



Appropriation Bill (No. 1) 2008-09

Richard Webb
Economics Section

Contents

Purpose	2
Background	2
The Senate's powers in relation to ordinary annual services	3
Changes to appropriation processes	3
Commonwealth Authorities and Companies Act	3
Reduction processes	5
Departmental expenses	5
Administered expenses	5
CAC Act bodies	5
Financial implications	5
Main provisions	6
Concluding comments	10

Appropriation Bill (No. 1) 2008-09

Date introduced: 13 May 2008

House: House of Representatives

Portfolio: Finance and Deregulation

Commencement: On Royal Assent

Links: The [relevant links](#) to the Bill, [Explanatory Memorandum](#) and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To appropriate approximately \$60.875 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Section 83 of the Constitution provides that no monies may be withdrawn from the Consolidated Revenue Fund (CRF) except ‘under an appropriation made by law’.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 three quarters of spending—are spending authorised by Acts for particular purposes. Examples are age pensions, carer payments, and the seniors concession 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*.

Appropriation Bill (No. 1) 2008-2009 (the Bill) appropriates funds for the ‘ordinary annual services of the Government’. By comparison Appropriation Bill (No. 2) 2008-2009 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

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.

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 portfolio and the breakdown between departmental outputs and administered expenses, are set out in **Schedule 1**.

Departmental outputs are expenses that portfolio departments and agencies control. They are essentially the cost of running agencies, for example, 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 Bass Strait Passenger Vehicle Equalisation Scheme is an example of an administered expense funded through the Bill.

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, under the Attorney-General's portfolio, the Bill appropriates funds for the Federal Magistrates Court of Australia 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 Court of Australia.¹

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.

Changes to appropriation processes

The Bill introduces important changes to appropriation processes. The following describes some of these changes.

Commonwealth Authorities and Companies Act

A feature of this year's Budget Papers is the change to the way so-called CAC Act bodies are funded. The CAC Act is the [Commonwealth Authorities and Companies Act 1997](#).

1. Federal Magistrates Court, *Portfolio Budget Statements 2008-09*, p. 268.

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.

According to the Department of Finance and Deregulation [website](#), the CAC Act regulates certain aspects of:

- the corporate governance, financial management and reporting of Commonwealth authorities, which are in addition to the requirements of their enabling legislation, and
- the corporate governance and reporting of Commonwealth companies, which are in addition to the requirements of the *Corporations Act 2001*.

Matters the CAC Act covers include:

- reporting by an authority or a company to a Minister and, through a Minister, to Parliament
- contents of the annual report of operations of an authority, and
- the audit of financial statements of an authority or a company by the Auditor-General.

The Department of Finance and Deregulation maintains a [list](#) of CAC Act bodies. Examples of these bodies are the Australian War Memorial, the Australian Film Commission, and the Australian Broadcasting Corporation.

In the past, CAC Act bodies were funded ‘directly’ through the annual appropriation acts and special appropriations. In 2008-09, funding is channelled ‘indirectly’ through the relevant portfolio department. For example, funding for the Australian Broadcasting Corporation and the Special Broadcasting Corporation appear as a ‘payment to CAC Act bodies’ in the statement of administered income and expenses of the Department of Broadband, Communications and the Digital Economy. The Explanatory Memorandum contains an explanation for the change:

A CAC Act body is defined in clause 3 to be a Commonwealth authority or Commonwealth company within the meaning of the CAC Act. Many CAC Act bodies receive funding directly from appropriations. However, these bodies are legally separate from the Commonwealth and as a result, do not debit appropriations or make payments from the CRF. The Bill is the first annual appropriation bill since 1999 to clearly recognise CAC Act bodies with a separate item.²

The change will complicate comparison of time series data. A consequence of the change is that the Department’s administered revenue and expenses are both ‘inflated’ in 2008-09 by the amount received for and paid to CAC bodies compared with previous years. To obtain comparable data, it will be necessary either to add the revenue for and payments to CAC bodies to the department’s previous year’s data, or subtract the CAC body revenue and payments from the data for 2008-09 and future years.

2. Appropriation Bill (No. 1) 2008-09, Explanatory Memorandum, paragraph 25, p. 9.

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.

Reduction processes

Departmental expenses

It is sometimes the case that an appropriation for a departmental expense exceeds what is needed. In these circumstances, a 'reduction process' to extinguish the unspent funds is available. Under this process, on request in writing from a minister, the Finance Minister may issue a determination to reduce the agency's departmental expense appropriation. This process is dealt with in **clause 10**.

Administered expenses

From 2008-09, appropriations for administered expenses will be subject to a different process to extinguish unspent appropriations. Until now, appropriations for administered expenses have been subject to determinations by the Finance Minister as to the amounts that can be issued from the Consolidated Revenue Fund. By convention, the Finance Minister issued determinations dealing with administered expenses after the end of each financial year. The effect of the determinations was to prevent any amount that was not expensed from being issued. The determinations did not, therefore, reduce the appropriation. Rather, the determinations set the maximum amount that could be issued from each appropriation. Consequently, appropriations that were not been expensed in a year could not be spent in later years.

Under the process introduced in the Bill, from 2008-09, appropriations for administered expenses will be subject to an annual process by which amounts, which are not required to fund activities in the year, will be extinguished. Agencies' financial statements—as published in their annual reports—will govern the amounts to be extinguished. This process is designed to ensure that the amounts that are not required in the year are extinguished permanently. If, in the future, the government wishes to spend the extinguished amount, it will have to seek an appropriation in a new appropriation bill. The process for reducing administered items is dealt with in **clause 11**.

CAC Act bodies

Clause 12 introduces a process for reducing payments to CAC Act bodies. This is necessitated by the change to the way CAC Act bodies are funded.

Financial implications

The Bill appropriates from consolidated revenue more than \$60.874 billion (compared with \$58.986 billion in Appropriation Bill (No. 1) 2007-08). As usual, the largest single portfolio appropriation is for defence with some \$19.923 billion. Whilst aggregate

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.

appropriations for the various portfolios are set out in **Schedule 1**, some information on what the funds will be spent on can be found in [Portfolio Budget Statements](#).

Main provisions

Clause 3 contains definitions. Most definitions are unchanged from previous appropriation acts. Several changes are noteworthy:

- the clause introduces a definition of a ‘CAC Act body’. This is a Commonwealth authority or company within the meaning of the *Commonwealth Authorities and Companies Act 1997*
- **Clause 3** defines a ‘CAC Act body payment item’. This is the total amount set out in Schedule 1 of the Bill in relation to a CAC Act body under the heading “Administered Expenses”. For example, for the Broadband, Communications and the Digital Economy portfolio, page 47 of Schedule 1, shows payments to the Australian Broadcasting Corporation of more than \$858 million and \$191 million for the Special Broadcasting Service Corporation
- **Clause 3** changes the definition of a ‘departmental item’ compared with previous appropriation acts by substituting ‘Agency’ for ‘item’, and
- the definition of ‘item’ is expanded compared with previous years by the insertion of ‘a CAC Act body payment item’ into the definition. The purpose of this change is to ensure that administered expenses include payments to CAC Act bodies.

Part 2—Appropriations Items—was titled ‘Basic Appropriations’ in previous appropriation acts and now includes CAC Act body payment items, along with departmental and administered items.

Clause 6—Summary of appropriations—states that the total of the items specified in Schedule 1 is \$60 874 689 000. The Explanatory Memorandum contains a useful exposition of the components of appropriations.³

Clause 7 of **Part 2** inserts a much shortened definition of ‘departmental items’ compared with previous appropriation acts. **Clause 7** provides that the amount specified in a departmental item for an agency may be applied for its departmental expenditure. The new ‘Note’ to the clause observes that the Finance Minister manages the expenditure of public money under the *Financial Management and Accountability Act 1997*. The Explanatory Memorandum contains a plain English definition and explanation of what departmental

3. *ibid.*, paragraphs 10 and 11, pp. 4–5.

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.

items are, including discussions of the fact that they do not automatically lapse and of the procedure for reducing unspent amounts.⁴

Clause 8 substitutes a new and shorter definition of ‘administered items’. **Subclause 8(1)** confirms that if an amount is specified as an administered item for an outcome, then money can be expended to achieve that outcome. **Subclause 8(2)** provides that where the Portfolio Budget Statements indicate an activity is for an outcome, the amount in the administered item is taken to contribute towards the achievement of that outcome.

Clause 9 is a new clause and deals with ‘CAC Act body payment items’. **Subclause 9(1)** provides that the amount designated as a payment for a CAC Act body may be paid to that body for its purposes. **Subclause 9(2)** provides that if there is an Act, which requires that amounts must to be paid to a CAC Act body for that body’s purposes, and Schedule 1 contains a CAC Act payment item for that body, that body must be paid the full amount in Schedule 1. According to the Explanatory Memorandum:

The purpose of subclause 9(2) is to clarify that subclause 9(1) is not intended to qualify any obligations in other legislation regulating a CAC Act body, where that legislation requires the Commonwealth to pay the full amount appropriated for the purposes of the body.⁵

Part 3—Adjusting appropriation items—deals with adjusting departmental, administered and CAC Act body payments.

The process for adjusting departmental expenses described above is essentially unchanged from previous appropriation acts. **Subclause 10(1)** specifies who can request reductions in departmental expenses. **Paragraph 10(1)(a)** enables the Minister for an agency to ask the Finance Minister to reduce a departmental item for that agency, while **paragraph 10(1)(b)** enables the Chief Executive, of an agency for which the Finance Minister is responsible, to ask the Finance Minister to reduce a departmental item for that agency.⁶ **Subclause 10(2)** specifies that the Finance Minister may make a determination reducing a departmental item by the amount in the request. **Subclause 10(3)** provides that the determination will be null and void if its effect is to reduce the departmental item below nil.

Clause 11—Reducing administered items— is mostly new compared with previous appropriations acts. As noted, this clause introduces a new process for reducing

4. *ibid.*, paragraphs 12–17, pp. 6–7.

5. *ibid.*, paragraph 27, pp. 9–10.

6. The *Financial Management and Accountability Act 1997* defines Chief Executive to include either a person identified by regulations to be the Chief Executive, or a person who is the Secretary of an Agency under the *Public Service Act 1999* or the *Parliamentary Services Act 1999*, section 5.

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.

administered items. **Subclause 11(1)** provides that if the amount shown in the financial statements of an agency's annual report shows that the expensed amount of an administered item is less than the amount appropriated for that item, then the amount of the reduction is the difference between the appropriated amount and the amount in the annual report.

According to the Explanatory Memorandum, **subclause 11(2)** enables the Finance Minister to determine that an amount, published in the financial statements of an agency, is taken to be the amount specified in his or her determination, while **paragraph 11(2)(b)** ensures that the amount published in the annual report can be corrected.⁷

In previous appropriation acts, the Finance Minister's determinations were legislative instruments. Similarly, **subclause 11(3)** provides that the Finance Minister's determination, made under **subclause 11(2)**, is a legislative instrument, that section 42 (relating to disallowance) of the [Legislative Instruments Act 2003](#) applies to the determination, but that Part 6 (relating to sunset provisions) of the *Legislative Instruments Act 2003* does not apply to the determination. In brief, this means that the Minister's determinations are disallowable by Parliament, but once made, will not expire.

Clause 12 is also entirely new and follows from the revised arrangements for payments to CAC Act bodies. The wording in this clause is almost identical to that in **clause 10**, which relates to reducing departmental items. Whereas **paragraph 10(1)(b)** enables the Chief Executive of an agency for which the Finance Minister is responsible to ask the Finance Minister to reduce a departmental item for that agency, **paragraph 12(1)(b)** enables the Secretary of the Department for which the Finance Minister is responsible to request a reduction for a CAC Act body. The reason the Secretary of the Department is empowered to request a reduction follows from the fact that payments to CAC Act bodies are channelled through the relevant portfolio departments. **Subclause 12(2)** empowers the Finance Minister to make a determination reducing a CAC Act body payment by the amount requested. **Subclause 12(5)** provides that proposed **subsection 9(2)** does not limit the reduction of a CAC Act body payment under this section. According to the Explanatory Memorandum:

Subclause 12(5) clarifies that the full amount that is required to be paid to a CAC Act body by subclause 9(2) of the Bill may be reduced in accordance with this clause.⁸

However, it is not obvious that **subclause 12(5)** does this.

7. Appropriation Bill (No. 1) 2008-09, Explanatory Memorandum, op. cit., paragraph 40, p. 12.

8. *ibid.*, paragraph 45, p. 13.

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.

Clause 13 deals with section 31 agreements (also referred to as ‘net appropriations’). Before the *Financial Management and Accountability Act 1997* (FMA Act) was amended on 1 January 2008, section 31 of the FMA Act allowed an agreement (known as a ‘section 31 agreement’) to be made between an agency and the Finance Minister regarding the agency’s use of certain revenue it receives. The section 31 provisions of the annual appropriation Acts provided that, if a section 31 agreement applied to an agency’s appropriation item, then the amount of that appropriation was taken to be increased in accordance with that agreement. Thus when an agency had an appropriation marked ‘net appropriation’ in an annual appropriation Act, the amount of its appropriation was increased by an amount equal to the amount the agency received under a section 31 agreement. The agency therefore had the legal authority to retain and spend the additional amount it received. An example of section 31 revenue is that which the Australian Federal Police receives from providing policing services to the Australian Capital Territory. The provisions of **clause 13** are transitional because section 31 agreements are being phased out.

Section 14 deals with the ‘Advance to the Finance Minister’. Compared with previous appropriation Acts, **subclause 14(1)** recasts slightly the criteria under which the Finance Minister can make payments from the Advance. For a payment to be made from the Advance, the Finance Minister must be satisfied that an urgent need exists for expenditure, and that no funds were allocated—or that the amount allocated was inadequate—because of erroneous omission or understatement [**paragraph 14(1)(a)**], or because the need for expenditure was unforeseen [**paragraph 14(1)(b)**]. **Subclause 14(2)** provides that where the Finance Minister has authorised a payment from the Advance, **Schedule 1** is changed accordingly. **Subclause 14(3)** provides that the amount of the Advance is \$295 million. This is an increase of \$120 million over the amount of \$175 million, which has been provided over several years. As with earlier appropriation Acts, **subclause 14(4)** provides that determinations authorising payments made from the Advance are legislative instruments. These must be tabled in Parliament but are not subject to the disallowance or sunset provisions of the *Legislative Instruments Act 2003*.

Clause 15 deals with ‘Flexible Funding Pool receipts’. The provisions dealing with these receipts were introduced following the Commonwealth government’s Northern Territory Emergency Response. A special account titled the Northern Territory Flexible Funding Pool Special Account (NTFFP) was established to fund employment creation initiatives under the Response.⁹ **Clause 15** recasts the provisions in *Appropriation Act (No. 3) 2007-08* but retains their purpose. According to the Explanatory Memorandum, **clause 15** is included because section 12 of previous appropriation Acts did not cover all the agencies that might need appropriations for administered items.¹⁰ **Subclause 15(1)** provides that an

-
9. A Special Account is essentially a bookkeeping device whereby all receipts and payments related to a particular activity are recorded.
 10. Explanatory Memorandum, op. cit., paragraph 60, p. 16.

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.

amount from the NTFFP may be added to an item in **Schedule 1** if the amount is debited from the NTFFP to be applied by an agency for the purpose of achieving an outcome for an administered item [**paragraph 15(1)(a)**], and if the Finance Minister specifies that item in a written determination [**paragraph 15(1)(b)**]. As in previous appropriation Acts, **subclause 15(4)** provides that a determination made under **paragraph 15(1)(b)** is a legislative instrument, but that it is not subject to the disallowance or sunset provisions of the *Legislative Instruments Act 2003*. [The reference to paragraph 15(1)(c) in paragraph 63 of the Explanatory Memorandum should be to paragraph 15(1)(b)].

When an agency incurs a Comcare-related expense, the effect of that payment is to reduce the funds available to that agency. The purpose of **clause 16**— which deals with ‘Comcare receipts’—is to ensure that any payment that Comcare makes to the agency becomes available for that agency’s use. The provisions in **clause 16** are broadly similar to those in previous appropriation acts.

Part 4—Reducing administered items in previous Acts—is a totally new. The Explanatory Memorandum explains that the reason for **Clause 17** is to prevent amounts of administered expenses, determined under previous appropriation Acts, from being re-determined and spent. **Subclause 17(4)** lists the Acts affected.

Concluding comments

For the first time, the annual appropriations Bills are accompanied by Explanatory Memorandums. These are useful additions in that they contain explanations of the appropriations processes and of the terminology used in the Bills. The Explanatory Memorandums also contain explanations of the purposes and effects of various clauses. In some instances, these purposes are not evident from the wording of the clauses. Note that clause 4 provides that the Portfolio Budget Statements are aids to the interpretation of the clauses under section 15AB of the Acts Interpretation Act 1901.

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.

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

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

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.