determine if a special appropriation was appropriate in the circumstances. For the remaining nine, less work was completed to determine appropriation type, and there was not substantive documentary evidence of consultation and collaboration with Finance. Specifically, five of the nine were continuing special appropriations amidst policy and/or legislative change, while the remaining four clearly aligned with one or more of the five categories listed in the Finance guidance.

32 Department of Finance, *RMG 100: Guide to Appropriations* [Internet], 2017, available from <http://www.finance.gov.au/resource-management/appropriations/guide-to-appropriations/> [accessed 18 January 2018].

Table 2.3: Risk-based approach to new special appropriations

Consultation with Finance (higher risk)	Continuation of a previous special appropriation (lower risk)	Aligns with one or more of Finance's circumstances in RMG 100 (lower risk)
1. Steel Transformation Plan Bill 2011 2. Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Bill 2014 3. Business Services Wage Assessment Tool Payment Scheme Bill 2014 4. Northern Australia Infrastructure Facility Bill 2016	5. Governance of Australian Government Superannuation Schemes Bill 2010 6. Judges and Governor-General Legislation Amendment (Family Law) Bill 2012 7. Public Governance, Performance and Accountability Bill 2013 8. Parliamentary Entitlements Legislation Amendment Bill 2014 9. Social Services and Other Legislation Amendment (Student Measures) Bill 2014	10. Paid Parental Leave Bill 2010 11. Clean Energy (Household Assistance Amendments) Bill 2011 12. Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Bill 2012 13. Medical Research Future Fund (Consequential Amendments) Bill 2015

Source: ANAO analysis.

2.11 A good demonstration of the development of a more complex special appropriation was identified in the Northern Australia Infrastructure Facility Bill 2016 (the NAIF). The NAIF Act establishes a special appropriation 'for the purposes of providing grants of financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure'.[33] The special appropriation is capped at $5 billion and can be used to make commitments of funding until 30 June 2021.[34] NAIF departmental costs are expected to be funded via annual appropriations.

2.12 A special appropriation was selected as the best appropriation mechanism following extensive work by Industry, in consultation with Finance. This included:

- developing an internal position paper regarding appropriation types, which assessed the benefits and risks of potential models;
- gaining legal advice on potential appropriation models;
- developing policy proposals that clearly selected and justified a preferred appropriation type;
- conducting consultation meetings with Finance and other central agencies;
- gaining written and other feedback from Finance regarding the preferred position;
- modifying and revising policy proposals in light of Finance's advice, including removing a proposed special account provision; and
- presenting the final position to government for decision.

2.13 In this example the contemporaneous development of policy and appropriation allowed Industry to provide decision-makers with up-to-date and thorough advice on the best appropriation to support the proposal. The consideration of appropriation requirements throughout the policy development process meant that emerging issues were addressed in real time and the government met its policy deadline of 1 July 2016.

33 *Northern Australia Infrastructure Facility Act 2016*, s. 41.
34 ibid., s. 8.

3. Management and reporting of special appropriations

Areas examined

This chapter examines management of existing special appropriations by Finance, Human Services, Industry and Social Services from 2012–13 to 2015–16. The topics were:

- linking payments to the correct appropriation;
- how entities responsible for a special appropriation managed other entities' use of it;
- unused or exhausted special appropriations; and
- reporting of special appropriations.

Conclusion

Entities were effective in linking payments to the correct appropriation and in managing other entities' use of appropriations for which they were responsible.

Since 2012, a substantial number of unused or exhausted appropriations have been repealed.

There was a lack of consistency and compliance in entity approaches to reporting requirements regarding any special appropriations which had not been drawn on in a particular reporting period ('unused appropriations').

The required approach for entities to report unused special appropriations in the Special Appropriations Table in Budget Paper No. 4 is not sufficiently clear.

Area for improvement

The ANAO made a recommendation aimed at improving clarity on reporting requirements for entities that have special appropriations that have not been drawn down during the financial or comparative year.

Do entities maintain accounts and records that link payments to a specific, valid appropriation?

Entities demonstrated that they tracked cash against a specific appropriation at payment.

3.1 Entities must match payments against a valid appropriation to ensure the payments are constitutional. Six payment types were tested to ensure that they sufficiently identified the appropriation. Entities met this test, but did so in ways that reflected different payment volumes.

3.2 The *Automotive Transformation Scheme Act 2009* has one special appropriation, in section 10, for capped assistance.[35] Industry prepared payment advice for each transaction, which identified the payment coming under 'Capped Assistance: Special Appropriation'.

35 There are two stages of assistance, January 2011 to March 2016 and January 2016 to March 2021. These stages have total limits and there is an annual limit of $300 million, which can be adjusted with carry-overs within each stage.

3.3 The *Medibank Private Sale Act 2006* has two unlimited special appropriations, the first of which is for payments to discharge 'other obligations incurred by the Commonwealth'.[36] The sale of Medibank Private was over-subscribed by $3.25 billion and Finance paid the refunds by cheque and direct debit through a bank account dedicated to the share offer. Given that the special appropriations in the Act were unlimited, this was sufficient to identify the appropriation.

3.4 The *Social Security (Administration) Act 1999* has two unlimited special appropriations; section 123ZN applies to income management regimes within that Act, and section 242 applies to the 'social security law'. This second appropriation supports Social Services' programs under the *Social Security Act 1991.* Human Services makes social security payments on behalf of Social Services and three of these payment types were tested: the Bereavement Allowance; the Seniors Supplement; and the Utilities Allowance. Human Services's systems identified these benefits correctly at payment. A similar finding was made in relation to Dad and Partner Pay under the *Paid Parental Leave Act 2010,* which is supported by the unlimited special appropriation in section 307 of that legislation. Since the special appropriations in these Acts were unlimited, Human Services had sufficiently identified the appropriation at payment.

Do owning entities effectively manage shared special appropriations?

Finance's agreements with entities that use special appropriations, and the delegation from Social Services to Human Services in the *Bilateral Management Arrangement* were kept up to date and properly constructed in relation to their reporting responsibilities.

Agreements between entities

3.5 The audit examined Finance's agreements with entities that use its special appropriations, and examined the delegation from Social Services to Human Services for the management of a range of special appropriations, including those under the *Social Security (Administration) Act 1999.* This arrangement is governed by the *Bilateral Management Arrangement* (BMA). Industry did not have any entities drawing down on its appropriations in the period under examination.

3.6 The relationships between entities vary in scale, which was reflected in the length, depth and scope of the agreements between them. The delegations from Finance to other entities were several pages in length and typically involve spending of up to $30 million, whilst the Superannuation Acts involve several billion dollars. Accordingly, the delegations from Finance to ComSuper were supplemented by a Memorandum of Understanding. The BMA between Social Services and Human Services is supplemented by a number of sub-agreements, and supports annual spending of over $100 billion. These agreements include protocols on Social Services accessing data from Human Services's systems, which Social Services uses to monitor various parameters, including debt levels, payment integrity and timeliness of claims processing.

3.7 After receiving a request from Human Services, Social Services draws down its appropriated funds from the Official Public Account (OPA) and transfers them to Human Services. The two BMAs applicable between 2012–13 and 2015–16 (dated July 2012 and October 2014) and associated

36 Item 8(1) in Schedule 2. The second special appropriation is in clause 61 of Schedule 2. It relates to reimbursements to Medibank Private for certain sale expenses and compensation for acquisition of property during the sale.

delegations were reviewed to determine whether they placed appropriate reporting obligations on the third party, and were no more than four years old.[37] The BMAs met these criteria.

3.8 Finance takes a different approach by giving other entities (third parties) rights to draw down cash from the OPA. The ANAO assessed 28 delegation agreements between Finance and third parties made between 2008 and 2017. All met the same high-level criteria of placing appropriate reporting obligations on the third party and being less than four years old.

Corporate Commonwealth entities

3.9 A Corporate Commonwealth entity (CCE) is a body corporate that has a separate legal personality from the Commonwealth, and therefore can act in its own right exercising certain legal abilities such as entering into contracts and owning property.[38]

3.10 Standard practice in the Commonwealth is that CCEs are not funded directly via appropriation, but instead should be funded by a non-corporate Commonwealth entity (usually the CCE's portfolio department) that draws down from the CRF. Finance's Model Accountable Authority Instructions (guidance to entities) state that:

> Non-corporate Commonwealth entities should not enter into an agreement with a corporate Commonwealth entity that allows the corporate Commonwealth entity to access an appropriation, including a special account, administered by a non-corporate Commonwealth entity.[39]

3.11 The Accountable Authority Instructions adopted by Finance in relation to its own operations are to similar effect.[40]

3.12 Parliament has legislated an exception for the Commonwealth Superannuation Corporation (CSC). Prior to 2015, ComSuper, as a non-corporate Commonwealth entity, drew down on the superannuation appropriations and paid the funds to CSC. In 2015 the Parliament provided CSC with the legal power to directly access appropriations in the superannuation legislation under section 29A of the *Governance of Australian Government Superannuation Schemes Act 2011*. This provision states that CSC may make payments on behalf of the Commonwealth. ComSuper was merged into CSC in 2015 to reduce the number of entities and achieve efficiencies.[41]

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37 These and other features of effective agency agreements are outlined in ANAO Audit Report No. 41 2009–10, *Effective Cross-Agency Agreements,* pp. 22–25.

38 Department of Finance, *Resource Management glossary—corporate Commonwealth entity (CCE)* [Internet], 2017, available from <https://www.finance.gov.au/resource-management/pgpa-glossary/corporate-commonwealth-entity/> [accessed 17 November 2017].

39 Department of Finance, *Model Accountable Authority Instructions – Non-corporate Commonwealth entities,* Resource Management Guidance No. 206, 2017, p. 33.

40 Department of Finance, *Accountable Authority Instructions,* 2016, p. 9.

41 Commonwealth, *Parliamentary Debates,* House of Representatives, 19 March 2015, M McCormack, p. 2913. Finance commissioned a reasonable assurance review of CSC's controls for 2015–16 and again in 2016–17, both of which concluded that its controls were suitably designed to achieve the relevant control objectives and, in this regard, they operated effectively as designed. Finance commissioned similar reviews of ComSuper from 2012–13 to 2014–15.

Do entities have suitable arrangements for managing unused or exhausted special appropriations?

Current legislation includes a number of Acts with exhausted/unused special appropriations. The risk to the Commonwealth associated with this is reduced due to the presence of controls in the Finance Central Budget Management System (CBMS), which prevent unauthorised drawdowns. Additionally, a number of Acts have been repealed following a stocktake conducted in 2012.

3.13 Currently, there is a number of current Acts with exhausted/unused special appropriations. The following three examples contain special appropriations that have been unused for a considerable period, yet have differing policy relevance:

- the *Science and Industry Endowment Act 1926,* which created a fund to provide grants for scientific research. The appropriation of £100,000 is most likely extinguished, but the fund is technically ongoing (it is within current policy)[42];
- *Coal Research Assistance Act 1977*, which creates a system to collect industry levies to fund coal research through a trust account under the now-defunct *Audit Act 1901.* In 1992, amendments to the Act transferred this activity to the private sector and the appropriation became dormant afterwards[43]; and
- the *Transferred Officers' Allowances Act 1948,* which provides for top-up pensions for public servants who transferred from a State to the Commonwealth. Use of this appropriation was last reported in 1977–78 (inactive).[44]

3.14 Exhausted/unused appropriations do not represent a risk to the Commonwealth. Finance controls access to cash; it transfers funds from the OPA to the entity based on set limits in the CBMS system (this is what occurs when entities 'draw down'). These limits are either based on published Budget documents or, where the appropriation is for an unlimited entitlement, agreed between the entity and Finance.[45]

3.15 There have been recent repeals of Acts with unused appropriations. In 2012, Finance conducted a survey of Acts with special appropriations and found that 211 had not been used for the past two and a half years. Analysis of a random sample of 53 of these Acts conducted by the ANAO during the current audit showed that 45 per cent have been repealed. Various methods of repeal were used, such as statute law revision or statute stocktake acts, Repeal Day Acts, and

42 The fund's website is at <http://www.sief.org.au/> [accessed 13 November 2017].

43 Refer to the table, 'Estimates of Payments from Special Appropriations,' in Australian Government, *The Commonwealth Public Account: Budget Paper No. 2*, various years in the 1990s.

44 Australian Government, *The Commonwealth Public Account 1978–79:* Budget Paper No. 2, 1978, p. 34.

45 Department of Finance, *The Banking of Cash by Commonwealth Entities,* Resource Management Guide No. 413, 2014, p. 3.

financial framework Acts.[46] Throughout this process Finance conducted consultations with entities and also requested in 2012 guidance that entities put forward Acts for repeal.

3.16 In November/December 2017, Finance updated its guidance on unused special appropriations. Entities should now satisfy themselves, on an ongoing basis, that their special appropriations are still required. The guidance states:

> Entities need to periodically review the need to retain individual special appropriations and special accounts. Entities are encouraged to abolish special appropriations and special accounts that are no longer used or which can be replaced by annual appropriations.[47]

Are special appropriations accurately reported?

Between 2012–13 and 2015–16, each entity's audited financial statements included a specific table for special appropriations applied.

There was a lack of consistency and compliance in entity approaches to financial statement reporting requirements regarding unused special appropriations (excluding Human Services, which did not have unused special appropriations in the scope period).

The basis for determining which unused special appropriations are reported in the Special Appropriations Table in Budget Paper No. 4 is unclear; there are inconsistencies in the extent to which unused special appropriations are being reported. The ANAO has suggested that Finance clarify which unused special appropriations are to be reported in the Table.

Entity financial statements

3.17 For 2012–13 and 2013–14, the legal reporting requirements for special appropriations and associated guidance were laid out in the *Finance Minister's Orders.* Thereafter, the legal requirements were articulated in the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* and the guidance was published in the *Commonwealth Entities Financial Statements Guide – Resource Management Guide No. 125.*

3.18 Between 2012–13 and 2015–16, each entity's audited financial statements included a specific table for special appropriations applied.

Reporting unused appropriations

3.19 The legal reporting requirements have stated that appropriations must be reported 'regardless of whether the relevant amounts are considered to be material'. Further, entities are

46 Repeal Day bills are part of the Government's deregulation agenda: Australian Government, *Cutting Red Tape: The Australian Government's online resource for regulation reform* [Internet], available from <https://www.cuttingredtape.gov.au/> [accessed 8 January 2018]. The other types of bills have the general aim of keeping the statute book up to date. For statute law revision bills, see Commonwealth, *Parliamentary Debates,* House of Representatives, 17 March 2016, J Frydenberg, p. 3445. For statute stocktake bills, see Commonwealth, *Parliamentary Debates,* House of Representatives, 20 June 2012, G Gray, p. 7173. For financial framework bills, see Commonwealth, *Parliamentary Debates,* House of Representatives, 16 February 2012, D Bradbury, p. 7173.

47 Department of Finance, *RMG 100: Guide to Appropriations* [Internet], 2017, available from <http://www.finance.gov.au/resource-management/appropriations/guide-to-appropriations/> [accessed 18 January 2018].

required to make disclosures 'for each special appropriation'.[48] These legal requirements are supported by guidance, which has consistently stated, 'Disclosures are required for all special appropriations irrespective of whether the appropriation has been drawn on'.[49]

3.20 Reporting unused appropriations provides meaningful information. A zero figure for a special appropriation could indicate that a planned government activity (which had a special appropriation) did not occur, or that the appropriation is no longer required and can be repealed. Reporting all special appropriations can also provide transparency on whether the entity was using the correct appropriations during the year.

3.21 Between 2012–13 and 2014–15, the four scope entities had differing practices for reporting special appropriations that were unused in both the reporting year and the comparative (previous) year:

Table 3.1: Financial statement reporting of special appropriations with a zero spend

Entity	2012–13	2013–14	2014–15	2015–16
Human Services	NA[a]	NA	NA	NA
Social Services	No	No	No	No
Finance	Yes	Yes	Yes	No
Industry	No	No	No	No

Note a: Human Services did not have any zero-spend special appropriations during the scope period of the audit.

Source: ANAO analysis of entities' annual financial statements.

3.22 Finance was the only entity to comply with the reporting requirements, however in 2015–16 stopped reporting appropriations that were not used. Finance explained its approach as follows:

> As part of the reduced disclosure and simplification program, Finance undertook a review of disclosures including special appropriations. The review looked at ensuring the disclosures were:
>
> - Material
> - Add value to user
> - Understandable.
>
> With applying these criteria, and noting that the RMG is guidance only, Finance assessed … the disclosure of the NIL appropriations and deemed it would not add value and as such was removed.
>
> This approach was agreed with the ANAO financial statement auditors.[50]

3.23 Outside of this audit, the Department of Agriculture and Water Resources is a case study of an entity that has reported unused special appropriations for which it is responsible consistently

48 Clauses 100.1 and 104.17 of Department of Finance and Deregulation, *Finance Minister's Orders for Financial Reporting (Incorporating Policy and Guidance: Requirements and Guidance for the Preparation of Financial Statements of Australian Government Entities for Reporting Periods Ending on or after 1 July 2012,* 2012; and clauses 35 and 46(1) of the *Financial Reporting Rule.*

49 Department of Finance, *Commonwealth Entities Financial Statements Guide,* Resource Management Guide No. 125, 2016, p. 92.

50 Between 2012–13 and 2015–16, Finance's financial statements decreased in size from 147 pages to 83 pages. Department of Finance, *Annual Report 2012–13,* 2013, pp. 127–273; Department of Finance, *Annual Report 2015–16,* 2016, pp. 73–126.

throughout the relevant period.[51] Discussions with key finance staff from across the entities subject to audit indicated confusion as to the specific requirements for reporting unused special appropriations. In order to ensure consistency in this key aspect of financial reporting, it is recommended that Finance clarify the requirements and guidance to entities on this matter.

Recommendation no.1

3.24 In order to promote greater consistency across entities in financial reporting and compliance with the *Financial Reporting Rule,* the ANAO recommends that Finance clarify reporting requirements when a special appropriation is unused in both the reporting and comparative years.

Department of Finance's response: *Agreed.*

3.25 Agreed. Finance has updated its guidance to clarify the appropriation reporting requirements of the Public Governance, Performance and Accountability (Financial Reporting Rule) 2015.

Special Appropriations Table in Budget Paper No.4

3.26 This table in the Commonwealth Budget documents lists Acts with special appropriations under each relevant entity. It includes an estimate of expenditure for the coming year and an estimated actual amount for the year about to end.

3.27 The data for the Special Appropriations Table is sourced through CBMS. Entities are responsible for ensuring this data is accurate, and conduct their own quality assurance on CBMS data and Budget Paper No. 4. Finance advised it checks drafts of the Special Appropriations Table to ensure they are consistent with entity advice.

Acts with dormant appropriations

3.28 The special appropriations table in the 2008 Budget did not include any special appropriations with zero amounts. Since then, successive tables have included more zero-spend special appropriations. The table in the 2017 Budget includes eight such Acts for Finance, one for Industry, one for Social Services, and none for Human Services (excluding refunds under section 77 of the PGPA Act, Human Services did not have any zero spend appropriations).[52]

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51 Department of Agriculture, Fisheries and Forestry, *Annual Report 2012–13,* 2013, p. 260; Department of Agriculture, *Annual Report 2013–14,* 2014, p. 255; Department of Agriculture, *Annual Report 2014–15,* 2015, p. 239; Department of Agriculture and Water Resources, *Annual Report 2015–16,* 2016, p. 220.

52 Australian Government, *Agency Resourcing: Budget Paper No. 4: 2008–09*, 2008, pp. 94–101; and Australian Government, *Agency Resourcing: Budget Paper No. 4: 2017–18*, 2017, pp. 91–100.

3.29 Review identified that some Acts with unused special appropriations are not reported in the Special Appropriations Table. Within the scope period, there were 22 such Acts: three for Finance[53]; seven for Industry; and 12 for Social Services.[54]

3.30 Finance advised that Acts with unused special appropriations did not need to be reported in the Special Appropriations Table if their inclusion would not provide useful information in the Budget context. Finance advised that each of the 22 Acts were appropriately reported on this basis. Finance provided examples of where this might occur:

- where the special appropriation has lapsed or been exhausted, the applicable date has passed, or it has fulfilled its purpose (12 Acts);
- where the special appropriation has been reported under the principal Act in the Special Appropriations Table (six Acts)[55];
- where the special appropriation is yet to be used and no expenditure is expected in the medium to long term (four Acts).

3.31 Entities' approach to the Special Appropriations Table is inconsistent; some unused special appropriations are reported and some are not. The scope of the Table is unclear as well. The 2012–13 Budget stated that the Table's scope covered 'each active special appropriation Act'.[56] For the 2017–18 Budget, two purposes were listed: to report 'Acts that contain one or more special appropriation(s)' and to present 'resourcing for each agency by Act that is supported by special appropriations'.[57] It is therefore unclear whether the focus of the table is on special appropriations – which would encourage the publishing of zero-spend Acts – or agency resources, where the focus would be on spending Acts. Finance's guidance to entities does not resolve the matter.

3.32 Finance may wish to clarify the Table's purpose and how it treats zero-spend appropriations.

53 In addition, the *Governance of Australian Government Superannuation Schemes Act 2011* commenced in July 2011, but was not listed in either the AAOs in December 2011 or in the Special Appropriations Table for the 2012–13 Budget. The Bill was introduced through the Finance and Deregulation portfolio and its AAO entries have always been under Finance. See p. 18.

54 See Appendix 3 for details.

55 The principal Act is the main piece of legislation in the relevant policy area. For example, the *Aged Care Act 1997* was the principal Act for the *Aged Care (Consequential Provisions) Act 1997,* before the second Act was repealed.

56 Australian Government, *Agency Resourcing: Budget Paper No. 4: 2012–13*, 2012, p. 3.

57 Australian Government, *Agency Resourcing: Budget Paper No. 4: 2017–18*, 2017, p. 89.

4. Section 83 of the Constitution and special appropriations

Areas examined

The chapter covers how entities comply with section 83 of the Constitution, focusing on monitoring processes and the identification and reporting of potential breaches.

Conclusion

Entities made reasonable attempts to implement the Finance-issued guidance on compliance with section 83 and have been appropriately reporting potential section 83 breaches.

Are potential breaches of section 83 of the Constitution identified, reported and addressed?

Entities have appropriately identified and reported potential breaches of section 83 of the Constitution. Finance has issued risk-based guidance to entities regarding compliance with this requirement.

For special appropriations with specific or objective criteria that rely on information from recipients, it is possible that entities may make overpayments that breach section 83 of the Constitution. It is important that entities have systems in place to identify any overpayments of special appropriations to ensure that these breaches have a low financial risk and impact.

Constitutional position

4.1 Section 83 of the Constitution provides that no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law. Additionally, all spending from the CRF needs to be in accordance with an authority given by Parliament.[58]

4.2 Section 81 refers to the 'appropriation of money for the purposes of the Commonwealth'. If spending does not align with the purpose (and any other criteria) in the relevant appropriation, it may breach section 83 of the Constitution. Whether there is a breach of section 83 will depend in each case on questions of fact and the construction of the relevant legislation. In general terms, a breach of section 83 may be more likely to occur where payments are only authorised under an Act if detailed criteria are met, because in such cases it may be more likely for a payment to be made in error that does not fulfil all of the criteria.

4.3 Once a breach of section 83 has occurred, it cannot be reversed by legislation or through recovering an erroneous payment. However, relevant provisions in legislation could, for example, authorise payments even on the basis of incorrect or incomplete information submitted by recipients, so that overpayments will not be a breach of section 83. This depends on the individual Act. Having good internal systems to identify and recover such overpayments will otherwise ensure that they remain a low financial risk.

58 Department of Finance, *Commonwealth Entities Financial Statement Guide,* Resource Management Guide No. 125, 2016, p. 84.

Finance's guidance on complying with section 83

4.4 From 2008–09 onwards, the ANAO had included in its financial statements audit reports a reference to the Australian Taxation Office's historic breach of section 83 of the Constitution. This had occurred through errors in the processing of tax returns. Some taxpayers had received amounts higher than to which they were entitled, resulting in the breach.[59]

4.5 Following consultation with entities and the ANAO in the second half of 2011, Finance developed guidance for entities on complying with section 83 and issued it to them in April 2012. Finance re-issued the advice to entities in July 2013 with legal advice on generic payments. The guidance states that the ANAO and Finance are jointly seeking to help entities comply with the Constitution and recommends that entities conduct a risk-based assessment of payments against section 83. As part of an ongoing project to consolidate its advice to entities, Finance published an edited version of the section 83 guidance in November/December 2017.[60] The risk assessment process is summarised in Table 4.1.

Table 4.1: Summary of Finance's guidance for complying with section 83

Risk rating	Legislation includes criteria which is specific/objective?	Do entity processes currently reflect these criteria?	Suggested treatment
High	Yes	No	Improve processes or approach Finance for legislative remedy.
Medium	Yes	Yes	Test processes, including sample testing. If they fail, treat as high risk.
Low	No	NA	Ensure future process changes are consistent with legislation.

Source: Department of Finance, *Section 83 Guidance Paper*, 2012, p. 8.

4.6 The first main test in the guidance is for entities to assess whether the legislation has specific requirements for making or assessing payments. More specific and objective requirements increase the risk of breaching the Constitution. The second main test is whether the entity's processes align with the legislation's requirements.

Reporting

4.7 Entities are required to report on breaches of section 83 in their financial statements. As it will often be unclear whether an actual breach has occurred, Finance recommends that entities conduct a risk assessment to identify the likelihood that a breach has actually occurred.[61]

4.8 Social Services, Finance and Industry each reported potential breaches between 2012–13 and 2015–16. The three entities' reporting is summarised in the table below.

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59 ANAO Audit Report No. 17 2011–12, *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2011,* 2012, pp. 50–51.

60 Department of Finance, *Guide to appropriations-RMG-100* [Internet], 2017, available from https://www.finance.gov.au/resource-management/appropriations/guide-to-appropriations/ [accessed 18 January 2018].

61 Department of Finance, *Commonwealth Entities Financial Statements Guide,* Resource Management Guide No. 125, 2016, p. 84; Department of Finance, *Forms of Financial Statements 2016–17, PGPA Act Corporate and Non-Corporate Commonwealth Entities, Tier 1 Reporting Entities,* 2017, p. 25.

Table 4.2: Reported potential breaches of section 83, by Act, entity, and year

Act	Entity	2012–13 $000	2013–14 $000	2014–15 $000	2015–16 $000
A New Tax System (Family Assistance) (Administration) Act 1999	Social Services	222	11 651	1 377 079	1 247 024
Aged Care Act 1997	Social Services	NA[a]	897	5000	NA
National Health Act 1953, Part III	Social Services	NA	323	193	NA
Paid Parental Leave Act 2010	Social Services	8557	6154	14 180	11 887
Social Security (Administration) Act 1999	Social Services	235 076	870 236	1 101 728	1 367 614
Student Assistance Act 1973	Social Services	NA	6545	13 175	12 537
Judges' Pensions Act 1968	Finance	19	0	0	0
Parliamentary Entitlements Act 1990	Finance	23	69	16	28
Automotive Transformation Scheme Act 2009	Industry	0	162	0	0
Higher Education Support Act 2003	Industry	1102	0	NA	NA
Social Security (Administration) Act 1999	Industry[b]	109 613	30 410	NA	NA

Note a: 'NA' indicates that the entity was not responsible for the Act in that year.

Note b: At this time, the then Department of Industry, Innovation, Science, Research and Tertiary Education was responsible for Austudy, Fares Allowance and Youth Allowance.[62]

Source: Financial statements in entities' annual reports, 2012–13 to 2015–16.

4.9 The highest potential breaches occurred in relation to Social Services and Industry's social security legislation, with reported amounts for Social Services increasing substantially over the period.

4.10 The Acts with the highest potential breaches as a percentage of total payments for 2015–16 were for *A New Tax System (Family Assistance) (Administration) Act 1999* (5.6 per cent), the *Student Assistance Act 1973* (3.7 per cent), and the *Social Security (Administration) Act 1999* (1.5 per cent). Finance provided data for the three entities showing that, between 2013–14 and 2016–17, amounts recovered or waived at the end of each relevant financial year ranged between 19 per cent and 100 per cent of potential breaches.

4.11 The *Judges' Pensions Act 1968* had recoverable payment provisions operating from 28 May 2013. Recoverable payment provisions are designed to ensure that the relevant appropriation applies under a wider set of circumstances; and therefore the payment does not have to fit within objective, specific criteria. Section 20A of the *Judges' Pensions Act 1968* states:

62 Australian Government, *Portfolio Budget Statements 2012–13: Budget Related Paper no. 1.13: Industry, Innovation, Science, Research and Tertiary Education Portfolio,* 2012, p. 103.

(1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the relevant amount) to a person (the recipient) purportedly as a benefit, then the Commonwealth may pay the relevant amount to the recipient.

(2) If a payment is made under subsection (1) to the recipient, the relevant amount:

(a) is a debt due to the Commonwealth by the recipient; and

(b) may be recovered by the Secretary of the Department, on behalf of the Commonwealth, in a court of competent jurisdiction.

(3) For the purposes of subsection 12A(5) [an appropriation], if a payment under subsection (1) of this section relates to a benefit under subsection 12A(2), the payment is taken to be a benefit under subsection 12A(2).

4.12 Recoverable payments provisions have been inserted in some of the Acts in the Finance portfolio that have special appropriations. As a transparency measure, Finance was required to report its use of these provisions for two of the Acts from 2012–13 onwards and a third Act from 2013–14 onwards. Finance has not issued this reporting to date – it issued its first report on recoverable payments in October 2017, which related to the 2016–17 financial year.[63]

Have entities made reasonable efforts to achieve section 83 compliance?

> Social Services uses Finance's guidance to conduct risk assessments in relation to its special appropriations and associated legislation, but has not shown evidence that it has attempted the treatments suggested by Finance beyond concluding that further work would provide no additional benefit. The other two entities were found to have made reasonable attempts to implement Finance's guidance.

Risk assessments

4.13 In line with Finance's guidance, three of the entities conducted risk assessments for special appropriations in relation to section 83 compliance. Their approach to implementing this guidance is discussed below.

Social Services

4.14 Social Services conducted section 83 risk assessments for all four scope years. In these assessments, the Department notes that current controls around payments administered by Human Services on its behalf are appropriate. Social Services conducted a Random Sample Survey each trimester to monitor payment assurance. Social Services concluded that conducting further work would provide no additional benefit.

4.15 Each year, Social Services listed a number of Acts that it assessed as high risk. This list always included *A New Tax System (Family Assistance) (Administration) Act 1999,* the *Paid Parental Leave Act 2010* (excluding Family Tax Benefits and the Baby Bonus); and the *Social Security Act (Administration) 1999.* Social Services took this approach because of the complexity of these items

63 The Acts were the *Governor-General Act 1974;* the *Parliamentary Contributory Superannuation Act 1948;* and the *Judges' Pensions Act 1968.* The reporting obligation for the judges' Act commenced in 2013–14.

of legislation. However, Social Services did not attempt treatments for the Acts which it assessed as high risk, beyond concluding that further work would provide no additional benefit.

Industry

4.16 Industry conducted section 83 risk assessments annually from 2012–13 to 2015–16 for all its special appropriations and complied with Finance's guidance.

Finance

4.17 Finance conducted section 83 risk assessments for all of its special appropriations in 2011–12, except for the *Medibank Private Sale Act 2006,* which at that time was not in use.[64] Finance advised that appropriations rated medium or high risk were amended to reduce the risk of breaching section 83, where possible. Finance did not conduct repeat risk assessments in later years—the guidance is silent on whether the assessments are required regularly. The treatment for low risk appropriations ('ensure future process changes are consistent with legislation') suggests that Finance envisaged an as-needed approach over time.

Internal audit

4.18 Between 2012–13 and 2015–16, the relevant entities commissioned six internal audit reports that covered payments supported by a special appropriation.[65] One of the reports referred to appropriations; this was the Industry internal audit into the Automotive Transformation Scheme. The internal audit tested compliance against the appropriations budgets.

Grant Hehir
Auditor-General

Canberra ACT
17 April 2018

64 In late 2013, Finance obtained legal advice on the *Medibank Private Sale Act 2006* and compliance with section 83 of the Constitution, prior to the sale occurring in 2014.

65 The topics were: government pension schemes (Finance); the Automotive Transformation Scheme (Industry); payment programs (Social Services); newstart payment controls (Human Services); income support manual payments (Human Services); and a preliminary scoping review of Human Services' payments (Human Services).

Appendices

Appendix 1 Entity responses

Australian Government

Department of Finance

Rosemary Huxtable PSM
Secretary

Our Ref: SEC0015332

Mr Grant Hehir
Auditor-General
Australian National Audit Office
19 National Circuit
Barton ACT 2602

Dear ~~Mr Hehir~~ Grant

I refer to the Australian National Audit Office's (ANAO's) correspondence dated 26 February 2018 containing the proposed section 19 report on the performance audit of the *Management of Special Appropriations*.

Thank you for the opportunity to respond to the matters raised in the proposed report. Finance's formal response is as follows:

> Finance supports the findings and key learnings in the audit report. The report confirms that entities have been managing, monitoring and reporting their special appropriations consistent with regulatory requirements.
>
> Recommendation No. 1:
>
> Agreed. Finance has updated its guidance to clarify the appropriation reporting requirements of the *Public Governance, Performance and Accountability (Financial Reporting Rule) 2015*.

I understand that a number of factual and editorial matters in the report have been agreed between our officers, and I would like to acknowledge the professional and constructive approach of the ANAO officers during the audit. The findings of this audit will be an important input to Finance's annual process of reviewing and enhancing its financial reporting guidance.

Yours sincerely

Rosemary Huxtable
Secretary

19 March 2018

One Canberra Avenue, Forrest ACT 2603 • Telephone 02 6215 3445
Internet www.finance.gov.au

Australian Government
Department of Human Services

Our Ref: EC18-000444

Secretary
Renée Leon PSM

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir

Thank you for providing the Department of Human Services (the department) with the opportunity to comment on the extract of the Australian National Audit Office's proposed report on *Management of Special Appropriations*.

The department welcomes the audit's overall conclusions and findings, and is pleased to note that the report has concluded that the department's management and reporting of special appropriations, including those delegated from the Department of Social Services, has been effective and in line with regulatory requirements.

Attachment A to this letter provides the department's response to the proposed report.

Mr Andrew Harvey, National Manager, Financial Accounting Branch, is the department's contact for this matter. Mr Harvey can be contacted on 02 6141 8349 or andrew.harvey@humanservices.gov.au.

Yours sincerely

Renée Leon

19 March 2018

PO Box 7788, Canberra Business Centre ACT 2610 | Phone (02) 6223 4411 | www.humanservices.gov.au

Attachment A

Response to the extract of the proposed report under section 19 of the *Auditor-General Act 1997* on the performance audit of *Management of Special Appropriations*

Summary of response for inclusion in the "summary of entity responses" section of the report

The Department of Human Services (Human Services) welcomes the audit's overall conclusions and findings. Human Services notes that the report has concluded that its management and reporting of special appropriations, including those delegated from the Department of Social Services, has been effective and in line with regulatory requirements.

Australian Government
Department of Industry, Innovation and Science

OFFICE OF THE SECRETARY

Lisa Rauter
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
By email: lisa.rauter@anao.gov.au

Dear Ms Rauter

Thank you for your correspondence of 26 February 2018, seeking comment from the Department of Industry, Innovation and Science (the department) on the proposed audit report on *Management of Special Appropriations*.

I note the findings in the report and acknowledge that the department is managing its special appropriations effectively.

I am also pleased to note the ANAO's acknowledgement of the approach taken by the department in its development of the special appropriation for the *Northern Australia Infrastructure Facility Bill 2016*.

The report makes one recommendation which does not relate to the department and as such, I have no comment in relation to the recommendation.

Thank you for the opportunity to provide comment on the proposed report.

Yours sincerely

Heather Smith

Heather Smith

26 March 2018

Industry House - 10 Binara Street, Canberra City, ACT 2601 - GPO Box 9839 Canberra ACT 2601 - **www.industry.gov.au** - ABN: 74 599 608 295

Australian Government
Department of Social Services

Chief Operating Officer

Ms Lisa Rauter
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Dear Ms Rauter

Thank you for your email of 26 February 2018 providing the proposed audit report under section 19 of the *Auditor-General Act 1997* on the Management of Special Appropriations.

I note the findings of the proposed audit report, including that the Australian National Audit Office found that the Department of Social Services (the department) was compliant with the regulatory requirements for the establishment and ongoing management of special appropriations. The department's response to the proposed audit report is at Attachment A.

If you would like further information on the department's response, please contact Mr Russell de Burgh, A/g Chief Finance Officer, by telephone on (02) 6146 0122, or by email at Russell.deBurgh@dss.gov.au.

Yours sincerely

RKelley

Roxanne Kelley

23 March 2018

GPO Box 9820, Canberra ACT 2601 • Tel (02) 6146 0010 • Facsimile (02) 6204 4505
Internet www.dss.gov.au

Attachment A

Department of Social Services response to the proposed Audit Report on the Management of Special Appropriations

The Department of Social Services (the Department) notes the audit's overall conclusion that the Department was compliant with the regulatory requirements for the establishment and ongoing management of special appropriations.

The Department also notes that the audit found that the current controls around the payments administered by the Department of Human Services are appropriate.

Appendix 2 References

Table 1.2

- Australian Government, *Agency Resourcing: Budget Paper No. 4: 2017–18*, 2017, pp. 89–100;
- HM Treasury (UK), *Central Government Supply Estimates 2017–18: Main Supply Estimates,* 2017, p. 14. Data includes the National Health Services but excludes local government and public corporations;
- L Angres and M Costantino, The Federal Budget in 2016 [Internet], Congressional Budget Office (United States), 2017, <https://www.cbo.gov/sites/default/files/115th-congress-2017–2018/graphic/52408-budgetoverall.pdf> [accessed 26 October 2017];
- A Malinovskaya and L Sheiner, The Hutchins Center Explains: Federal Budget Basics [Internet], Brookings, 2017, available from <https://www.brookings.edu/blog/up-front/2016/06/01/the-hutchins-center-explains-federal-budget-basics/> [accessed 26 October 2017];
- Government of Canada, *2017–18 Estimates Parts I and II: The Government Expenditure Plan and Main Estimates,* 2017, pp. I–1 to I–6;
- The Treasury (New Zealand), *Putting It Together: An Explanatory Guide to New Zealand's State Sector Financial Management System, Version 1.1,* 2011, p. 35; and
- M Harris and D Wilson (eds), *Chapter 31 Appropriation and Authorisations* [Internet], 4th edition, New Zealand Parliament, 2017, available from <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-31-appropriation-and-authorisations/> [accessed 2 January 2018].

Paragraph 1.14

- Appropriation (2017/18 Estimates) Bill, New Zealand Parliament, 2017, available from <https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_74170/appropriation-201718-estimates-bill> [accessed 23 October 2017];
- G Freeguard, E Andrews, D Devine, R Munro and J Randall, *Whitehall Monitor 2015: The Coalition in 163 charts*, Institute for Government, London, 2015, pp. 41–42; and
- HM Treasury (United Kingdom), How to Understand Public Sector Spending [Internet], GOV.UK, 2013, available from <https://www.gov.uk/government/publications/how-to-understand-public-sector-spending/how-to-understand-public-sector-spending> [accessed 26 October 2017].

Table 1.3

- ANAO Audit Report No. 15 2004–05 *Financial Management of Special Appropriations,* 2004;
- Joint Committee of Public Accounts and Audit, Parliament of Australia, *Report 404: Review of Auditor-General's Reports 2003–2004 Third & Fourth Quarters, and First and Second Quarters of 2004–2005,* 2005, pp. 167–91;
- The Hon. Phillip Ruddock MP, Attorney-General, *Correspondence enclosing Executive Minutes in response to the Joint Committee of Public Accounts and Audit,* 19 May 2006; and Senator the Hon. Richard Colbeck, Parliamentary Secretary to the Minister for Finance

and Administration, *Correspondence enclosing Executive Minutes in response to the Joint Committee of Public Accounts and Audit,* 30 May 2006;

- Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Fourteenth Report of 2005: Accountability and Standing Appropriations,* 2005;
- Examples of follow-ups by the Senate Standing Committee for the Scrutiny of Bills in relation to the inclusion of a special appropriation are: Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Fourteenth Report of 2014,* 2014, p. 832; and Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Tenth Report of 2014,* 2014, p. 486;
- Senate Standing Committee on Finance and Public Administration, Parliament of Australia, *Transparency and Accountability of Commonwealth Public Funding and Expenditure,* 2007, pp. 15–19; and Australian Government, Commonwealth Government Response to Senate Report, *Transparency and Accountability of Commonwealth Public Funding and Expenditure,* 2009;
- Senator Andrew Murray, *Review of Operation Sunlight: Overhauling Budgetary Transparency,* 2008; and Australian Government, *Government response to Review of Budget Transparency,* 2008; and
- Department of the Prime Minister and Cabinet, *Legislation Handbook,* 2017, p. 32.

Appendix 3 The Special Appropriations Table

Table A.1: Unused special appropriations not reported in the Special Appropriations Table in Budget Paper No. 4, four entities, 2012–13 to 2015–16[a]

Entity	Act	Unreported years	Explanation for not being reported
Finance	*AIDC Sale Act 1997*	2012–13 to 2015–16	Lapsed, exhausted or fulfilled its purpose
Finance	*Airports (Transitional) Act 1996*	2013–14 to 2015–16	Lapsed, exhausted or fulfilled its purpose
Finance	*Medibank Private Sale Act 2006*	2012–13 and 2013–14	Yet to be used[b]
Industry	*The Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005*	2012–13	Lapsed, exhausted or fulfilled its purpose
Industry	*Higher Education Support Act 1988*	2012–13 to 2013–14	Lapsed, exhausted or fulfilled its purpose
Industry	*Moomba-Sydney Pipeline System Sale Act 1994*	2014–15 to 2015–16	Lapsed, exhausted or fulfilled its purpose. Reported under the Australian Office of Financial Management
Industry	*Snowy Hydro Corporatisation Act 1997*	2014–15 to 2015–16	Lapsed, exhausted or fulfilled its purpose. Reported under the Australian Office of Financial Management
Industry	*Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008*	2012–13 to 2013–14	Reported under the principal Acts: *A New Tax System (Family Assistance) Act 1999; Social Security (Administration) Act 1999;* and *Veterans' Entitlements Act 1986*
Industry	*Space Activities Act 1998*	2012–13 to 2015–16	Yet to be used
Industry	*Uranium Royalty (Northern Territory) Act 2009*	2014–15 and 2015–16	Yet to be used
Social Services	*The A New Tax System (Family Assistance) (Administration) Act 1999*	2012–13 to 2013–14	Reported under the principal Act: the *A New Tax System (Family Assistance) Act 1999*
Social Services	*Aged Care (Bond Security) Act 2006* – renamed to the *Aged Care (Accommodation Payment Security) Act 2006*	2014–15 to 2015–16	Reported under the principal Act: the *Aged Care Act 1997*
Social Services	*Aged Care (Consequential Provisions) Act 1997*	2014–15 to 2015–16	Reported under the principal Act: the *Aged Care Act 1997*
Social Services	*Clean Energy (Household Assistance Amendments) Act 2011*	2014–15 to 2015–16	Lapsed, exhausted or fulfilled its purpose

Entity	Act	Unreported years	Explanation for not being reported
Social Services	*Data-matching Program (Assistance and Tax) Act 1990*	2012–13 to 2015–16	Yet to be used
Social Services	*Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*	2015–16	Reported under the principal Act: the *A New Tax System (Family Assistance) Act 1999*
Social Services	*Family Assistance Legislation Amendment (More Help for Families – One-off Payments) Act 2004*	2014–15 to 2015–16	Lapsed, exhausted or fulfilled its purpose
Social Services	*Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012*	2014–15 to 2015–16	Reported under the principal Act: the *A New Tax System (Family Assistance) Act 1999*
Social Services	*Social Security Legislation Amendment (One-off Payments for Carers) Act 2005*	2014–15 to 2015–16	Lapsed, exhausted or fulfilled its purpose
Social Services	*Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*	2012–13 to 2015–16	Lapsed, exhausted or fulfilled its purpose
Social Services	*Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance to Older Australians and Carers and Other Measures) Act 2006*	2014–15 to 2015–16	Lapsed, exhausted or fulfilled its purpose
Social Services	*Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*	2014–15 to 2015–16	Lapsed, exhausted or fulfilled its purpose

Note a: Human Services did not have any unreported Acts during the scope period.

Note b: Following the sale of Medibank Private in 2014 and 2015, the special appropriations in this Act would now fit in the category of 'lapsed, exhausted or fulfilled its purpose'.

Source: Finance and ANAO analysis of the Special Appropriations Table and the Administrative Arrangements Orders valid between 2012–13 and 2015–16.