



Appropriation Bill (No. 4) 2004-05

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Appropriation Bill (No. 4) 2004-05

Date Introduced: 10 February 2005

House: House of Representatives

Portfolio: Finance and Administration

Commencement: On the day it receives the Royal Assent

Purpose

To appropriate additional sums that are not for the ordinary annual services of the Government.

Background

Section 83 of the [Constitution](#) states:

No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

There are two broad categories of appropriations:

- annual appropriations. There are usually six annual appropriation Bills. They authorise about 25 per cent of annual Commonwealth spending, and
- special (or standing) appropriations. Special (or standing) appropriations—the terms are often used interchangeably—authorise about 75 per cent of spending. An example is the *Social Security (Administration) Act 1999* under which age pensions, Austudy payments and other social security payments are made.

Three annual appropriations Bills are introduced when the Budget is brought down. They are:

- Appropriation Bill (No. 1)
- Appropriation Bill (No. 2), and
- Appropriation (Parliamentary Departments) Bill (No. 1).

These Bills are reproduced in Budget Paper No. 4.

The Bills authorise the payment of specified amounts for particular purposes. Appropriation Bill (No. 1) provides for the appropriation of money from the Consolidated Revenue Fund for the ‘ordinary annual services’ of government. Appropriation Bill

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(No. 2) provides for the appropriation of money from the Consolidated Revenue Fund for purposes other than the ordinary services of government. The division of items between the two Bills accords with the 1965 ‘compact’ between the House of Representatives and the Senate.

Appropriation Bill (No. 1) appropriates amounts according to whether they are departmental or administered expenses. Departmental expenses are those that agencies control.¹ Examples are salaries, other cash expenses, and non-cash expenses such as accruing employee entitlements and depreciation. Administered expenses are those that agencies administer on behalf of the government. (While some administered expenses are paid under Appropriation Bill (No. 1), the bulk are paid under special appropriations).

Appropriation Bill (No. 2) provides appropriations for:

- administered expenses, and
- non-operating costs.

Administered expenses include:

- grants to the States and Territories (sometimes called section 96 grants)², and
- new administered outcomes.

Non-operating costs—sometimes called ‘capital costs’—include:

- ‘equity injections’ which are provided to agencies to enable investment in new capacity when normal cash flows are insufficient
- ‘loans’ which are provided to agencies and used when an investment is expected to result in a direct return such as an efficiency saving
- previous years outputs appropriations: these provide funding for outputs that were delivered in a previous year. This can occur, for example, when a decision is made to implement a new activity after the date for inclusion in the additional appropriation Bills. Such activities are funded initially from cash balances, which are then replenished by the previous years outputs appropriation, and
- ‘administered assets and liabilities’ appropriations: they provide funding for acquiring new assets, extending existing assets, and discharging administered liabilities relating to activities administered by agencies in their fiduciary capacity on behalf of the Government.³

The Parliamentary Departments have a separate Appropriation Bill because Parliament is constitutionally separate and independent of the Executive.

Funding requirements often change after the Budget is brought down. Governments make new policy commitments which have to be funded. Agencies reassess their requirements and, if necessary, submit requests for additional funding. The Government may agree to

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additional funding if the amounts in the Appropriation Acts are inadequate. The process whereby additional funds are provided is called [additional estimates](#), and begins around November. The approved additional estimates are incorporated into Appropriation Bill (No. 3), Appropriation Bill (No. 4), and Appropriations (Parliamentary Departments) Bill (No. 2). These Bills are the counterparts of Appropriation Bill (No. 1), Appropriation Bill (No. 2) and Appropriations (Parliamentary Departments) Bill (No. 1) respectively.

Portfolio Additional Estimates Statements are the additional estimates counterparts of Portfolio Budget Statements, and contain explanations of Appropriation Bill (No. 3), Appropriation Bill (No. 4) and Appropriation (Parliamentary Departments) Bill (No. 2).

New policy proposals should not be included in Appropriation Bill (No. 3) because they do not fall with the classification of ordinary annual services. New policy measures are funded either through Appropriation Bill (No. 4) or special appropriations.

The [Advance to the Finance Minister](#) (AFM) provides flexibility to the system of appropriating funds. The AFM is a contingency fund from which the Minister for Finance can spend for emergency or unforeseen circumstances. Authority for payments derives from the annual Appropriation Acts. According to Department of Finance and Administration guidelines, funding is available only if agencies meet two tests:

- the need for funding must be urgent, and
- the need was unforeseen or arose because of erroneous omission or understatement.

The Appropriation Acts also require the Finance Minister to account to Parliament for spending from the AFM, which the Minister does by tabling monthly and annual statements. Whereas in the past, these reports were virtually useless in finding out the purposes for which funds were expended, their content has improved dramatically and they now contain plain English explanations.

The Bill refers to Special Accounts. In essence, they are ledgers in the Consolidated Revenue Fund that are used to record all spending and revenue relevant to a particular activity. Special accounts are thus a means of simplifying the recording and keeping track of amounts of money associated with that activity.

Funding proposals

According to the second reading speech, sums sought in the Bill fall into three categories:

- additional payments to the states and territories. They have two components:
 - funding of election commitments, and
 - additional compensation to Victoria and NSW for company tax paid through Snowy Hydro Limited
- non-operating expenses. They have two components:

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- election commitments, and
- other non-operating items, and
- a new administered expense.

Additional payments to the states and territories

The Bill includes \$81.8 million in additional payments to the states and territories.

Funding of election commitments

Election commitments include:

- \$30 million to the Department of Transport and Regional Services for the expansion of the Roads to Recovery program
- \$10 million to the Department of Health and Ageing to develop a prototype, world-class cancer centre at the Melbourne Royal Children's Hospital
- \$5 million to the Department of Health and Ageing to establish a national critical care and trauma response centre at Royal Darwin Hospital, and
- \$4.1 million to the Department of Health and Ageing for a new positron emission tomography scanner at Westmead Hospital.

Additional compensation to Victoria and NSW for company tax paid through Snowy Hydro Limited

The second component of the payments to the states and territories is \$17.7 million to the Department of Industry, Tourism and Resources for additional compensation to Victoria and New South Wales for company taxes paid through Snowy Hydro Limited.

Non-operating expenses

The Bill proposes \$420.8 million in additional appropriation for non-operating expenses.

Election commitments

Election commitments include:

- \$11 million to the Australian Customs Service for new mail, biological and chemical screening capabilities, and
- \$6.4 million to the Australian Federal Police for specialist counter-terrorism equipment.

Other non-operating items

Other non-operating items include:

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- \$84.6 million to the Department of Industry, Tourism and Resources to pay the Government's loan guarantee for the Australian Magnesium Corporation ahead of schedule, extinguishing the \$90 million liability
- a net \$76.5 million to the Department of Defence, which is largely related to reclassifying the logistics support budget from maintenance related expenses to the purchase of repairable items
- \$72.2 million to the Department of Transport and Regional Services to reclassify capital works in the Indian Ocean Territories from departmental to administered appropriations
- \$65.8 million to the Department of Foreign Affairs and Trade and Austrade to enhance security in Australian diplomatic missions, including blast-proofing windows, and
- \$25.7 million to the Department of Employment and Workplace Relations to address the cash requirements of expenses incurred in relation to the Job Network in 2003-04, reflecting the high levels of activity and outcomes under Employment Services Contract 3.

New administered expense.

The Bill includes \$50 million for a new administered expense for the National Water Commission. These grant and program funds represent the first part of the Government's election policy to establish the Australian water fund.

Basis of policy commitment

As noted, some of funding sought is for commitments made during the 2004 election.

Senate's powers with respect to money bills

Section 53 of the Constitution states:

Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or

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amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

In short, the Senate cannot amend any laws for appropriating monies for the ordinary annual services of the government. The Senate can, however, amend any appropriations for other purposes.

Main Provisions

The clauses in the Bill are largely identical to the provisions of *Appropriation Act (No. 4) 2003–04* (the Act). The following focuses on the provisions in the Bill that are not in this Act.

Clause 3 of Part 1 contains definitions. Clause 3 extends the definition of ‘agency’ to include the High Court, and the definition of ‘entity’ to include the Australian National Training Authority.

Part 2 deals with basic appropriations. **Clause 6** of Part 2 specifies a total of about \$553 million for basic appropriations. The amounts for each agency are contained in **Schedule 2**.

Clause 7 deals with payments to the states and territories. **Subclause 7(1)** empowers the Finance Minister to make a determination on the amounts to be issued from the Consolidated Revenue Fund, while limiting the amount that can be issued to the lesser of the amount specified in the state payment [**paragraph 7(1)(a)**] and the amount determined by the Finance Minister in relation to the state payment, having regard to the expenses the entity incurred in relation to the payment [**paragraph 7(1)(b)**]. **Subclause 7(3)** provides that a determination issued under paragraph 7(1)(b) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (Legislative Instruments Act). This means that the Minister’s determination is not required to be tabled in each House of Parliament, and is not subject to disallowance. There is no subsection comparable to subclause 7(3) in the relevant provisions of the Act.

Clause 8 deals with basic appropriations for administered items. **Subclause 8(1)** provides that, for an administered item, the Finance Minister may issue amounts that do not exceed, in total, the lesser of:

- the amount specified in the item [**paragraph 8(1)(a)**], and
- the amount the Finance Minister determines having regard to the expenses the entity incurred in the current year [**paragraph 8(1)(b)**].

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Budget Paper No. 4 contains the following explanation of these paragraphs:

Appropriations for administered expenses are subject to a determination by the Finance Minister on the amounts to be issued. The effect of that determination is to prevent any part of the appropriation that has not been expensed in the year from being issued from the Consolidated Revenue Fund. By convention the Finance Minister issues determinations in relation to administered expenses appropriations following the completion of each financial year.⁴

Subclause 8(3) is a provision that was not in the comparable provisions of the Act. Subclause 8(3) provides that a determination under paragraph 8(1)(b) is not a legislative instrument for the purposes of the Legislative Instruments Act.

The provisions in **Clause 11** are identical to the comparable provisions in the Act except that subsection 11(9) has been dropped and **subclause 11(9)** and **subclause 11(10)** substituted. Subclause 11(9) relates to **subclauses 11(1)** and **11(2)**. These two subclauses deal with the lapsing of administered assets and liabilities and departmental items. Budget Paper No. 4 for 2004–05 explains:

The annual appropriations acts are not expressed in terms of a particular financial year and so do not automatically lapse. Amounts appropriated for departmental expenses and for non-operating costs can be subject to a lapsing process first introduced in the additional estimates appropriations bills for 2003-2004. Under this process, on request in writing from a responsible minister for an agency, the Finance Minister may issue a determination to reduce the agency's departmental expense or non-operating costs appropriation. Requests for amounts to be lapsed may arise, for example, because the appropriation is no longer required. Until the Finance Minister issues a determination under this process, moneys appropriated for departmental expenses and non-operating costs may be issued from the Consolidate Revenue Fund in the budget or later years.⁵

Subclause 11(9) provides that a determination under subclause 11(1) or subclause 11(2) is a legislative instrument for the purposes of the Legislative Instruments Act and that, despite subsection 44(2) of the Legislative Instruments Act, section 42 applies to the determination. However, Part 6 of the Legislative Instruments Act does not apply to the determination.

Comment. Part 6 of the Legislative Instruments Act deals with the sunseting of legislative instruments, subsection 44(2) with legislative instruments that are not subject to disallowance, and section 42 with the disallowance of legislation instruments. Thus subclause 11(9) provides that the sunset provisions do not apply but that the disallowance provisions do.

Subclause 11(10) provides that a written request under subclause 11(1) or subclause 11(2) is not a legislative instrument for the purposes of the Legislative Instruments Act.

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Part 3 deals with additions to basic appropriations. The essence of **Clause 12** in Part 3 is that it allows the Finance Minister to increase the amounts for departmental items up to a maximum of \$20 million. **Subclause 12(1)** allows the Finance Minister to issue a determination increasing the amount of a departmental item by the amount specified in the determination. **Subclause 12(3)** provides that the Finance Minister's determination in subclause 12(1) is a legislative instrument for the purposes of the Legislative Instruments Act but that neither section 42 of that Act nor Part 6 of that Act applies.

Clause 13 deals with the advance to the Finance Minister. The provisions in Clause 13 are identical to the comparable provisions in Appropriation Act (No. 3) 2003–04 except for the dropping of subsection 14(4) and its replacement by **subclause 13(4)** and **subclause 13(5)**. **Subclause 13(2)** provides that, where the Finance Minister has advanced an amount, Schedule 2 is taken to be amended to take account of the advance. **Subclause 13(3)** limits the amount of the advance for the financial year ended 30 June 2005 to \$215 million. **Subclause 13(4)** provides that if an amount set out in Schedule 2 of the Bill is recovered, then the total the Minister can advance remains at \$215 million. **Subclause 13(5)** provides that a determination issued under subclause 13(2) is a legislative instrument for the purposes of the Legislative Instruments Act but that neither section 42 of that Act nor Part 6 of that Act applies.

Clause 15 deals with the terms and conditions that apply to Commonwealth payments to the states (such payments are called 'specific purpose payments'). These conditions specify amounts, times when payments are to be made, and other matters. **Schedule 1** lists the agencies responsible for making the payments, the agency outcomes to which the payments contribute, the Minister responsible for determining the conditions attached to the payments, and the Minister responsible for determining the payments (column four of Schedule 1). **Paragraph 15(2)(a)** provides that payments to the states must conform to any applicable terms and conditions, while **paragraph 15(2)(b)** provides that payments must be made in the amounts and at the times that the Minister, listed in column four, determines. **Subclause 15(4)** provides that a determination under paragraph 15(2)(b) is not a legislative instrument for the purposes of the Legislative Instruments Act. **Subclause 15(5)** contains a definition of 'applicable terms and conditions' as they relate to payments to the states. In essence, these are the conditions that the Minister responsible for determining conditions applicable to payments, decides upon. **Subclause 15(6)** provides that a determination of terms and conditions, mentioned in the definition of applicable terms and conditions, is not a legislative instrument for the purposes of the Legislative Instruments Act. Subclause 15(6) seems to be intended to ensure that terms and conditions, once decided by the Minister, cannot be easily changed.

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Endnotes

- 1 'Agency Resourcing 2004-05. Budget Paper No. 4', p. 4.
- 2 These are grants provided to the States by the Commonwealth under section 96 of the Constitution, which permits the Commonwealth to provide financial assistance to the States on whatever terms and conditions the Commonwealth Parliament thinks fit.
- 3 For a more comprehensive discussion, see 'Agency Resourcing 2004-05. Budget Paper No. 4', pp. 4–5.
- 4 'Agency Resourcing 2004-05. Budget Paper No. 4', p. 5.
- 5 'Agency Resourcing 2004-05. Budget Paper No. 4', p. 5.

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