Parliament of Australia
Department of Parliamentary Services

Parliamentary Library
Information, analysis and advice for the Parliament

BILLS DIGEST
no. 115, 2004–05

16 February 2005, ISSN 1328-8091

Appropriation Bill (No. 3) 2004–05

Richard Webb
Economics, Commerce and Industrial Relations Section

Contents

Appropriation Bill (No. 3) 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 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, and
- special (or standing) appropriations.

There are usually six annual appropriation Bills. They authorise about 25 per cent of annual Commonwealth spending.

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 (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), 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.[2]

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 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.

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

- funding of election commitments
- major items of expenditure, and
- estimates variations and other measures.

Funding of election commitments

They include:

- $18.5 million to the Department of Health and Ageing to further address mental health issues, including depression and dementia
- $10.1 million to establish the National Water Commission and provide program funding under the Australian Water Fund
- $10 million contribution to the Department of Communications, Information Technology and the Arts towards upgrading the Penrith stadium
- $6.9 million to the Attorney-General's Department for additional funding for the National Community Crime Prevention program, in addition to the extra $5 million announced before the election, and
- $6.5 million to the Department of Veterans' Affairs as additional funding to commemorate significant anniversaries in 2005, including the 90th anniversary of the Gallipoli landings and the 60th anniversary of the end of World War II.

Major items of expenditure

They include:

- $365.1 million to the Department of Employment and Workplace Relations in additional funding for Job Network, reflecting the continuation of record levels of performance and employment outcomes under Employment Services Contract 3
- a net $103.8 million to the Department of Defence, which includes $149.4 million to fund accelerated depreciation for the earlier withdrawal of F111 fighter bomber planes and two guided missile frigates
- $85.1 million in indexation adjustments
- $123.5 million to establish Tourism Australia
- $78.7 million to the Department of Family and Community Services to fund Centrelink costs for the recent budget measure, More Help for Families
- $60 million to the Australian Taxation Office to provide transitional grants to state funded organisations which will become ineligible for an exemption from fringe benefits tax as public benevolent organisations
- $42.1 million to the Department of Environment and Heritage to enhance and supplement the Great Barrier Reef structural adjustment package, and
- $24.3 million to the Department of Health and Ageing for the childhood obesity package.

Estimates variations and other measures

These amount to around $690.7 million.

Basis of policy commitment

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

Any consequences of failure to pass

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 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. 3) 2003–04*. The following focuses on the provisions in the Bill that are not in this Act.

Part 2 deals with basic appropriations. They are the amounts allocated to agencies so they can provide ordinary annual services. **Clause 6** of Part 2 specifies a total of $1 540 million. The amounts for each agency are contained in **Schedule 1**.

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)**].

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.[3]

Subclause 8(3) is a provision that has not appeared in earlier years' Appropriation Bills. It provides that a determination under paragraph 8(1)(b) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This means that the Minister's determination is not required to be tabled in each House of Parliament, and is not subject to disallowance.

The provisions in **Clause 9** are identical to the comparable provisions in *Appropriation Act (No. 3) 2003–04* except for the addition of **subclause 9(9)** and **subclause 9(10)**. Subclause 9(9) relates to **subclauses 9(1)** and **9(2).** These two subclauses deal with the lapsing of departmental expenses:

> 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.[4]

Subclause 9(9) provides that a determination under subclause 9(1) or subclause 9(2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and that, despite subsection 44(2) of this Act, section 42 of this Act applies to the determination. However, Part 6 of that Act does not apply to the determination.

Comment. Part 6 of the Legislative Instruments Act deals with the sunsetting 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 9(9) provides that the sunset provisions do not apply but that the disallowance provisions do.

Subclause 9(10) provides that a written request under subclause 9(1) or subclause 9(2) is not a legislative instrument for the purposes of the Legislative Instruments Act.

The provisions in **Clause 10** are identical to the comparable provisions in Appropriation Act (No. 3) 2003–04 except for the addition of **subclauses 10(3)** and **10(4)**. These subclauses deal with section 31 of the *Financial Management and Accountability Act 1997* (FMA Act) and 'net appropriations'. Section 31 of the FMA Act allows a departmental item to be increased by an amount (up to the amount of eligible receipts) where the Finance Minister and the Minister responsible for an agency have entered into a 'net appropriation agreement' with the agency. (A proforma agreement can be found on the Department of Finance and Administration website). Such an agreement provides that, if the agency receives any amounts covered by the agreement, the agency's appropriation will be increased in the annual Appropriation Acts. Specific provisions in the annual Appropriation Acts give effect to the agreement. Thus, the agreement has effect only while the specific provisions are in the annual Appropriation Acts. The main effect of subclauses (3) and (4) is to apply net appropriation agreements to administered items and specifically to the agencies set out in **paragraphs 10(4) (a)** to **(d)** inclusive.

The provisions in **Clause 11** are identical to the comparable provisions in Appropriation Act (No. 3) 2003–04 except for the addition of **subclause 11(3)**. **Subclauses 11(1)** and **(2)** allow the Finance Minister to increase the amount specified in a departmental item but limit the increase to no more than $20 million. Subclause 11(3) provides that the Finance Minister's determination 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 12 deals with the advance to the Finance Minister. The provisions in Clause 12 are identical to the comparable provisions in Appropriation Act (No. 3) 2003–04 except for the addition of **subclause 12(4)** and **subclause 12(5)**. **Subclause 12(3)** limits the amount of the advance for the financial year ended 30 June 2005 to $175 million. Subclause 12(4) provides that if an amount set out in Schedule 1 of the Bill is recovered, then the total the Minister can advance remains at $175 million. **Subclause 12(2)** provides that, where the Finance Minister has advanced an amount, Schedule 1 is taken to be amended to take account of the advance. **Subclause 12(5)** provides that a determination issued under subclause 12(2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* but that neither section 42 of that Act nor Part 6 of that Act applies.

Endnotes

1 'Agency Resourcing 2004-05. Budget Paper No. 4', p. 4.

2 For a more comprehensive discussion, see 'Agency Resourcing 2004-05. Budget Paper No. 4', pp. 4–5.

3 'Agency Resourcing 2004-05. Budget Paper No. 4', p. 5.

4 'Agency Resourcing 2004-05. Budget Paper No. 4', p. 5.

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2464.