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Appropriation Bill (No. 3) 2005-06

Richard Webb
Economics, Commerce and Industrial Relations Section

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Appropriation Bill (No. 3) 2005-06

Date introduced: 8 February 2006

House: House of Representatives

Portfolio: Finance and Administration

Commencement: On the day it receives Royal Assent

Purpose

To appropriate sums, additional to those sought through Appropriation Act (No. 1) 2005-06, 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 and other social security payments are made.

Annual Appropriation Bills

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).

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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), most 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 because the grants are made under section 96 of the Constitution), and
- new administered outcomes.

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

- ‘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

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New policy proposals should not be included in Appropriation Bill (No. 1) because they do not fall with the classification of ordinary annual services. New policy measures are funded either through Appropriation Bill (No. 2) or special appropriations.

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

The Senate's powers and '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 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 such as this Bill. The Senate can, however, amend any appropriations for other purposes.

Additional estimates

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

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(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.

Further annual appropriation bills can be introduced during the year if required. They are called 'supplementary' additional estimates.

Advance to the Finance Minister

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.

Net appropriations

In addition to the amount sought as a 'basic' appropriation and the AFM, the Bill provides for agencies to spend income received under 'net appropriations' agreements (also known as section 31 agreements, a reference to section 31 of the *Financial Management and Accountability Act 1997*).

In January 2006, the Australian National Audit Office released a report titled [Management of Net Appropriation Agreements](#). The report describes net appropriations as follows:

2. ... net appropriation arrangements are a longstanding feature of the Commonwealth's financial framework. They provide a means by which an agency's appropriation item in the annual Appropriation Acts can be increased by amounts received from non-appropriation sources. This provides the agency with the appropriation authority to retain and spend those amounts ...

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4. Under the Commonwealth's current financial framework, Section 31 of the Financial Management and Accountability Act 1997 (FMA Act) allows the Finance Minister to enter into net appropriation agreements (known as Section 31 agreements) for the purposes of appropriation items in Appropriation Acts that are marked "net appropriation". The FMA Act requires that an agreement be made with the Minister responsible for the appropriation item or, in the case of items for which the Finance Minister is responsible, with the Chief Executive of the agency for which the appropriation is made.

5. A Section 31 agreement specifies the types of departmental and/or administered receipts that will be eligible to be retained by the relevant agency, and the terms on which the relevant appropriation item will be increased for those receipts by operation of the agreement. For example, the agreement may require certain receipts to be shared with the Budget in nominated proportions. The annual Appropriation Acts provide that, if a Section 31 agreement applies to an appropriation item, the amount specified in the item is taken to be increased in accordance with the agreement, on the conditions set out in the agreement. The increase cannot be more than the relevant receipts covered by the agreement.³

Special Accounts

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. Special Accounts can be established in two ways: by the Finance Minister under the *Financial Management and Accountability Act 1997* or by another Act.

Financial implications

The amount sought as basic appropriations is \$1,258,101,000, that is, almost \$1.3 billion.

Basic appropriations can be supplemented by net appropriations, adjustments to departmental items, and by spending from the AFM. Adjustments are subject to a maximum of \$20 million for all of financial year 2005-06. Similarly, spending under the AFM is limited to \$175 million for all of financial year 2005-06.

Major items of expenditure

According to the Minister's second reading speech, some of the items for which funds are sought appear in the [Mid-year Economic and Fiscal Outlook 2005-06](#) (MYEFO). The following lists the items mentioned in the second reading speech.

Note: the numbers in brackets below are references (where possible) to the relevant page numbers in the MYEFO.

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Agriculture, Fisheries and Forestry

\$124 million to the Department of Agriculture, Fisheries and Forestry to provide:

- \$104 million in business exit assistance as part of the fishing structural adjustment package to support the sustainability of Australian government managed fisheries (90), and
- \$20 million support for the hardwood timber industry as part of the Tasmanian Community Forest Agreement (96).

Attorney-General

An additional \$29.2 million to the Attorney-General's Department, which includes:

- \$18.1 million for security costs associated with the APEC Leaders Week 2007 (97)
- \$10.5 million for enhancement of the national urban search and rescue capability (107)
- a total of \$54.6 million to the Australian Federal Police for airport policing measures, in particular:
 - \$27.2 million for phase 1 of community policing at airports
 - \$18.2 million to provide a first response counter-terrorism capability at relevant airports, and
 - \$9.2 million to establish joint airport investigation teams with the Australian Customs Service, who will also receive an additional \$1 million for this initiative (98)
- an additional \$16.5 million to increase the apprehension, detention and prosecution of illegal foreign fishers operating in Australia's northern waters. As part of this measure the Australian Customs Service will receive \$13.7 million (102), and
- \$10.6 million has been allocated to the Australian Customs Service to increase air-side patrols at airports (99).

Defence

The Bill proposes an increase of \$155.8 million to the Department of Defence, which includes:

- \$40.9 million to provide a Special Forces Task Group to Afghanistan (117)
- \$16 million to fund the deployment of helicopters and support elements in Afghanistan
- \$25.1 million in indexation adjustments, and
- a net increase of \$73.8 million, consisting substantially of a reclassification of appropriation to revise Defence's depreciation and inventory related estimates.

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Employment and Workplace Relations

A net increase of \$167.1 million to the Employment and Workplace Relations portfolio, the major components of which are:

- \$110.7 million to fund the Workplace Relations Reform Package (130-135), and
- \$52.4 million in additional funding to meet the increased demand for the highly disadvantaged stream of Job Network services.

Environment and Heritage

\$28.5 million is to be provided to the Department of the Environment and Heritage as additional supplementation for the Great Barrier Reef structural adjustment package.

Foreign Affairs

A net increase of \$42 million to the Department of Foreign Affairs, including:

- a \$10 million contribution to the American Red Cross as part of Australia's response to the devastation caused by Hurricane Katrina in the United States (153), and
- supplementation of \$19.8 million for increased passport volumes.

Immigration and Multicultural Affairs

A net increase of \$41.2 million to the Department of Immigration and Multicultural Affairs, including:

- \$16.2 million to implement the government's response to the Palmer and Comrie Reports (179)
- \$9.3 million to implement more flexible and timely immigration detention arrangements arising from amendments to the migration legislation (177), and
- \$8.3 million to introduce a visa requirement for all maritime crew arriving in Australia (178).

Transport and Regional Services

\$11.9 million has been provided to the Department of Transport and Regional Services to improve security of international passenger aircraft through increased inspection of air cargo (100).

Cross portfolio

A total of \$22.1 million has been provided to the Australian Taxation Office, the Australian Crime Commission, the Australian Securities and Investments Commission and

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the Australian Federal Police to conduct investigations and prosecutions arising from Operation Wickenby.

Statement of savings

An useful innovation is the tabling with the Bill of a document titled *Statement of Savings Expected in Annual Appropriations made by Act No. 72 of 2004 – Appropriation Act (No. 1) 2005-06 and Act No. 73 of 2004 – Appropriation Act (No. 2) 2005-06*. The footnote on the front page states that the savings are from underspending.

The document is useful in that it identifies the areas of expected underspending by agency, outcome, and type of expense (departmental or administered). The benefit of the document would, however, be enhanced by some explanation of the reasons for the underspending.

Basis of policy commitment

The bulk of additional spending promised during the 2004 election was introduced in the 2005-06 Budget. The proposed spending in the Bill is for subsequent policy measures.

Main provisions

The provisions in the Bill are identical to those in [Appropriation Act \(No. 3\) 2004-05](#) except for several minor changes. The changes include:

- dropping ‘for the purposes of the *Legislative Instruments Act 2003*’ from the subclauses dealing with whether an item is a legislative instrument, and editorial changes that simplify the English expression [**subclauses 8(3), 9(9), 9(10), 11(3) and 12(5)**]
 - under **subclauses 9(9), 11(3) and 12(5)**, the Finance Minister’s determinations are legislative instruments but are not disallowable and not subject to sunset requirements
- inserting under ‘definitions’ in **clause 3**, the definition of Portfolio Supplementary Estimates Statements
 - this is necessary because the Government introduced as a supplementary estimate the [Appropriation \(Regional Telecommunications Services\) Act 2005-06](#)
 - **clause 4(1)** consequently includes a reference to Portfolio Supplementary Estimates Statements
- dropping the Australian National Training Authority from the definition of ‘entity’ in **clause 3**
- **clause 10(4)** recognises as net appropriations certain administered items for the Department of Families, Community Services and Indigenous Affairs

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- in 2004-05, the comparable clause applied to the Attorney-General's Department, the Department of Family and Community Services, the Department of Foreign Affairs and Trade, and the Department of Immigration and Multicultural and Indigenous Affairs
- with respect to adjustments to departmental items (see below), **subclause 11(1)** inserts 'during the current year' when referring to when the Finance Minister may make a determination increasing the amount for a departmental item
- **clause 12** deals with the Advance to the Finance Minister. **Paragraph 12(1)(a)** inserts 'in the current year'
 - this amendment has the effect of limiting to the 2005-06 financial year the ability of the Finance Minister to issue funds made available under clause 12. Were it not for this amendment, the Finance Minister could issue the funds made available under clause 12 in other financial years

Clause 6 provides that the basic appropriation is \$1,258,101,000. The amounts allocated to each agency, and the breakdown between departmental and administered items, are set out in **Schedule 1**.

Subclause 7(1) empowers the Finance Minister to issue money from the Consolidated Revenue Fund for departmental items for an entity but restricts the total to that specified in Schedule 1.

Clause 8 deals with administered items in the basic appropriation. **Subclause 8(1)** limits the amount of money the Finance Minister can issue from the Consolidate Revenue Fund to the amount specified (in Schedule 1), and the amount that the Finance Minister includes in a determination. The general procedure with respect to the latter is as follows:

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. ... the determinations for administered expenses do not reduce the appropriation. Rather, they are a declaration by the Finance Minister of the maximum amount that may be issued for the respective items.⁴

Clause 9 deal with reductions of appropriations. The general process for reductions is as follows:

Amounts appropriated for departmental expenses and for non-operating costs can be subject to a reduction process first introduced in the additional estimates appropriations acts 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.

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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 CRF.⁵

Clause 11 deals with the power of the Finance Minister to increase the amount allocated to a departmental item up to a maximum of \$20 million. As noted, departmental expenses are essentially the costs of running agencies such as salaries and rent. Clause 11 provides flexibility in that when situations arise where an agency finds that it does not have enough funds for departmental expenses and the shortfall cannot be met through the normal additional estimates processes, it may request additional funds by means of a determination that the Finance Minister issues. **Subclause 11(3)** provides that such a determination is a legislative instrument. This provides some accountability for the Finance Minister's actions.

Clause 12 deals with the AFM. **Subclause 12(3)** limits the combined total the Finance Minister can issue under *Appropriation Act (No. 1) 2005-06* and the Bill to \$175 million.

Endnotes

1. Agency Resourcing 2005-06, Budget Paper No. 4, p. 4.
2. For a more comprehensive discussion, see, *ibid.*, p. 5.
3. Australian National Audit Office, *Management of Net Appropriation Agreements*, Audit Report no. 28, 2005-06, p. 13.
4. Budget Paper No. 4, *op. cit.*, p. 6.
5. *ibid.*, p. 6.

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