



Appropriation Bill (No. 1) 2005-06

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Appropriation Bill (No. 1) 2005-06

Date Introduced: 10 May 2005

House: House of Representatives

Portfolio: Department of Finance and Administration

Commencement: When the Act receives the Royal Assent

Purpose

To appropriate funds for the ordinary annual services of the Government.

Background

Section 83 of the Constitution provides that no monies may be withdrawn from the Consolidated Revenue Fund except ‘under an appropriation made by law’. Laws authorising spending are either:

- special appropriations, or
- annual Appropriation Acts.

Special appropriations—which account of about 75 per cent of spending—are spending authorised by Acts for particular purposes. Examples are age pensions, disability support pensions and the Newstart Allowance paid under the *Social Security (Administration) Act 1999*, and the Family Tax Benefits A and B paid under *A New Tax System (Family Assistance) (Administration) Act 1999*.

There are usually six annual Appropriation bills. Three—Appropriation Bill (No. 1), Appropriation Bill (No. 2) and Appropriation (Parliamentary Departments) Bill (No. 1)—are introduced with the Budget. Appropriation Bill (No. 1) appropriates funds for the ordinary annual services of the Government, while Appropriation Bill (No. 2) appropriates funds for other annual services. Section 54 of the Constitution requires that there be a separate law appropriating funds for the ordinary annual services of the Government. That is why there are separate bills for ordinary annual services and for other annual services. The distinction between ordinary and other annual services was set out in a ‘Compact’ between the Senate and the Government in 1965 (the Compact has been updated to take account of the adoption of accrual budgeting). The Appropriation (Parliamentary Departments) Bill (No. 1) appropriates funds for the Parliamentary departments. There is a separate Bill for the Parliamentary departments because the services they provide are not considered to be either ordinary or other annual services.

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In the spring sitting of Parliament, three other Appropriation bills are introduced. They provide supplementary funding to agencies, and are called additional estimates. The bills are Appropriation Bill (No. 3) for ordinary annual services, Appropriation Bill (No. 4) for other annual services, and Appropriation (Parliamentary Departments) Bill (No. 2) for the Parliamentary departments.

Appropriation Bill (No. 1) and Appropriation Bill (No. 2) appropriate funds to departmental outputs and administered expenses. Departmental outputs are expenses that agencies control. They are essentially the cost of running agencies. Examples of departmental expenses are salaries and other day-to-day operating expenses. Administered expenses are those that agencies administer on the Government's behalf. The bulk of appropriations in Appropriation Bill (No. 1) are for departmental expenses. While most administered expenses are funded through special appropriations, some are funded through Appropriation Bill (No. 1). The 'regional partnerships' program and the Bass Strait Passenger Vehicle Equalisation Scheme are examples of administered expenses funded through Appropriation Bill (No. 1).

Departmental outputs and administered expenses contribute to outcomes. They are the results or consequences for the community that the Government wishes to achieve. For example, Appropriation Bill (No. 1) 2005-06 (the Bill) appropriates funds for the Federal Magistrates Service under Outcome 1 which is:

To provide the Australian community with a simple and accessible forum for the resolution of less complex disputes within the jurisdiction of the Federal Magistrates Service.

The data in the Bills are aggregated. Additional information can be found in Portfolio Budget Statements. However, by far the largest single portfolio appropriation is for Defence—some \$16.438 billion from a total of \$47.371 billion. A summary of the Department of Defence's 2005-06 Budget is contained in Chapter 2 of its [Portfolio Budget Statement](#). Information for other portfolios can be found in their respective Portfolio Budget Statements at <http://www.budget.gov.au/2005-06/pbs/html/index.htm>.

The Senate's powers in relation to ordinary annual services

Section 53 of the Constitution provides that the Senate may not amend proposed laws appropriating revenue or moneys for the ordinary annual services of the Government. The Senate may, however, return to the House of Representatives any such proposed laws requesting, by message, the omission or amendment of any items or provisions therein.

Main Provisions

The amount available for agencies to spend on departmental and administered items is specified in **Schedule 1**. The total specified in this Schedule is \$47.371 billion.

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The Bill contains a clause (**clause 12**) titled ‘Advance to the Finance Minister’. This allows the Minister to pay sums for emergency or unforeseen purposes. As in earlier years, the maximum the Minister may spend is \$175 million [**sub-clause 12(3)**].

The Bill is largely identical to [Appropriation Act \(No. 1\) 2004–05](#). The following are noteworthy differences between the Bill and this Act.

Clause 9

Clause 9 deals with ‘reduction of appropriations upon request’.

Note: departmental appropriations do not lapse at the end of the financial year. They therefore remain legally valid until spent, that is, the unspent balances of all departmental appropriations remain available across all financial years. However, amounts appropriated for departmental expenses can be subject to a reduction process. Under this process, the Finance Minister may issue a determination—following a written request from the relevant Minister—to reduce an agency’s departmental expenses appropriation. Subsection 9(9) of *Appropriation Act (No. 1) 2004-05* provides that:

A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

This provision does not appear in the Bill. Instead, **subclauses 9(9)** and **9(10)** provide that:

- determinations are legislative instruments
- section 42 of the *Legislative Instruments Act 2003* applies to determinations but Part 6 of that Act does not, and
- written requests are not legislative instruments.

Note: [section 42](#) of the *Legislative Instruments Act 2003* enables legislative instruments to be disallowed by either House of Parliament in the same way as formerly existed under section 46A of the *Acts Interpretation Act 1901*. Where it applies, [Part 6](#) of the *Legislative Instruments Act 2003* effectively places a 10-year sunset clause on relevant instruments.

Clause 11

As in *Appropriation Act (No. 1) 2004-05*, **clause 11** allows the Finance Minister to increase, by determination, spending on departmental items. The maximum allowed is \$20 million. However, clause 11 differs from the comparable sections in *Appropriation Act (No. 1) 2004-05* in that it:

- limits the Minister’s power to do so to the current year [**subclause 11(1)**]

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- whereas subsection 11(2) of *Appropriation Act (No. 1) 2004-05* referred to ‘all departmental items’, **subclause 11(2)** does not so specify
 - **Note:** subsection 11(2) of the Appropriation Act (No.1) 2004–05 explicitly stated:
The total of the amounts determined by the Finance Minister under this section for *all departmental items* cannot be more than \$20 million. (Emphasis added).
 - By comparison, subclause 11(2) of the Bill does not contain the phrase ‘for all departmental items’. Whilst this deletion does not appear to allow the Minister to spend \$20 million on each individual departmental item, it would be preferable for this to be clarified
- provides that determinations are legislative instruments, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to determinations [**subclause 11(3)**], and
- prevents the Minister from making increases under previous years Appropriation Acts [**subclause 11(4)**].

Note: the Bill does not include the equivalent of section 11(3) of the *Appropriation Act (No. 1) 2004-05*, which provides that the Finance Minister must give Parliament details of increases. Subclause 11(3) means that the Minister’s determination is not required to be tabled in each House of Parliament, and is not subject to disallowance.

Clause 12

Clause 12 deals with the Advance to the Minister for Finance. Similar to **clause 11**:

- **paragraph 12 (1)(a)** limits the Minister’s power to make advances to the current year
- **subclause 12(4)** provides that determinations are legislative instruments, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to determinations, and
- **subclause 12(5)]** prevents the Minister from making increases under previous years Appropriation Acts.

Note: the Bill does not include the equivalent of section 12(4) of the *Appropriation Act (No. 1) 2004-05*, which provides that the Finance Minister must give Parliament details of increases.

Clause 13

Clause 13 deals with Comcover receipts. **Subclause 13(5)** introduces a provision that is not in *Appropriation Act (No. 1) 2004-05*. Subclause 13(5) provides that neither a

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determination made by the Agency Minister, nor a written direction made by the Finance Minister, in respect of Comcover payments is a legislative instrument.

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