

Responses from legislation proponents — Report 4 of 2019¹

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Australian Government

Department of Finance

Reference:
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Ms Anita Coles
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Parliamentary Joint Committee on Human Rights
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Dear Ms Coles

Section 8 of the *Human Rights (Parliamentary Scrutiny) Act 2011*: application to annual Appropriation Bills

As you will be aware, the Government has now tabled *Appropriation Bill (No. 1) 2019-2020*, *Appropriation Bill (No. 2) 2019-2020* and *Appropriation (Parliamentary Departments) Bill (No. 1) 2019-2020* and their accompanying explanatory memoranda.

Since our most recent discussions, we have reviewed the content of the statements of compatibility included in the explanatory memoranda accompanying the annual Appropriation Bills and have sought legal advice. Through this process we have affirmed our view of the limited legal operation of the annual Appropriation Acts. In this respect, the annual Appropriation Acts only perform the function of authorising the withdrawal of money from the Consolidated Revenue Fund and of identifying the purposes for which that money may be withdrawn.

Accordingly, we hold the view that the annual Appropriation Acts do not confer any legal authority to spend. We consider that this authority must be derived from either the Constitution or from other legislation (often a mechanism is provided through s 32B of the *Financial Framework (Supplementary Powers) Act 1997*). The statements of compatibility for the annual Appropriation Bills have been drafted accordingly.

I would also like to draw your attention to a minor amendment to the statement of compatibility for *Appropriation Bill (No. 2) 2019-2020*. As you may be aware, Clause 16 of that Bill permits Ministers to make determinations and set the terms and conditions of payments to or for the States, the Australian Capital Territory, the Northern Territory and local government authorities. To avoid this being construed as providing legislative authority for expenditure, the statement of compatibility was amended to clarify the Government does not rely on the section as an authority to spend. Instead, authority will be derived from other legislation such as, for example, the *Australian Education Act 2013*.

As a separate matter, we are currently working to ensure that legislative instruments that do authorise expenditure, better meet the requirements of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Earlier this year the Minister for Finance, Senator the Hon Mathias Cormann, wrote to the previous Chair of the Committee, Mr Ian Goodenough MP, advising that Finance will work with entities to ensure that sufficient information is included in statements of compatibility for legislative instruments which amend the *Financial Framework (Supplementary Powers) Regulations 1997*.

I would welcome the opportunity to discuss these matters with you should this be required.

Yours sincerely

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