



Appropriation Bill (No. 1) 2006–2007

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Law and Bills Digest Section

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Appropriation Bill (No. 1) 2006–2007

Date introduced: 9 May 2006

House: House of Representatives

Portfolio: Finance and Administration

Commencement: On Royal Assent.

Purpose

To appropriate approximately \$53.335 billion 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Section 83 of the Constitution provides that no monies may be withdrawn from the Consolidated Revenue Fund (CRF) except ‘under an appropriation made by law’. Laws authorising spending are either:

- special appropriations, or
- six (usually) 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*.

The Appropriation Bill (No. 1) 2006-2007 (the Bill) appropriates funds for the ‘ordinary annual services of the Government’. By comparison Appropriation Bill (No. 2) 2006-2007 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 amounts allocated to each Commonwealth portfolio and the breakdown between departmental outputs and administered expenses, are set out in **Schedule 1**.

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Departmental outputs are expenses that portfolio departments and agencies control. They are essentially the cost of running agencies – for example are salaries and other day-to-day operating expenses. The bulk of appropriations in the Bill are for departmental expenses. Administered expenses are those that agencies administer on the Government's behalf. While most administered expenses are funded through special appropriations, some are funded through the Bill. The 'regional partnerships' program and the Bass Strait Passenger Vehicle Equalisation Scheme are examples of administered expenses funded through the Bill.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, the Bill appropriates funds for the Federal Magistrates Service under Outcome 1 which is:²

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 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.

The Workplace Relations advertising case: *Combet v Commonwealth*³

In May 2005, the Commonwealth announced its intention to introduce a workplace relations reform package. In response, the Australian Council of Trade Unions instituted a national campaign opposing the proposed reforms. The Government also commenced a national advertising campaign to promote the proposed reforms. The advertisements were funded from appropriations to the Employment and Workplace Relations Portfolio under the *Appropriation Act (No. 1) 2005-2006*.

The crucial question argued before the High Court was whether the purpose for which the Commonwealth decides to appropriate money must be described in the appropriation Acts with some degree of specificity and, if so, what degree of specificity would be required under the Australian Constitution.

In *Combet*, all members of the High Court agreed that the Constitution requires some degree of specificity. The majority in this matter, comprised of Gummow, Hayne, Callinan and Heydon JJ, endorsed the view that so-called blank appropriations, that are appropriations without any specificity, are invalid.⁴ Further, the majority, with Gleeson CJ agreeing, held that the degree of specificity is to be set by Parliament.

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However, the majority did not provide a conclusive answer as to where the specificity threshold may lie. Rather, arguably even sidestepping the issue, their Honours held that departmental items specified in appropriation bills are not connected to outputs which could have provided some specificity. As a result, their Honours did not hesitate to find that the expenditure for the advertising campaign was covered by the appropriation Act. On this point, Gleeson CJ provided some form of guidance, arguing that outputs are valid expressions of Parliament's choice, unless they are expressed in such broad terms that they are devoid of meaning.⁵ His Honour found that the breadth of the output stated for the departmental item was sufficient to support the expenditure by the government.

The decision by the majority was heavily criticised by the dissenting Justices Kirby and McHugh. McHugh argued that the approach taken by the majority would appear to authorise agencies 'to spend money on whatever outputs it pleases'.⁶ Justice Kirby made a similar point, especially noting that appropriations cannot be denuded of meaning without violating constitutional commands.⁷

Financial implications

The total amount appropriated from consolidated revenue under the Bill is approximately \$53.335 billion (as compared to the *Appropriation Act (No. 1) 2005-2006*, where the amount was approximately \$47.371 billion).⁸ As usual, by far the largest single portfolio appropriation is Defence with some \$17.541 billion. Whilst aggregate appropriations for the various portfolios and agencies within each portfolio are contained in **Schedule 1** of the Bill, more detailed information for all portfolios can be found in their respective Portfolio Budget Statements at <http://www.budget.gov.au/2006-07/pbs/html/index.htm>

Main provisions

The main provisions of the Bill are in practice identical to *Appropriation Act (No. 1) 2005-06*, with only a few minor deletions to take account of redundant provisions.

New section 4 provides that Portfolio Budget Statements are to be considered as relevant extrinsic interpretational material under section 15AB of the *Acts Interpretation Act 1903*. This provision was contained in the *Appropriation Act (No.1) 2005-2006*, a fact noted by the High Court in the *Combet* case discussed above. However, the contents of the relevant Portfolio Budget Statement does not appear to have been an influential factor in the majority decision in that case.

New section 6 provides that the basic appropriation is \$53,334,579. The amounts allocated to each agency, and the breakdown between departmental outputs and administered expenses, are set out in **Schedule 1**. The actual appropriation is done under **new section 15**.

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New Section 7 empowers the Finance Minister to issue money from the Consolidated Revenue Fund for departmental items (department outputs) for an agency but restricts the total to that specified in **Schedule 1**.

New Section 8 deals with administered items in the basic appropriation. **Subclause 8(1)** limits the amount of money the Finance Minister can issue for administered items from the Consolidate Revenue Fund to the *lesser* of the amount specified in **Schedule 1**, and the amount that the Finance Minister includes in a determination. The general procedure with respect to such a determination is as follows:⁹

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 CRF. By convention the Finance Minister issues determinations in relation to administered expenses appropriations following the completion of each financial year. Unlike the reduction determinations for departmental outputs or non-operating costs discussed above, 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. The effect of the determination is that administered expense appropriations that have not been expensed in a year cannot be spent in later years.

New Section 9 deals with ‘reduction of appropriations upon request’. 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. As in the 2005-06 Act, for previous years such determinations are legislative instruments, and disallowable by either House of Parliament in the usual way under the *Legislative Instruments Act 2003*.

New Section 11 allows the Finance Minister to increase, by determination, spending on departmental items. The maximum allowed is \$20 million. Such determinations are legislative instruments, but are not disallowable under the *Legislative Instruments Act 2003*: **new subsection 11(3)**.

New section 12 effectively allows the Finance Minister to increase the total amount appropriated in **Schedule 1** by up to \$175 million in urgent cases were the need for additional amount was unforeseen or not provided for due to an ‘erroneous omission or understatement’. A determination by the Finance Minister increasing the appropriation is a legislative instrument, but not disallowable under the *Legislative Instruments Act 2003*: **new subsection 12(4)**.

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Endnotes

1. Department of Transport and Regional Services 2006-2007 Portfolio Budget Statement.
See: <http://www.dotars.gov.au/dept/budget/0607/c3.aspx>
2. See: page 32 of the Appropriation Bill (No.1) 2006-2007.
3. *Combet v Commonwealth* [2005] HCA 61.
4. *ibid.*, paragraph 160 per Gummow, Hayne, Callinan and Heydon JJ
5. *ibid.*, paragraph 27 per Gleeson J.
6. *ibid.*, paragraph 90 per McHugh J
7. *ibid.*, paragraph 258, per Kirby J.
8. Although with later adjustments, the 'actual available' 2005-2006 appropriation appears to have been 48.165 billion. See p. 13 of the Bill.
9. 2006-2007 Budget Paper No. 4

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