

# The Perils of Treasurer's Advances

A Centre for Public Integrity Factsheet



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## Factsheet: The Perils of Treasurer's Advances

Advances to Treasurers (or to Finance Ministers, as is the case in some jurisdictions), are mechanisms enabling the executive to spend a capped amount of public funds, approved by parliament in advance of the purpose of the funds being known. These advances are meant only to provide the executive with some monies to respond to unforeseen emergencies for which it would be impractical to have to seek parliamentary approval prior to meeting the expense.

### How do they work?

Each financial year, Appropriation Act/s are passed by Parliaments around the country in order to enable them to spend public money. These Acts have included provisions enabling Advances in the Commonwealth, New South Wales, Victoria, Western Australia, the Australian Capital Territory and the Northern Territory. For example, item 4 of Schedule 1 to the *Appropriation (2024-2025) Act 2024* (Vic) provides for an "Advance to Treasurer to enable Treasurer to meet urgent claims that may arise before Parliamentary sanction is obtained, which will afterwards be submitted for Parliamentary authority".

### Why can Advances be a cause for concern?

Advances can be a cause for concern for a number of reasons. Firstly, one of Parliament's core functions is scrutinising and authorising proposed expenditure for specific public service purposes. In 2022-23 the Victorian government used advances for 335 different initiatives, projects and 'top-ups' of existing projects and programs. As the Victorian Auditor-General has observed, advances are 'not subject to the parliamentary scrutiny that applies to the rest of the budget before it is spent'.<sup>1</sup> Secondly, the lack of scrutiny accompanying Advances means they pose a risk of misuse of power for partisan gain. Thirdly, enabling the Parliament to scrutinise delegated legislation allocating public funds is critically important to good decision-making and reducing the risk of corruption.

The need for reform in this area is heightened by the High Court's decision in *Wilkie v Commonwealth* [2017] HCA 40, in response to a challenge brought by independent MP Andrew Wilkie to the use of Advance funds to pay for the 2017 same-sex marriage plebiscite. The Court held that under the current statutory arrangements, whether an expenditure is urgent or unforeseen is subjectively determined by the Minister – with

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<sup>1</sup> Victorian Auditor-General's Office, 'Accessing Emergency Funding to Meet Urgent Claims' <<https://www.audit.vic.gov.au/report/accessing-emergency-funding-meet-urgent-claims?section=>>>.

<sup>2</sup> Anne Twomey, 'Wilkie v Commonwealth: A Retreat to Combet over the Bones of Pape, Williams, and Responsible Government', *AUSPUBLAW* (Blog, 27 November 2017) <https://auspublaw.org/blog/2017/11/wilkie-v-commonwealth/>.

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the consequence that, as Professor Anne Twomey has characterised it, 'anything is an 'urgent need' as long as it is something the government wants to do'.<sup>2</sup>

## **Victoria: a case study**

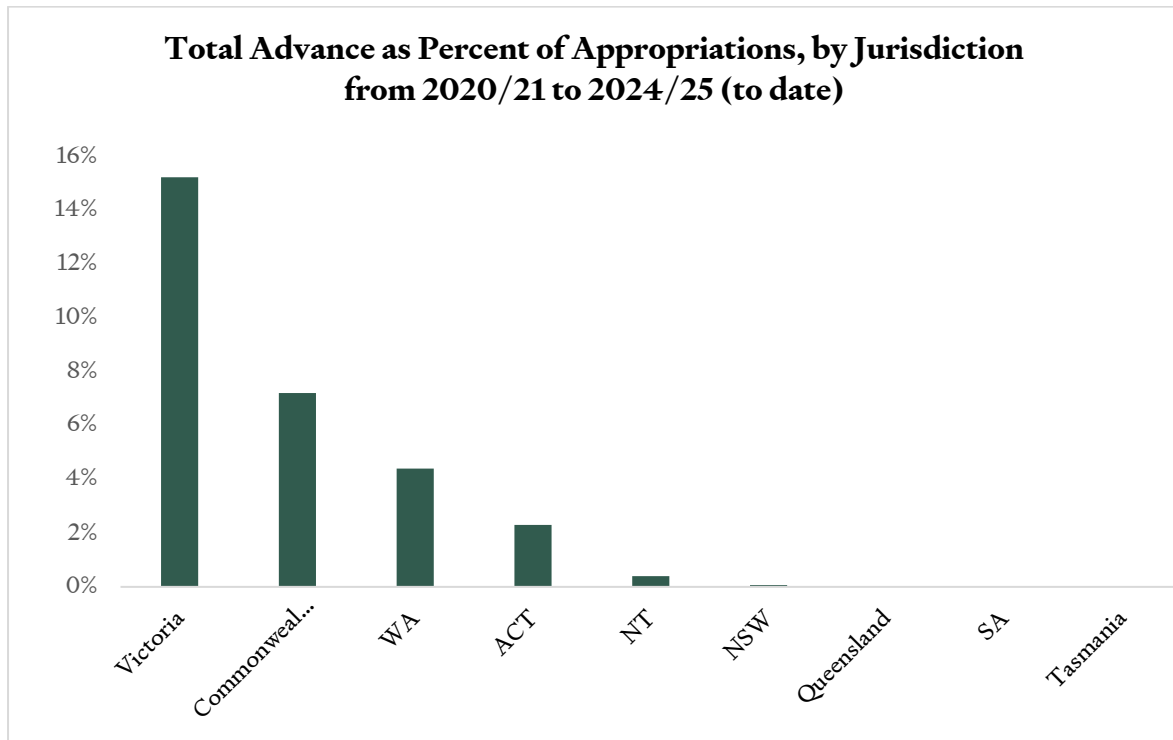
The Centre for Public Integrity has analysed the use of Advances around the country since 2020/21. Differently from almost all other jurisdictions, in Victoria Treasurer's Advances have come to represent a significant percent of total appropriations – even after the COVID-19 pandemic, when the increased use of Advances may have been justified (see Figures 1 and 2).

In 2013/14 the Victorian government used \$364.5 million – that is, less than one per cent of the \$39 billion of total appropriation for government services that year – of Treasurer's Advance.<sup>2</sup> Recent years have seen vast sums appropriated by way of Advance: \$13.7 billion in 2023/24, equating to 14.7% of the total amount appropriated to fund government services, and \$12.1 billion in 2024/25, equating to 12.7% of the total amount appropriated to fund government services. There is no reason to think that these amounts will not be utilised by government, given that in 2022/23 virtually the entire amount approved by Parliament as Treasurer's Advance was actually spent (\$12.2 billion, or 14.3% of total moneys approved by the Parliament). By way of contrast, the Commonwealth Minister for Finance used no advance in 2022-23 and 2023-24 and appropriation acts provide only \$1 billion for advances in 2024-25.

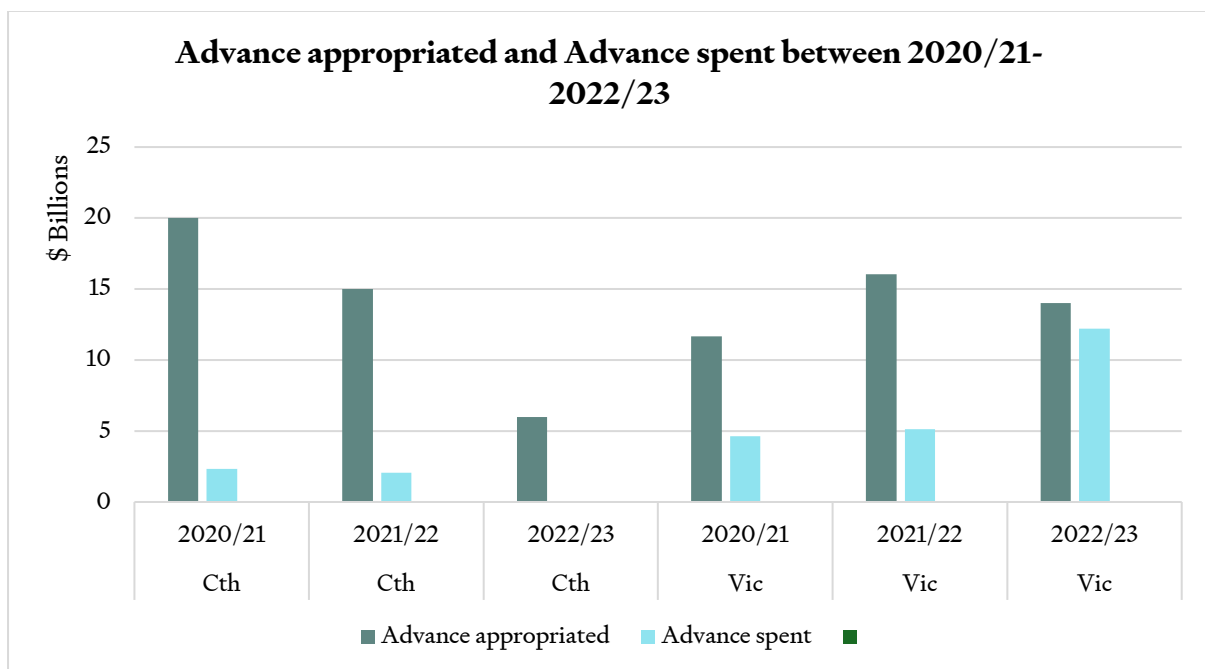
The practice that is developing in Victoria sees the Parliament appropriating amounts of money for no stated purpose, available to government to use as it sees fit and increasingly with no evidence that the expenditure was unforeseen and urgent, as should be the strict conditions for its use. Victoria is manifestly out of step with other jurisdictions in a way that fundamentally undermines the principle that Parliament should authorise the moneys to be spent for specified purposes.

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<sup>3</sup> As reported two years later in the 2015-2016 Appropriation bill.



**Figure 1:** Total Advance as Percent of Appropriations, by Jurisdiction from 2020/21 to 2024/25 (to date)



**Figure 2:** Advance appropriated and Advance from 2020/21 to 2022/23 (the data here excludes Advances claimed to be in response to COVID-19)

## A Five Point Reform Plan

The Houses of Parliament must demand greater transparency and discipline in appropriation bills and uphold the principle of parliamentary authority over government spending. This could be achieved by requiring that:

1. Relevant financial management legislation should prescribe that a Treasurer's advance only be used for expenditure that is urgent and unforeseen at the time the Appropriation Bill was passed into law.
  - 'Urgency' should be defined as meaning it is impractical to seek parliamentary approval for the expenditure in the form of a supplementary appropriation. The basis of urgency should not be that the expense must be met, but that the need causing the expense is urgent.
  - 'Unforeseen' should be defined as meaning it was not possible for the government to have known the expenditure would be necessary at the time the appropriation bill was passed.
2. Relevant financial administration legislation should provide that any advance is a legislative instrument and such instrument must be tabled in the parliament on the next day. If the parliament is not sitting, it must be tabled by forwarding a copy to the clerk(s) of the House(s) of parliament for distribution to Members.
3. The legislative instrument should describe the basis for the claim that the expenditure requiring an advance was urgent and unforeseen.
4. Relevant financial administration legislation should provide that within five months of the end of the financial year the Treasurer or Minister Finance shall report to Parliament on all advances expended in the reporting period, including the reasons each advance was urgent and unforeseen. The minister's annual report should include a limited assurance report of the Auditor-General that there was evidence of appropriate controls, records and information to validate use of each advance.
5. The relevant financial administration legislation or standing orders should require that the minister appear before the public accounts committee in relation to the annual report of advances within six months of the end of the financial year.

## **About The Centre for Public Integrity**

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We would like to thank Andrew Young, former Clerk of the Parliaments, Victoria and member of the Deakin University Parliamentary Research Unit for his contribution to this factsheet.