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Request made by: IP USER  
Request made on: Wednesday, 13 March, 2013 at 16:35 EST

Title Should Parliament determine the accountability, transparency and responsibility standards for the Australian Government?

Delivery selection: Current Document

Number of documents delivered: 1

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## Should Parliament determine the accountability, transparency and responsibility standards for the Australian Government?

**Journal Title:** Australian Journal of Administrative Law

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**Article Citation:** 19 AJ Admin L 73

**Publication Year:** 2012

**Jurisdiction:** Australia

### ABSTRACT

*This article reviews the key reporting obligations of the Australian Government and poses the question: should Parliament be responsible for setting the standards for the multitude of Australian Government presentations of information and data to Parliament? The article concludes that Parliament should probably set these standards to ensure that the Parliament independently determines what information and data it needs and subsequently receives that data and information. This is necessary to properly hold the Australian Government to adequate standards of accountability, transparency and responsibility in line with the public administration reforms over the last decades.*

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## 1. Introduction

### 1. Introduction

The genesis of the recent Australian Government public administration reforms was the remarkable economic liberalisation in Australia starting in the 1980s addressing financial liberalisation, fiscal discipline, macroeconomic stability, microeconomic reform, trade liberalisation, privatisation and liberalisation of the labour market. <sup>[1]</sup> The key legislated reforms are set out in the *Financial Management and Accountability Act 1997* (Cth), *Commonwealth Authorities and Companies Act 1997* (Cth), *Auditor-General Act 1997* (Cth), *Charter of Budget Honesty Act 1998* (Cth) and the *Public Service Act 1999* (Cth). <sup>[2]</sup> These ongoing public administration reforms <sup>[3]</sup> adopted a new means of allocating resources (through accrual budgeting) and then devolved responsibility for using those resources to those making decisions about how those resources (both the financial and human resources) should be managed and used (through accrual accounting and performance benchmarking). These reforms also imposed a plethora of reporting back arrangements so that the allocation and performance could be assessed and hopefully improved.

The purpose of this article is to document the Australian Government's key reporting back arrangements and pose the question of whether Parliament should be responsible for setting the accountability, transparency and responsibility standards for the multitude of Australian Government presentations of information and data to Parliament. The following parts set out the reporting obligations (the form of reporting), the prospective standards that are then reported back in the reporting obligations (the substance to be addressed), provides an illustration of the kinds of data and

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information presently provided to Parliament, and then sets out a conclusion. The conclusion is that Parliament should probably set the standards for key reporting obligations, and overseeing their implementation, to ensure that the Parliament independently determines what information and data it needs. This is increasingly necessary with the plethora of available information and data to properly hold the government to adequate standards of accountability, transparency and responsibility.

## 2. The reporting back obligations

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The reporting back arrangements established by the public administration reforms that presently apply to the Australian Government include:

- (a) the *Charter of Budget Honesty Act 1998* (Cth) requires that the government provide a number of annual reports:
  - (i) Budget Economic and Fiscal Outlook Report – This is made available at the time of the Budget (s 10), and is intended to provide information to allow the assessment of the government's fiscal performance against the fiscal strategy set out in its current fiscal strategy statement (s 11). The report is required to contain the following information:  
Commonwealth budget sector and Commonwealth general government sector fiscal estimates for the budget year

and the following 3 financial years, the economic and other assumptions for the budget year and the following 3 financial years that have been used in preparing those fiscal estimates, discussion of the sensitivity of those fiscal estimates to changes in those economic and other assumptions, an overview of the estimated tax expenditures for the budget year and the following 3 financial years, a statement of the risks, quantified where feasible, that may have a material effect on the fiscal outlook, including: (i) contingent liabilities; and (ii) publicly announced Government commitments that are not yet included in the fiscal estimates, and Government negotiations that have yet to be finalised (s 12(1)).

- (ii) Mid-year Economic and Fiscal Outlook Report – This is made available by the end of January in each year, or within 6 months after the last budget, whichever is later (s 14(1)), and is intended to provide updated information to allow the assessment of the government's fiscal performance against the fiscal strategy set out in its current fiscal strategy statement (s 15). The report is intended to update key information contained in the most recent budget economic and fiscal outlook report and contain a detailed statement of tax expenditures, presenting disaggregated information on tax expenditures (s 16(1)).
- (iii) Final Budget Outcome Report – This is made available no later than 3 months after the end of the financial year (s 18(1)), and contains Commonwealth budget sector and Commonwealth general government sector fiscal outcomes for the financial year (s 19(1)). This report sets out a range of financial information about the previous budget and the high level outcomes from expenditures.<sup>[4]</sup>
- (b) the *Charter of Budget Honesty Act 1998* (Cth) also requires that the government provide a number of other reports:
  - (i) Intergenerational report – This report is issued every five years starting in 2002 (s 20(1)), and is intended to assess the long term sustainability of current Government policies over the 40 years following the release of the report, including by taking account of the financial implications of demographic change (s 21). This report has become a means of addressing the long-term demographic, economic and spending projections and the implications for the sustainability of fiscal policy.<sup>[5]</sup>
  - (ii) *Pre-election economic and fiscal outlook report* – This report is issued jointly by the Secretary to the Department of the Treasury and the Secretary to the Department of Finance as a pre-election economic and fiscal outlook report within 10 days of the issue of the writ for a general election (s 22) that is intended to provide updated information on the economic and fiscal outlook (s 23).

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- (c) the *Public Service Act 1999* (Cth) requires that the Australian Government provide a number of reports:
  - (i) Annual Reports – The Secretary of a Department, the Head of an Executive Agency and the Public Service Commissioner are required to give a report to the Minister on their activities during the year.<sup>[6]</sup> The report is prepared according to guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit (JCPAA).<sup>[7]</sup> These reports include information about the outcomes, programmes, key performance information and financial statements.<sup>[8]</sup>
  - (ii) State of the Service Report – As a part of the Annual Report about the activities of the Australian Public Service Commission.<sup>[9]</sup> Following agreement with the JCPAA in 2003, the State of the Service Report is submitted as a separate report together with supporting documentation.<sup>[10]</sup> The report is prepared according to guidelines approved on behalf of the Parliament by the JCPAA.<sup>[11]</sup> The report addresses the activities and human resource management practices of [Australian Public Service] agencies and outlines some of the key achievements and contributions agencies have made in assisting the government during this period to meet its policy objectives and achieve its stated outcomes.<sup>[12]</sup>
- (d) the *Financial Management and Accountability Act 1997* (Cth) requires that the Australian Government provide a number of statements including a monthly financial statement in a form consistent with the Budget estimates that includes information about the fiscal balance, the underlying cash balance and the net operating result for the general government sector, and annually consolidated financial statements for the Commonwealth.<sup>[13]</sup>
- (e) the *Commonwealth Authorities and Companies Act 1997* (Cth) requires each body to present an *Annual Report*.<sup>[14]</sup>

### 3. Prospective reporting standards

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There are also a number of documents that provide the prospective reporting standards that are then reported back in the above documents. These include the key Budget documents, and the fundamental appropriation documents that form the thread of all the Australian Government's reporting back arrangements, and they include:

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- (a) the *Charter of Budget Honesty Act 1998* (Cth) requires that the Australian Government provide a Fiscal Strategy Statement at or before the time of the Government's first budget and at the time of each of the Government's subsequent budgets

(s 6(1), (2)). This statement is intended to increase public awareness of the Government's fiscal strategy and to establish a benchmark for evaluating the Government's conduct of fiscal policy (s 6(3)). The statement is required to: specify the Government's long-term fiscal objectives within which shorter-term fiscal policy will be framed, explain the broad strategic priorities on which the budget is or will be based, specify the key fiscal measures that the Government considers important and against which fiscal policy will be set and assessed, specify, for the budget year and the following 3 financial years: (i) the Government's fiscal objectives and targets; and (ii) the expected outcomes for the specified key fiscal measures, explain how the fiscal objectives and strategic priorities ... relate to the principles of sound fiscal management, specify fiscal policy actions taken or to be taken by the Government that are temporary in nature, adopted for the purpose of moderating cyclical fluctuations in economic activity, and indicate the process for their reversal, and explain broadly the reporting basis on which subsequent Government fiscal reports will be prepared (s 9(1)).

- (b) Appropriation Act (No 1) – The appropriations of the Consolidated Revenue Fund (CRF) for the purposes of the ordinary annual services of government. This distinction is necessary to comply with ss 53 and 54 of the *Constitution*, that prevent the Senate from amending proposed laws appropriating funds for the ordinary annual services of government.<sup>[15]</sup> These appropriations are made according to a distinction between administered items and departmental items, the former being applied for expenditure for the purpose of contributing to achieving that outcome<sup>[16]</sup> and the latter being applied for the departmental expenditure of the Agency.<sup>[17]</sup> This law provides for the appropriation of specified amounts for Australian Government agencies (being those under the *Financial Management and Accountability Act 1997* (Cth) and the *High Court of Australia Act 1979* (Cth))<sup>[18]</sup> and bodies under the *Commonwealth Authorities and Companies Act 1997* (Cth).<sup>[19]</sup>
- (c) Appropriation Act (No 2) – The appropriations of the CRF for the purposes *other than* the ordinary annual services of government. These appropriations are for the States, the Australian Capital Territory, the Northern Territory and local government authorities,<sup>[20]</sup> administered items to be applied for expenditure for the purpose of contributing to achieving that outcome,<sup>[21]</sup> administered assets and liabilities items to be applied for expenditure for the purpose of contributing to achieving any outcome specified for the Agency,<sup>[22]</sup> departmental items to be applied for the departmental expenditure of the Agency,<sup>[23]</sup> and bodies under the *Commonwealth Authorities and Companies Act 1997* (Cth).<sup>[24]</sup> Again, this law provides for the appropriation of specified amounts for Australian Government agencies (being those under the *Financial Management and Accountability Act 1997* (Cth) and the *High Court of Australia Act 1979* (Cth))<sup>[25]</sup> and bodies under the *Commonwealth Authorities and Companies Act 1997* (Cth).<sup>[26]</sup>

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- (d) Appropriation (Parliamentary Departments) Act (No 1) – The appropriations of the CRF for the expenditure of the Parliamentary Departments. Appropriations for the Parliamentary Departments *are not* for the ordinary annual services of the government. These appropriations are made according to a distinction between administered items and departmental items, the former being applied for expenditure for the purpose of contributing to achieving that outcome<sup>[27]</sup> and the latter being applied for the departmental expenditure of the Parliamentary Department.<sup>[28]</sup> There are also appropriations for administered assets and liabilities items to be applied for expenditure for the purpose of contributing to achieving any outcome.<sup>[29]</sup>
- (e) Appropriation Act (No 3), Appropriation Act (No 4) and Appropriation (Parliamentary Departments) Act (No 2), etc – These are Appropriation Bills that are counterparts to those introduced as part of the Budget or other appropriations, and deal with appropriations later in the year addressing additional funding commitments.
- (f) Portfolio Budget Statements (PBS) – These documents are intended to inform Senators and Members of Parliament about the proposed allocation of resources to government outcomes by Agencies within the portfolio. Significantly, the document sets out the allocation of the Agency resources from the appropriations, the outcome and planned performance including the strategy and outputs/programs. These statements include the presentation of intended expenditure on an accrual and cash basis.<sup>[30]</sup> The critical aspect of this document is the forward estimates. These are a projection on expenditure in following years (out years), with the first year's forward estimate forming the basis of the following year's budget allocation. Any changes therefore need to be explained and any new expenditure identifiable. This is significant as these forward estimates include *all* appropriations, including the plethora of standing appropriations, and provide the primary means of accountability, responsibility and transparency for the Budget and standing appropriations.<sup>[31]</sup> Critically, the Portfolio Budget Statements are declared by the Appropriation Acts to be declared to be relevant for interpreting the Appropriation Acts.<sup>[32]</sup>
- (g) *Financial Management and Accountability Act 1997* (Cth) – This requires Chief Executives (s 5) to keep accounts and records of the resources under their control according to the Finance Minister's Orders (s 48(1)) and prepare financial statements according to the Finance Minister's Orders (s 49(2)). The Finance Minister's Orders (s 63(1)) are legislative instruments under the *Legislative Instruments Act 2003* (Cth) and are subject to disallowance by the Parliament.<sup>[33]</sup> The Finance Minister's Orders have been made setting the standards for keeping accounts and records (s 48(1))<sup>[34]</sup> and for presenting financial statements (s 49(2)).<sup>[35]</sup> The Auditor-General is required (s 57(7)) to state an opinion that is included in the *Public Service Act 1999* (Cth) Annual Report

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whether the financial statements have been prepared in accordance with the Finance Minister's Orders and give a true and

fair view of the matters required by [the Finance Minister's Orders] (s 57(2)).

- (h) *Commonwealth Authorities and Companies Act 1997* (Cth) – Both Commonwealth authorities (s 7) and Commonwealth companies (s 34(1), (2)) are required to provide annual reports that include financial statements (ss 9(1), 36(1)). For Commonwealth companies the financial statements need to comply (s 36(1)(a)) with the requirements of the *Corporations Act 2001* (Cth), with the Auditor-General either being the auditor or providing an report on the company's financial statements (s 35(1)). For Commonwealth authorities the financial statements are required to form part of an annual report and they are prepared and presented according standards set in the Finance Minister's Orders (s 48(1)).<sup>[36]</sup> The Auditor-General is required to state an opinion that is included in the annual report whether the financial statements have been prepared in accordance with the Finance Minister's Orders and give a true and fair view of the matters required by [the Finance Minister's Orders] (s 9(1)(a) and Sch 1, items 1, 3(1)).

## 4. IP Australia: An illustration

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The following provides an illustration of the reporting arrangements for IP Australia, a prescribed Agency under the *Financial Management and Accountability Act 1997* (Cth),<sup>[37]</sup> to demonstrate where Parliament might intervene to establish standards and oversee their implementation (as a regulator). The key Australian Government organising document is the Annual Report prepared under s 63(1) of the *Public Service Act 1999* (Cth). The intention of the Annual Report reporting obligations is to enhance accountability, responsibility and transparency through a clear read between the Budget documents (setting out the allocations) and the subsequent reporting obligations (documenting performance).<sup>[38]</sup> The Annual Report itself is a report from a *Public Service Act 1999* (Cth) Agency Head to the portfolio Minister about that Agency's performance.<sup>[39]</sup> Included in the Annual Report are the *Financial Management and Accountability Act 1997* (Cth) requirements that the Chief Executive prepare annual financial statements (according to the Finance Minister's Orders),<sup>[40]</sup> and the associated Auditor-General's report.<sup>[41]</sup> A similar requirement applies to bodies under the *Commonwealth Authorities and Companies Act 1997* (Cth).<sup>[42]</sup> In effect, the Annual Report is the key reference document<sup>[43]</sup> that links the financial management and people management arrangements within an outcomes and outputs/programs framework set out in the Portfolio Budget Statements (and Portfolio Additional Estimates Statements) accompanying the Budget appropriations.<sup>[44]</sup>

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The Annual Report is tabled in Parliament<sup>[45]</sup> and referred to a Senate Standing Committee<sup>[46]</sup> and a House of Representative Standing Committee.<sup>[47]</sup> These committees have the mandate to rigorously assess the Annual Report.<sup>[48]</sup> Other opportunities for parliamentary scrutiny of the Australian Government's operations, activities and expenditure proposals occurs through the Joint Committee of Public Accounts and Audit under the *Public Accounts and Audit Committee Act 1951* (Cth) and the twice-yearly Senate Estimate Committee hearings.<sup>[49]</sup> Further opportunities also arise though ad hoc committee inquires addressing a range of matters of interest to the Parliament.

The following analysis demonstrates the accountability, responsibility and transparency through a clear read between the Budget documents and the subsequent reporting obligations for IP Australia for the formal reporting periods from the 2009 Budget<sup>[50]</sup> to the 2009-2010 Annual Report<sup>[51]</sup> that covers the period of the 2009 Budget allocation (see Table 1). Within the institution of the Department of Industry, Tourism and Resources (now the Department of Innovation, Industry, Science and Research) and IP Australia a number of personalities have powers: the Secretary of the Department of Industry, Tourism and Resources/Department of Innovation, Industry, Science and Research has responsibility under the *Public Service Act 1999* (Cth) (and the *Workplace Relations Act 1996* (Cth)/*Fair Work Act 2009* (Cth)) as an Agency Head,<sup>[52]</sup> and the Director General has responsibility under the *Financial Management and Accountability Act 1998* (Cth) as a Chief Executive.<sup>[53]</sup> IP Australia has a regulatory function promoting innovation, investment and international competitiveness (or trade), in part, through allocating time-limited exclusive rights under the *Patents Act 1990* (Cth).<sup>[54]</sup> Within IP Australia the decision<sup>[55]</sup> to grant or refuse to grant<sup>[56]</sup> these exclusive rights is made by a statutory office holder, the Commissioner of Patents (Commissioner).<sup>[57]</sup> Figure 1 illustrates the web of accountability and responsibility applying to decisions made by the Commissioner.

The main annual appropriations for 2009-2010, the *Appropriation Act (No 1) 2009-2010* (Cth), recorded for IP Australia amounts up to a total \$3,036,000 comprising all departmental items and no

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administered items for Outcome 1 – Increased innovation, investment and trade in Australia, and by Australians overseas, through the administration of the registrable intellectual property rights system, promoting public awareness and industry engagement, and advising government.<sup>[58]</sup> The Portfolio Budget Statements were declared relevant to interpreting the detail activities (the outputs/programs) relevant to the appropriated outcomes.<sup>[59]</sup> The relevant details for 2009-2010 are set out in Table 1. Notably the *Appropriation Act (No 3) 2009-2010* (Cth) and the Portfolio Additional Estimates Statements did not vary the appropriated amounts

or change to the principal objectives and functions of IP Australia for Outcome 1 in 2009-2010.<sup>[60]</sup>

The other appropriations for IP Australia are standing appropriations through Special Accounts. Special Accounts under the *Financial Management and Accountability Act 1997* (Cth) are established either by the Minister responsible for that Act (s 5: Finance Minister)<sup>[61]</sup> by written determination (s 20)<sup>[62]</sup> or as a provision in legislation (s 21).<sup>[63]</sup> In both instances they are a ledger<sup>[64]</sup> of the CRF.<sup>[65]</sup> The essential features of Special Accounts are that they: are a method by which money may be drawn from the Treasury of the Commonwealth<sup>[66]</sup> for the expenditure purposes of the Commonwealth; articulate the requirements of an appropriation from the CRF; set out an authorisation to expend; and, identify the Commonwealth purposes for which that money may be expended (s 20).<sup>[67]</sup>

IP Australia administers a number of Special Accounts established by written determination.<sup>[68]</sup> These Special Accounts are used to fund IP Australia's operations through cost recovery from customers<sup>[69]</sup> for intellectual property services.<sup>[70]</sup> As a consequence, the Special Account acts as a standing appropriation of the amount credited to the account that is supplemented with any annually

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appropriated notional interest and various other amounts for identified purposes (as set out above).<sup>[71]</sup> However, the costs recovered from customers of intellectual property services<sup>[72]</sup> also include a component of the costs of IP Australia's activity and another component related to other policy considerations.<sup>[73]</sup> These include rising annual renewal fees after the fifth year so that less innovative patents extract lower economic rents (discouraging unwanted patents),<sup>[74]</sup> a waiver of fees for public interests,<sup>[75]</sup> and so on.

For the IP Australia Special Account used to credit receipts from charges for intellectual property services to fund its operations, the appropriation is set out in s 20(4) of the *Financial Management and Accountability Act 1997* (Cth): [t]he CRF is hereby appropriated for expenditure for the purposes of a Special Account ... up to the balance for the time being of the Special Account the expenditure purpose of the Commonwealth. The Commonwealth purpose is set out in the determination establishing the Special Account: [f]or expenditure related to the development and administration of intellectual and industrial property systems, including the provision of property rights in inventions ... and matters incidental thereto and [f]or expenditure comprising payments of moneys to the [CRF], as agreed from time to time by the Minister for Finance and the relevant Minister, in addition to payments expressly required to be paid to that fund under legislation.<sup>[76]</sup> The appropriated amount credit to the Special Account available to expend is recorded in 2009-2010 (receipts) as \$154,753,000 and associated with the Outcome 1 in the terms: Increased innovation, investment and trade in Australia, and by Australians overseas, through the administration of the registrable intellectual property rights system, promoting public awareness and industry engagement, and advising government.<sup>[77]</sup> Importantly, the Portfolio Budget Statements record the Special Account cash flows as receipts and payments, and distinct from the amount of the annual appropriation by the *Appropriation Act (No 1) 2009-2010* (Cth).<sup>[78]</sup> Presumably the expenditure purposes of the annual appropriation and the Special Account appropriation are within the meaning of the terms of both forms of appropriation purposes, and that the outcomes and outputs/programs framework also applies to the Special Account standing appropriations.<sup>[79]</sup> This appears to be the approach adopted by IP Australia.<sup>[80]</sup>

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This analysis of IP Australia's reporting period for the 2009 Budget illustrates the range of standards set by Parliament through the *Appropriation Act (No 1) 2009-2010* (Cth) and the subsequent reporting back through the Annual Report against those benchmarks (the clear read). Importantly, this analysis demonstrates that the Australian Government is setting the standards as it is the Australian Government that sets the prospective reporting standards for consideration by the Parliament (detailing the outcomes, the programs, the performance indicators, and so on, in the Budget documents) and the reporting benchmarks (setting the guidelines for Annual Reports, the financial and accounting standards, and so on). Further, while there is some participation of the Parliament, such as passing the *Appropriation Act (No 1) 2009-2010* (Cth) and the JCPAA approving the guidelines for *Public Service Act 1999* (Cth) Annual Reports,<sup>[81]</sup> there are other standards that are prepared by the Australian Government with either no involvement of the Parliament (such as the Portfolio Budget Statements), or merely a veto role for Parliament (such as disallowing the Finance Minister's Orders). The use by IP Australia of Special Accounts also demonstrates that significant expenditure is not formally approved by the Parliament during the Budget considerations.<sup>[82]</sup>

## 5. Conclusions

### 5. Conclusions

The question posed by this article was whether Parliament should be responsible for setting the accountability, transparency and responsibility standards for the multitude of Australian Government presentations of information and data to Parliament. The analysis presented in this article shows that this question needs to be recast as whether there should be a *greater* involvement of the Parliament. As the analysis demonstrates, Parliament does have a role in that the existing reporting obligations are imposed by

statute with a clear read between the *Appropriation Act (No 1) 2009-2010* (Cth) and the *Public Service Act 1999* (Cth) Annual Reports. While not a comprehensive coverage of the accountability, transparency and responsibility standards applying to the Australian Government, the spending and employment arrangements are certainly a major element of those standards. Key elements of these standards, however, are prepared by the Australian Government with either no involvement of the Parliament (such as the Portfolio Budget Statements), or merely a veto role for Parliament (such as disallowing the Finance Minister's Orders). This is potentially a significant flaw in the existing arrangements as both the Portfolio Budget Statements and the Finance Minister's Orders address critical content standards about the performance benchmarks and accounting standards respectively.

One of the beneficial results of the public administration reforms have been a plethora of reporting back arrangements so that the allocation of resources and performance using those resources could be assessed and hopefully improved. With all this information now available, and probably more information and data than has ever been made available before, the likely problem faced by Parliament is discerning useful information – sorting significant information and data from the not so significant. A critical part of getting the right information and data is that the right questions are asked and the right processes are established to elicit that information and data. Put simply, are reforms required to enable the Parliament to ask the right questions and get the kinds of information and data that is necessary to properly hold the Australian Government to adequate standards of accountability, transparency and responsibility? The Parliament could usefully give direction and guidance about the form of these critical documents together with standards and guidance materials, such as:

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- (1) Establish standards and oversee the purpose statements (outcomes) in Appropriation Bills to ensure the purposes of appropriations are sufficiently descriptive to confine subsequent executive spending – These are the Outcome statements defining the purposes of the Parliament's approval for spending that are set out in the Appropriation Bills, the Portfolio Budget Statements and the Annual Reports against which performance is measured. These statements are also a link to senior Executive's performance. These purpose statements need to be carefully crafted to limit the Executive's spending, albeit a crude measure given the preference for one line appropriations. These statements are, in effect, a parliamentary pre-approval for spending and benchmark for performance;
- (2) Establish standards and oversee the benchmarks for performance measures of programs (outputs) in the Portfolio Budget Statements, including the descriptive performance indicators – These are the various program, sub-program, deliverables and key performance statements that are found in the Portfolio Budget Statements and the Annual Reports against which performance is measured. These statements are also link to senior Executive's performance. These statements need to be carefully crafted so that performance is properly directed to outcomes and outputs that the Parliament intends through its appropriations;
- (3) Establish standards and oversee the financial reporting standards (currently prepared as, for example, the Finance Minister's Orders) – These are the annual financial statements (according to the Finance Minister's Orders) against which the Auditor-General provides a report. The relevant documents are currently in the form of Orders (approved by Parliament as disallowable instruments (that is, legislative authority delegated to the Executive)) and policy and guidance materials provided by the Australian Government. These are essentially the accounting standards against which the appropriations are expended and found the government's financial reporting;
- (4) Establish standards and oversee the benchmarks for reporting to Parliament in the Annual Report on spending and performance – The Annual Reports is the key reference document linking appropriation, spending and performance (the clear read). As such, it is essential that this document provide the kinds of information and data that a Parliament might need and want.

The justification for Parliament taking on setting the standards and forms and overseeing their implementation is to ensure that the Parliament independently determines what information and data it needs, recognising that the Parliament has a different function to the Australian Government and the Parliament is best placed to determine its own needs and wants. For example, the Australian Government's documents might not provide the kind of information and data, or the synthesis of that information and data, in a form that is most useful to Parliament. As the analysis in Tables 1 and 2 shows there is no clear synthesis of reporting available for a clear read between the Budget documents and the Annual Reports until that material is collected together from different sources.

Another justification for Parliament adopting a more proactive role is the need to compile records of performance across reporting periods that is consistent and comparable. Table 2 illustrates similar output/program performance information and data across the appropriation periods 2006-2007, 2008-2009 and 2009-2010 for IP Australia. For each reporting period comparable information and data was synthesised from various sources as no single source provided a direct comparison between the Budget documents and the final reporting in the Annual Report on performance. Of particular note are the price amounts changing across reporting periods (see Table 2). Further, it was notable that there were minor variations in the data and information set out in the Portfolio Budget Statements and the Annual Report (such as quantities and prices) was not the same creating some internal inconsistencies within years and for comparisons between years. The consequence is that the Annual Report statements on prospective performance needed to be checked against the targets in the Portfolio Budget Statements. The paucity of information and data for the appropriations 2008-2009 compared with the period of the appropriations 2006-2007 is perhaps surprising, given the rhetoric of

Operation Sunlight to improve the openness and transparency of public sector budgetary and financial

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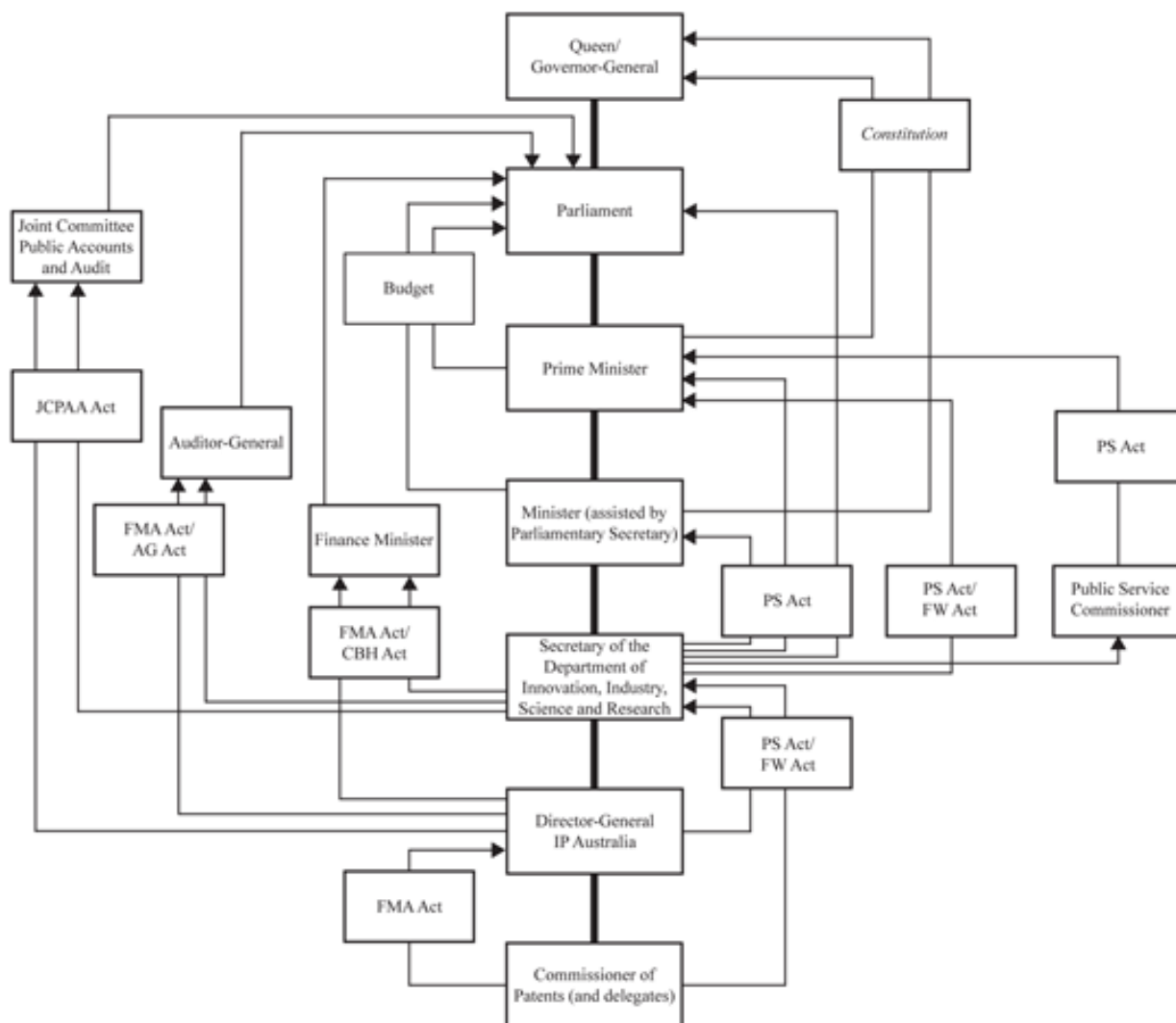
management and the Australian Government's response.<sup>[83]</sup> More importantly, the variation in the information and data means that tracking performance is made difficult. This is also problematic when measured differ across agencies so comparisons of quality, quantity and price across agencies might provide useful measures of performance and value.

The conclusion from the analysis presented in this article is that Parliament should probably take a greater role in setting the standards for key reporting obligations, and overseeing their implementation. This might be achieved simply by ensuring a greater scrutiny of key measures by committees, or more comprehensively through an independent entity such as the proposed Parliamentary Budget Office.<sup>[84]</sup> With the plethora of information and data now available some measures are probably necessary to ensure that the Parliament independently determines what information and data it needs to properly hold the Australian Government to adequate standards of accountability, transparency and responsibility.

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## The web of accountability applying to decisions made by the Commissioner of Patents under the Patents Act 1990 (Cth)

The web of accountability applying to decisions made by the Commissioner of Patents under the Patents Act 1990 (Cth)



AG Act – Auditor-General Act 1997 (Cth); CBH Act – Charter of Budget Honesty Act 1996 (Cth); FW Act – Fair Work Act 2009 (Cth); FMA Act – Financial Management and Accountability Act 1997 (Cth); PS Act – Public Service Act 1999 (Cth).

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Sub-program 1.2: Awareness, Education and International Engagement Sub-program objectives Key Performance Indicators Deliverables (PBS) Results Achieved (Annual Report)

**\*Awareness and education:**

IP Australia will facilitate understanding of the value of and access to the domestic and international intellectual property system among its stakeholders in line with Australia's interests

**\*International engagement:**

IP Australia will influence the development of effective intellectual property systems in line with Australia's interests

**Awareness and education**

***Quantity***

- The proportion of customers that deal with us electronically.

\*Awareness, Education and International Engagement represents IP Australia's role in raising awareness and educating customers about intellectual property, and engaging with key international stakeholders and IP bodies

\*Under the awareness and education objective of this sub-program IP Australia will deliver Public Education and Awareness programs, which promote the importance of IP and provide Australians with the tools they require to make informed decisions regarding IP

\*Under the international engagement objective of this sub-program IP Australia will proactively manage customer and international engagement activities, including development and cooperation activities.

\*There has been little upward movement in the proportion of customers who deal with us electronically (although significantly more online transactions occur in the trade marks business line than in patents).

\*IP Australia's major program of ICT modernisation, especially the Integrated Customer Service Delivery (ICSD) Program, should lift the proportion significantly in coming years.

- The level of use of public information services.\*The number of total visitors to IP Australia's website increased by 20% in 2009-10 compared to the previous financial year. Subscribers to IP Australia's small and medium business e-newsletter increased by more than 45% in the same period. • The level of use of fast-track applications and registration options.\*IP Australia's customers lodged fewer fast tracked patent applications in 2009-10 than in 2008-09: 456 compared with 454. Ten of these lodgments cited green technology as the reason.

***Quality***

- Increased public awareness of intellectual property rights.

\*Research indicates that 67% of SMEs are either somewhat or very aware of IP protection. This is the same percentage as in the 2008-09 research. • The level of customer satisfaction with information services.

\* 2009 Service Evaluation found that the trend in satisfaction with online services is upwards with accuracy, ease of use, and look and feel leading the upwards trend.

\*Attorneys reported higher levels of satisfaction compared to self-filers whose experience was moderated by the individual's prior knowledge or exposure to intellectual property.

**International engagement**

***Quantity***

- The amount of international work sharing.

\*41 cases were considered under the Vancouver Group Mutual Exploitation (VGME) Initiative during 2009-10. This will increase significantly in 2010-11.

\*In 2009-10, 26 requests to fast-track AU applications were received via the Patent Prosecution Highway with the US Patents and Trademarks Office.

- Number of international activities and agreements.

\*40 overseas trips were undertaken in 2009-10, primarily to participate in multilateral and bilateral meetings. See below for the outcomes of this participation.

\*In 2009-10, IP Australia participated in the development of three agreements with international IP offices. See below for more information on key agreements achieved.

- Number of externally funded aid projects delivered against key target segments.\*The following development cooperation projects/activities in 2009–10 were partially funded by external organisations (identified in brackets): Intellectual Property Explorer – IPR web resource for SMEs (APEC, the Hong Kong Intellectual Property Department, and the Intellectual Property Office of Singapore).

**(2012) 19 AJ Admin L 73 at 88**

Sub-program 1.2: Awareness, Education and International Engagement (continued)Sub-program objectivesKey Performance IndicatorsDeliverables (PBS)Results Achieved (Annual Report)

*Quality*

- The level of customer satisfaction with access to international IP system.

\* 2009 Service Evaluation found that 79% of customers found the ease of access to the international IP system to be good, very good or excellent, with 92% describing the ease of access as either the same or better when compared with earlier experiences.\* The achievement of key outcomes through participation at key international and regional forums.\*Key outcomes achieved in 2009-10 included: renewal of the mandate of the WIPO Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore. The mandate renewal has started to provide momentum to WIPO normative activities; agreement to several measures to enhance the Patent Cooperation Treaty system. These will make the patent system more efficient and increase the quality of examination; agreement to a coordination mechanism for the WIPO Committee on Development and IP. This agreement contributes to maintaining balance in WIPO as an international IP system delivery agency and an agency responsible for economic development, technical assistance and capacity building.\* Key agreements reached and implemented with targeted international IP offices.\*Key agreements reached in 2009-10 included: the VGME initiative agreed in July 2009 between the Australian, Canadian and UK IP offices, enabling exploitation of existing search and examination reports on equivalent applications; the 2010 European Patent Office - IP Australia Memorandum of Understanding agreed in November 2009, setting out key cooperation activities with one of the world's largest patent offices; and the 2010-11 WIPO – Australia Work -Plan agreed in November 2009, which articulates development cooperation projects for the Asia and Pacific Region.Sub-program expenses\*\$8.093 million\$9.403 million

**(2012) 19 AJ Admin L 73 at 89**

Sub-program 1.3: Advice to GovernmentSub-program objectivesKey Performance IndicatorsDeliverables (PBS)Results Achieved (Annual Report)

\*Policy & legislation:

IP Australia's program of policy and legislative change will foster Australian innovation by shaping the development of the IP system both at home and abroad

\*IP research: IP Australia will contribute to research in intellectual property issues to support its legislative and policy effort and its advisory boards

\*Support for advisory boards:

IP Australia will provide effective support to the Advisory Council on Intellectual Property.

Policy & Legislation

*Quality*

- Satisfaction of stakeholders with quality and timeliness of advice on policy and legislation, and ministerial correspondence, speeches & briefings, submissions to reviews and Government responses

\*Advice to Government relates to IP Australia's role in providing advice on intellectual property matters, and supporting the research

into the current and future use of IP Rights

\*Under the policy and legislative objective of this sub-program IP Australia will provide IP policy advice across government and internationally

\*IP Australia's policy and advice is consistently delivered on time. Less than 5% of IP Australia's ministerial contributions are returned for re-work.

#### *Quantity*

- The number of ministerial briefs and responses

\*In 2009-10, IP Australia provided 34 pieces of ministerial correspondence, 19 information briefs, 20 action briefs, 14 engagement briefs, 15 question time briefs and 2 meeting records to the Minister.

#### IP Research

#### *Quality*

- Increased understanding of IP issues impacting on Australian business.

\*Through IP Australia's biannual Business and Industry Forum, business issues related to IP and intangible assets have been identified, discussed and acted upon. The forum includes representatives from the Australian Industry Group, the Australian Chamber of Commerce and Industry, the Institute of Chartered Accountants and the Certified Practising Accountants of Australia.

#### *Quantity*

- The number of IP research initiatives

\*IP Australia conducted four strategic research projects during 2009-10. Of these strategic research initiatives, 100% were completed on time, within budget and to the anticipated standard.

\*IP Australia also agreed to provide \$2 million over four years to support the Intellectual Property Research Institute of Australia, to assist in its multi-disciplinary IP research work.

#### Support for Advisory Boards

#### *Quality*

- Council & Board satisfaction with quality of secretariat and research support provided

\*IP Australia's Advisory Boards indicated that they were very satisfied with secretariat and research support during 2009-10.

#### *Quantity*

- The number of ACIP reviews completed

\*During 2009-10, the Advisory Council on Intellectual Property completed two reviews – the review of Post Grant Patent Enforcement strategies and a review of the Enforcement of Plant Breeder's Rights. Sub-program expenses \$4.267 million \$4.970 million

**(2012) 19 AJ Admin L 73 at 90**

**(2012) 19 AJ Admin L 73 at 91**

(ii) IP Australia: Department of Innovation, Industry, Science & Research 2008-2009†Output groupsComponents (*with the results to be achieved*)Key Performance Indicators2008-09 targetsResults Achieved

#### Output 1.1: Intellectual property rights and professional registration

\*Intellectual property rights – IP rights administration, search and examination

*IP Australia will deliver intellectual property rights that are valued in the community and are enforceable when required. IP Australia will strive to create an intellectual property system that is simple, open, fair and which offers value for money*

\*Professional registration – Registration processing and Professional Standards Board secretariat

*IP Australia will successfully undertake its functions associated with persons wishing to qualify for registration as patents and/or*

*Trade Marks Attorneys and will provide effective secretariat support for the Professional Standards Board*

Compliance with agreed Customer Charter standards\*80% or greater compliance with agreed Customer Service Standards\*88%  
compliance with agreed Customer Service Standards Receipt of patent applications and provisions of patent examination services

\*Applications: 37,595

\*Examinations: 17,000

\*Applications: 24,985

\*Examinations: 19,336

Receipt of Professional Standards Board applications and provision of Professional Standards Board registration services

\*Applications: 457

\*Registrations: 1,206

\*Applications: 387

\*Registrations: 1,170

Costs of delivering this output group (which includes trade marks, designs and plant breeder's rights applications and registration services)\*\$132.728 million\*\$132.235 million† Department of Innovation, Industry, Science & Research, *Annual Report 2008-09* (2009) p 122; Department of Finance & Deregulation, *Portfolio Budget Statements 2008-2009: Innovation, Industry, Science and Research Portfolio*, Budget Related Paper No 1.14 (2008) pp 173-175.

**(2012) 19 AJ Admin L 73 at 92**

(iii) IP Australia – Department of Innovation, Industry, Science and Research 2009-2010 Sub-programs Sub-program objectives Key Performance Indicators Deliverables Results Achieved

Sub-program 1.1: IP rights administration and professional registration

\*Intellectual property rights: IP Australia will deliver robust IP rights and satisfy our customers in terms of timeliness and value for money. IP Australia will be recognised as one of the leading IP offices in the world for the quality (including accuracy and consistency) of the IP rights we grant

\*Professional registration: IP Australia will successfully undertake its functions associated with persons wishing to qualify for registration as Patents and/or Trade Marks Attorneys and will provide effective secretariat support to the Professional Standards Board

Intellectual property rights

\*The level of customer satisfaction with the consistency of our work

\*IP Australia's performance in benchmarking against quality standards (both domestic and international)

\*Timeliness of services against service charter standards

\*The level of maturity of quality assurance systems

\*The level of work on hand for each IP right reduced, avoidance of backlog

Professional Standards Board

\*Stakeholder satisfaction with secretariat support

\*Receipt of patent applications 24,10025, 344\*Provision of patent examination services 20,40027, 700\*Receipt of Professional Standards Boards applications 130110\*Provision of Professional Standards Board registration services 1,1981, 122 Sub-program expenses (which includes other IP services)\*\$134.791 million \$129.125, million Department of Innovation, Industry, Science & Research, n 51, pp 97-101; Department of Finance & Deregulation, n 58, pp 221-244.

**Footnotes**

- \* Associate Professor, Australian Centre for Intellectual Property in Agriculture, Griffith Law School, Griffith University.
- 1 For an overview in the context of government see Blöndal J, Bergvall D, Hawkesworth I and Deighton-Smith R, "Budgeting in Australia" (2008) 8 OECD Journal on Budgeting 133 at 134-139 and the references therein.
- 2 See Joint Committee on Public Accounts, *Advisory Report on the Public Service Bill 1997 and the Public Employment (Consequential and Transitional) Amendment Bill 1997*, Report No 353 (AGPS, 1997); Joint Committee on Public Accounts, *Charter of Budget Honesty Bill 1996: Advisory Report*, Report No 351 (AGPS, 1997); Joint Committee on Public Accounts, *Guarding the Independence of the Auditor-General*, Report No 346 (AGPS, 1996); Joint Committee on Public Accounts, *Financial Reporting for the Commonwealth: Towards a Greater Transparency and Accountability*, Report No 341 (AGPS, 1995); Joint Committee on Public Accounts, *Cash Matters: Cash Management in the Commonwealth*, Report No 340 (AGPS, 1995); Joint Committee on Public Accounts, *Accrual Accounting: A Cultural Change*, Report No 338 (AGPS, 1995); Joint Committee on Public Accounts, *Public Business in the Public Interest: An Inquiry into Commercialisation in the Commonwealth Public Sector*, Report No 336 (AGPS, 1995); etc.
- 3 Recent advances are proposed and assessed in Advisory Group on Reform of Australian Government Administration, *Ahead of the Game: Blueprint for the Reform of Australian Government Administration* (2010); Department of Finance & Administration, *Governance Arrangements for Australian Government Bodies*, Financial Management Reference Material No 2 (2005); Uhrig J, *Review of Corporate Governance of Statutory Authorities and Office Holders* (Department of Finance & Administration, 2003).
- 4 See eg, Department of Finance & Deregulation, *Final Budget Outcome 2009-10* (2010); Department of Finance & Deregulation, *Final Budget Outcome 2008-09* (2009).
- 5 Treasury, *Intergenerational Report 2007* (2007) p iii. See also Treasury, *Australia to 2050: Future Challenges – Intergenerational Report 2010* (2010); Treasury, *Intergenerational Report 2002-03*, Budget Paper No 5 (2002).
- 6 *Public Service Act 1999* (Cth), ss 44(1) (Public Service Commissioner), 63(1) (Secretary of a Department), 70(1) (Head of an Executive Agency). As a matter of policy this reporting is also applied to prescribed Agencies: *Financial Management and Accountability Act 1997* (Cth), s 5; Department of the Prime Minister & Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (2010) p 1.
- 7 *Public Service Act 1999* (Cth), ss 44(4) (Public Service Commissioner), 63(2) (Secretary of a Department), 70(2) (Head of an Executive Agency). See also Department of the Prime Minister & Cabinet, n 6.
- 8 See Department of the Prime Minister & Cabinet, n 6, pp 5-14.
- 9 *Public Service Act 1999* (Cth), s 44(2); *Public Service Commissioner's Directions 1999* (Cth), d 3.5(2).
- 10 See Australian Public Service Commission, *State of the Service Report*, State of the Service Series 2002-03 (2003) p iii.
- 11 *Public Service Act 1999* (Cth), s 44(4).
- 12 Australian Public Service Commission, *State of the Service Report*, State of the Service Series 2009-10 (2010) p xiii; Australian Public Service Commission, *State of the Service Report*, State of the Service Series 2008-09 (2009) p xiii; Australian Public Service Commission, *State of the Service Report*, State of the Service Series 2007-08 (2008) p xiii; etc.
- 13 *Financial Management and Accountability Act 1997* (Cth), ss 54 (monthly financial statement), 55 (consolidated financial statements). See also Department of Finance & Deregulation, *Consolidated Financial Statements for the Australian Government for the Financial Year Ended 30 June 2010* (2010); Department of Finance & Deregulation, *Consolidated Financial Statements for the Australian Government for the Financial Year Ended 30 June 2009* (2009); Department of Finance & Deregulation, *Consolidated Financial Statements for the Australian Government for the Financial Year Ended 30 June 2008* (2008); etc.
- 14 *Commonwealth Authorities and Companies Act 1997* (Cth), ss 9(1) (Commonwealth authority), 36(1) (Commonwealth company). The Annual Report must comply with various standards: Commonwealth authority – Sch 1 and *Commonwealth Authorities and Companies (Report of Operations) Orders 2008* (Cth); Commonwealth company – company's financial report, directors' report and auditor's report that the company is required to prepare according to the *Corporations Act 2001* (Cth).
- 15 See Lawson C, "Re-invigorating the Accountability and Transparency of the Australian Government's Expenditure" (2008) 32 MULR 879 at 911-913.
- 16 *Appropriation Act (No 1) 2011-2012* (Cth), s 8.
- 17 *Appropriation Act (No 1) 2011-2012* (Cth), s 7.
- 18 *Appropriation Act (No 1) 2011-2012* (Cth), s 3 (Agency). See *Financial Management and Accountability Act 1997* (Cth), s 5 (Agency); *High Court of Australia Act 1979* (Cth), s 35.
- 19 *Appropriation Act (No 1) 2011-2012* (Cth), s 3 (CAC Act body).
- 20 See *Appropriation Act (No 2) 2011-2012* (Cth), s 7 and Sch 1.
- 21 See *Appropriation Act (No 2) 2011-2012* (Cth), s 8 and Sch 2.
- 22 See *Appropriation Act (No 2) 2011-2012* (Cth), s 9 and Sch 2 (including *Appropriation Act (No 1) 2011-2012* (Cth), Sch 1).
- 23 See *Appropriation Act (No 2) 2011-2012* (Cth), s 10 and Sch 2.
- 24 See *Appropriation Act (No 2) 2011-2012* (Cth), s 11 and Sch 2.
- 25 *Appropriation Act (No 2) 2011-2012* (Cth), s 3 (Agency). See *Financial Management and Accountability Act 1997*

(Cth), s 5 (Agency); *High Court of Australia Act 1979* (Cth), s 35.

*Appropriation Act (No 2) 2011-2012* (Cth), s 3 (CAC Act body).

*Appropriation (Parliamentary Departments) Bill (No 1) 2011-2012* (Cth), s 8.

*Appropriation (Parliamentary Departments) Bill (No 1) 2011-2012* (Cth), s 7.

*Appropriation (Parliamentary Departments) Bill (No 1) 2011-2012* (Cth), s 9 and Sch 1.

Notably, there is usually little material difference between the accrual and cash amounts because of the limited capital outlays by the Commonwealth, those outlays being made at the State and local council level: see Blöndal et al, n 1 at 166-167.

Notably, the forward estimates are also addressed in the Mid-Year Economic and Fiscal Outlook: see eg, Department of the Treasury, *Mid-Year Economic and Fiscal Outlook 2009-10* (2009) pp 59-63.

See eg, *Appropriation Act (No 1) 2010-2011* (Cth), s 4; *Appropriation Act (No 2) 2010-2011* (Cth), s 4; *Appropriation Act (No 3) 2010-2011* (Cth), s 4; *Appropriation Act (No 4) 2010-2011* (Cth), s 4; *Appropriation (Parliamentary Departments) Act (No 1) 2010-2011* (Cth), s 4; etc.

*Legislative Instruments Act 2003* (Cth), s 42(1).

See also *Financial Management and Accountability (Financial Statements for reporting periods ending on or after 1 July 2009) Orders 2009* (Cth), O 4.

See also *Financial Management and Accountability (Financial Statements for reporting periods ending on or after 1 July 2009) Orders 2009* (Cth), O 3.

See also *Commonwealth Authorities and Companies (Financial Statements for reporting periods ending on or after 1 July 2010) Orders* (Cth).

IP Australia is a prescribed Agency under the *Financial Management and Accountability Regulations 1997* (Cth), reg 5 and Sch 1 (item 151).

See Department of the Prime Minister & Cabinet, n 6, p 3; Murray A, *Review of Operation Sunlight: Overhauling Budget Transparency* (Senate Printing, 2008) pp 90-91; Australian National Audit Office (ANAO), *Application of the Outcomes and Outputs Framework*, Audit Report No 23, 2006-07 (2007) pp 77-83; ANAO, *Performance Information in Portfolio Budget Statements*, Better Practice Guide (2002) pp 5-6; etc. For an illustration of the relationship see eg, Lawson C, "Managerialist Influences on Granting Patents in Australia" (2008) 15 AJ Admin L 70.

*Public Service Act 1999* (Cth), ss 44(1) (Public Service Commissioner), 63(1) (Secretary of a Department), 70(1) (Head of an Executive Agency).

*Financial Management and Accountability Act 1997* (Cth), s 63; amended *Financial Management and Accountability Orders (Financial Statements for Reporting Periods Ending on or after 1 July 2009) 2009* (Cth). See also ANAO, *Preparation of Financial Statements by Public Sector Entities*, Better Practice Guide (2009).

*Financial Management and Accountability Act 1997* (Cth), ss 49-51, 54-57.

See *Commonwealth Authorities and Companies Act 1997* (Cth), s 9(1) and Sch 1 (item 1) (Annual Report – Commonwealth authorities), s 36 (Annual Report – Commonwealth companies).

ANAO, *Annual Performance Reporting*, Audit Report No 11 (2003) p 21. See also Senate Standing Order 25(21); ANAO and Department of Finance & Administration, *Guide on Annual Performance Reporting*, Better Practice Guide (2004).

See ANAO, Better Practice Guide (2002), n 38, p 5. See also Department of the Prime Minister & Cabinet, n 6, pp 3-4.

*Public Service Act 1999* (Cth), s 63(1).

Senate Standing Order 25(21). See also Evans H, *Odgers' Australian Senate Practice* (11th ed, 2004) pp 386-387.

House of Representatives Standing Order 215(c). See also Harris I (ed), *House of Representatives Practice* (5th ed, 2005) p 624.

See Senate Standing Order 25(20)(e); House of Representatives Standing Order 215(c).

See Evans H, *Odgers' Australian Senate Practice* (12th ed, 2008) pp 360-362, 366-371. See also Department of the Senate, *Consideration of Estimates by the Senate Committees*, Senate Brief No 5 (2006).

See Budget Speech 2009 and associated documents were delivered on 12 May 2009 as the Second Reading to the *Appropriation Bill (No 1) 2006* (Cth): Commonwealth, House of Representatives, *Debates*, 12 May 2009, pp 3531-9 (Wayne Swan, Treasurer). See also Commonwealth, Senate, *Debates*, 12 May 2009, p 2468 (Nick Sherry, Minister for Superannuation and Corporate Law).

Department of Innovation, Industry, Science & Research, *Annual Report 2009-10* (2010).

See *Public Service Act 1999* (Cth), s 9.

See *Financial Management and Accountability Act 1997* (Cth), s 5; *Financial Management and Accountability Regulations 1997* (Cth), reg 5 and Sch 1 (item 128A).

These exclusive rights are during the term of the patent, to exploit the invention and to authorise another person to exploit the invention where the term exploit means in relation to an invention, includes: (a) where the invention is a product – make, hire, sell or otherwise dispose of the product, offer to make, sell, hire or otherwise dispose of it, use or import it, or keep it for the purpose of doing any of those things; or (b) where the invention is a method or process – use the method or process or do any act mentioned in paragraph (a) in respect of a product resulting from such use: *Patents Act 1990* (Cth), s 13 and Sch 1 (exploit).

In the nature of an administrative determination: see [Australian Broadcasting Tribunal v Bond \(1990\) 170 CLR 321](#) at

335-338 (Mason J), 365 (Brennan J), 369 (Deane J). Notably, this conception of a decision contemplates the place of other considerations that guides but does not control the making of decisions: [\*Re Drake and Minister for Immigration & Ethnic Affairs \(No 2\)\*](#) (1979) 2 ALD 634 at 640-641 (Brennan J). See also [\*Tang v Minister for Immigration & Ethnic Affairs\*](#) (1986) 67 ALR 177 at 178 (Evatt J), 183 (Davies J), 189-190 (Pincus J).

See *Patents Act 1990* (Cth), ss 45 (examination), 59 (opposition), 207 (general powers).

*Patents Act 1990* (Cth), s 207.

*Appropriation Act (No 1) 2009-2010* (Cth), ss 7 (departmental items), 8 (administered items), 16 (appropriation) and Sch 1. Before the transition of outcome the outcome was Australians benefit from the effective use of intellectual property, particularly through increased innovation, investment and trade and the output groups (now called programs) remained unchanged: Department of Finance & Deregulation, *Portfolio Budget Statements 2009-2010: Innovation, Industry, Science and Research Portfolio*, Budget Related Paper No 1.14 (2009) p 226.

*Appropriation Act (No 1) 2009-2010* (Cth), s 4.

See *Appropriation Act (No 1) 2009-2010* (Cth), ss 7, 16 and Sch 1.

The Finance Minister is currently the Minister for Finance and Administration.

Noting that such determinations are disallowable instruments that must satisfy special procedural requirements before the Parliament before they take effect (*Financial Management and Accountability Act 1997* (Cth), s 22).

A listing of these Acts is set out in Joint Committee of Public Accounts & Audit, Commonwealth Parliament, *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, Report 395 (2003), App K. See also Lawson C, "Special Accounts under the Constitution: Amounts Appropriated for Designated Purposes" (2006) 29 UNSWLJ 114.

They are an account ... used to record moneys received for a designated purpose and expenditure of those moneys: Explanatory Memorandum, *Financial Management Legislation Amendment Bill 1999* (Cth), p 3.

See *Constitution*, s 81. Note also *Constitution*, ss 66, 82.

This is any fund or sum of money standing to the credit of the Crown in right of the Commonwealth: [\*Northern Suburbs General Cemetery Reserve Trust v Commonwealth\*](#) (1993) 176 CLR 555 at 573 (Mason CJ, Deane, Toohey and Gaudron JJ). In other words, the moneys actually held by the Commonwealth.

See Department of Finance & Administration, *Guidelines for the Management of Special Accounts*, Financial Management Guidance No 7 (2003) pp 3-15.

These are: Intellectual Property Special Account (Departmental) ... [f]or developing and administering intellectual and industrial property systems, including the provision of property rights in inventions, trademarks, designs and plant breeders rights; Other Trust Monies Special Account (Departmental) ... [f]or the receipt of moneys temporarily held in trust for the World Intellectual Property Organisation (WIPO) under the Patent Cooperation Treaty and MADRID protocol and IP legislation [and f]or the receipt of moneys held as a security in respect of the costs of the opposition proceedings under s 222 of the *Trade Marks Act 1995* (Cth) and s 219 of the *Patents Act 1990* (Cth); Services for Other Governments and Non-Agency Bodies ... [for] monies advanced to IP Australia by Comcare for the purpose of distributing compensation payments made in accordance with the *Safety, Rehabilitation and Compensation Act 1998* (Cth) and... for payment of Salary Packaging expenses on behalf of current IP Australia employees in accordance with the IP Australia Certified Agreement; Services for Other Governments and Non-Agency Bodies Account (Departmental) ... for the receipt of moneys held as a security in respect of the costs of the opposition proceedings under ... s 219 of the *Patents Act 1990* (Cth): Department of Innovation, Industry, Science & Research, n 51, pp 308-310. See also Department of Finance & Deregulation, n 58, pp 235-236.

See IP Australia, Customer Service Charter (2009).

See Department of Innovation, Industry, Science & Research, n 51, p 272; IP Australia, *Corporate Guidelines for Refunds and Waivers* (2010) p 4. See also Department of Finance & Administration, *Australian Government Cost Recovery Guidelines*, Financial Management Guidance No 4 (2005).

See Department of Finance & Deregulation, n 58, pp 235-236.

This was a policy that already featured in patent practice at the time the *Patents Act 1990* (Cth), was implemented: see eg, Department of Industry, Technology & Commerce, *Annual Report 1989-1990* (1990) p 98.

For example, this includes agreed charges applying under international agreements, such as applications filed under the *Patent Cooperation Treaty* [1980] ATS 6 in an agreement with the World Intellectual Property Organisation: see Department of Finance & Deregulation, n 58, p 236.

*Patents Regulations 1991* (Cth), Sch 7 (Pt 2). See also Intellectual Property & Competition Review Committee, *Review of Intellectual Property Legislation under the Competition Principles Agreement* (2000) pp 144, 156, 157; IP Australia, *Government Response to Intellectual Property and Competition Review Recommendations* (2001) p 7.

See eg, IP Australia, n 70, pp 13-15.

Initial Determination to Establish Components of the Reserved Money Fund (1997) Sch. Notably the *Financial Management Legislation Amendment Act 1999* (Cth), s 5 merged the Loan Fund and the components of the Reserve Money Fund and the Commercial Activities Fund into the single CRF with the new Special Accounts preserving the rights and obligations of the components of the Reserve Money Fund and Commercial Activities Fund: Department of Finance & Administration, Reserved Money Fund (RMF) and Commercial Activities Fund (CAF) – Transition to 'Special Accounts', Finance Circular 1999/03 (1999); Department of Finance & Administration, n 67.

Department of Finance & Deregulation, n 58, pp 228, 236.



- 78 Department of Finance & Deregulation, n 58, p 236.
- 79 Similar dual appropriations have been considered by the High Court, although the issue of inconsistency or supremacy has not been resolved, see eg, [Northern Suburbs General Cemetery Reserve Trust v Commonwealth \(1993\) 176 CLR 555](#). While this may be of little practical consequence there are potentially significant issues where the appropriations are double counted in the calculation of surplus revenue due to the States (*Constitution*, s 94), and where an appropriation is for the necessary supplies for the ordinary annual services of Government (*Constitution*, ss 53, 54). Notably, to expend money there must be both an appropriation law *and* a spending law as an appropriation is not sufficient by itself to authorise spending: see [Pape v Commissioner of Taxation \(2009\) 238 CLR 1](#) at 55 (French CJ), 74, 82-83 (Gummow, Crennan and Bell JJ), 113 (Hayne and Kiefel JJ), 210-213 (Heydon J).
- 80 See eg, Department of Industry, Tourism & Resources, *Annual Report 2006-2007* (2007) p 25; Department of Industry, Tourism & Resources, *Annual Report 2005-2006* (2006), p 19.
- 81 See Department of the Prime Minister & Cabinet, n 6.
- 82 It is estimated that approximately 80% of appropriations are standing appropriations: Australian National Audit Office, *Financial Management of Special Appropriations*, Audit Report No 15 2004-05 (2004) p 11. Notably, the High Court considers that Standing appropriations need not be included in annual appropriations: [Brown v West \(1990\) 169 CLR 195](#) at 207 (Mason CJ, Brennan, Deane, Dawson and Toohey JJ). See also [Northern Suburbs General Cemetery Reserve Trust v Commonwealth \(1993\) 176 CLR 555](#) at 603 (McHugh J).
- 83 See Murray, n 38, pp 24-26; Finance and Public Administration Committee, Senate, *Transparency and Accountability of Commonwealth Public Funding and Expenditure* (2007) pp 50-52; ANAO, Audit Report No 23, 2006-07, n 38, pp 90-94. See also Department of Finance & Deregulation, *Government Response to the Review of Operation Sunlight: Overhauling Budget Transparency* (2008) p 6.
- 84 See Joint Select Committee on the Parliamentary Budget Office, *Inquiry into the proposed Parliamentary Budget Office* (2011). This is consistent with some of the recommendations, such as, The committee recommends that the Government empower the Parliamentary Budget Office to undertake the following functions, consistent with its mandate ... initiate its own work in anticipation of the interests of its clients (p 50).