



Appropriation Bill (No. 2) 2005-2006

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Law and Bills Digest Section

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Appropriation Bill (No. 2) 2005-2006

Date Introduced: 10 May 2005

House: House of Representatives

Portfolio: Finance and Administration

Commencement: On Royal Assent

Purpose

To appropriate funds for the non-ordinary (or ‘other’) annual services of Government.

Background

Under section 83 of the Constitution, no monies may be withdrawn from the Consolidated Revenue Fund except ‘under an appropriation made by law’.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
- six (usually) annual appropriation acts.

Three appropriation Bills are generally introduced to accompany the May Budget. By far the most important in dollar terms is Appropriation Bill (No. 1), which appropriates funds for the ‘ordinary’ annual services of the government while Appropriation Bill (No. 2) appropriates funds for other annual services.¹ 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 was updated to take account of the adoption of accrual budgeting).

The Appropriation Bill (No. 2) 2005-06 (the Bill) provides funding for agencies to meet:

- expenses in relation to grants to the States under section 96 of the Constitution and for payments to the Northern Territory and the Australian Capital Territory;
- administered expenses for new outcomes;
- requirements for departmental equity injections, loans and previous years’ outputs; and
- requirements to create or acquire administered assets and to discharge administered liabilities.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The total appropriated by the Bill is \$7.787 billion. This compares to \$5.187 billion for the *Appropriation Act (No.2) 2004-05*. The increase is largely due to higher appropriations for the Defence and Transport and Regional Service Portfolios.

Main Provisions

Clause 4 provides that Portfolio Budget Statements are to be considered as relevant extrinsic interpretational material under section 15AB of the *Acts Interpretation Act 1903*.

Clause 6 lists the total amount appropriated by the Bill – \$7.787 billion.

Clause 11 provides that the responsible portfolio Minister may request the Finance Minister to make a written determination reducing the appropriation for an item in the budget of an entity within their portfolio. The amount of reduction is to be no greater than the amount requested, or, where payments have already been made from the Consolidated Revenue Fund, the difference between the amount appropriated to an item and the amount already paid. For entities within the Finance Minister's portfolio, the reduction request must come from the Chief Executive of the relevant entity. **Subclause 11(9)** provides that a determination may be disallowed by either House of Parliament in accordance with the provisions of section 42 of the *Legislative Instruments Act 2003*. However, the sunset provisions contained in Part 6 of that Act do not apply to such a determination.

Under **clause 12**, the Finance Minister is able to increase the amount appropriated for certain items, such as equity injections, listed in **Schedule 2**. The maximum additional amount available under **clause 12** is a total of \$20 million. Similar provisions are contained in previous appropriation Acts. Once the Bill commences, no additional funding can be provided by the Finance Minister under the relevant provisions of those previous appropriation Acts listed in **subclause 12(4)**.

Clause 13 allows the Finance Minister to provide additional funding due to unforeseen and urgent circumstances. The maximum additional funding available under **clause 13** is a total of \$215 million. Similar provisions are contained in previous appropriation Acts. Once the Bill commences, no additional funding can be provided by the Finance Minister under the relevant provisions of those previous appropriation Acts listed in **subclause 13(5)**.

For specific payments to States and Territories, the relevant portfolio Minister (listed in **column 3** of **Schedule 1**) will be able to determine conditions under which payments can be made: **clause 14**.

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Concluding Comments

Apart from the amount appropriated, the main provisions of the Bill only differ in three notable respects from the *Appropriation Act (No.2) 2004-2005*.

The first is that the *Appropriation Act (No.2) 2004-05* did not contain the limitations in **subclauses 12(4)** and **13(5)** referred to in the Main Provisions section of this Digest.

The two other differences both relate of the coming into force of the *Legislative Instruments Act 2003*. One is that the power of either House of Parliament to disallow the Finance Minister's determinations made under **subclauses 11(1)** and **(2)** now resides in section 42 of *Legislative Instruments Act 2003*. The procedures for disallowance remain the same. The final difference is that the Finance Minister is no longer obliged to give Parliament details of the increases in departmental funding under **clauses 12 and 13**. Presumably this is because these determinations are now classed as legislative instruments and thus must be registered to have effect. Registration will mean that the determinations are on the public record and thus accessible by Parliamentarians.

Endnotes

¹ The third is the Appropriation (Parliamentary Departments) Bill (No.1).

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