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Appropriation Bill (No. 3) 2008-09

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Contents

Purpose 2
Background 2
  Ordinary and other annual services 2
  Additional estimates 3
  Departmental and administered expenses 3
  Outcomes 3
  The Senate's powers in relation to ordinary annual services 4
  Reduction processes 4
Financial implications 4
 Reclassification of appropriations 5
Main provisions 5
  Part 1—Preliminary 5
  Part 2—Appropriation items 6
  Part 3—Adjusting appropriation items 6
Concluding comments 9
 Appendix: Links to Portfolio Additional Estimates Statements 2008-09 10

Appropriation Bill (No. 3) 2008-09

Date introduced: 4 December 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 about $2 053 million for the ordinary annual services of 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Section 83 of the Constitution provides that no monies may be withdrawn from the Consolidated Revenue Fund except 'under an appropriation made by law'.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
- one of (usually) six annual appropriation acts.

Special appropriations—which account for 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 Family Tax Benefits A and B paid under *A New Tax System (Family Assistance) (Administration) Act 1999*. The remaining quarter of spending is funded by annual appropriations.

Ordinary and 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 was updated to take account of the adoption of accrual budgeting). Appropriation Bill (No. 1) is introduced with the Budget and appropriates funds for the 'ordinary annual services of the Government'. Appropriation Bill (No. 2)—which is also introduced with the Budget—appropriates funds for other annual services. A third Appropriation Bill—Appropriation (Parliamentary Departments) Bill No. 1—funds the parliamentary departments.

Additional estimates

Funding requirements usually change after the Budget is brought down. The government may agree to additional funding if the amounts in the three Budget Appropriation Acts are inadequate and so has to seek parliamentary approval for additional spending. The process whereby additional funds are provided is called 'additional estimates' and usually begins around November of the Budget year. The approved additional estimates are incorporated into Appropriation Bills No. 3 and No. 4 and Appropriation (Parliamentary Departments) Bill No. 2. These Bills are the counterparts of Appropriation Bills No. 1 and No. 2 and Appropriation (Parliamentary Departments) Bill No. 1 respectively.

When the Budget is brought down, the government releases Portfolio Budget Statements. They contain, amongst other things, explanations of the funding sought through the three Appropriation Bills. The Portfolio Budget Statements are 'relevant documents' for the purposes of section 15AB of the *Acts Interpretation Act 1901*. This means that the Portfolio Budget Statements can be used to help interpret an Act. Portfolio Additional Estimates Statements[1] are the counterparts of Portfolio Budget Statements and contain explanations of the funding sought through the additional estimates Appropriation Bills.

Departmental and administered expenses

Departmental expenses (outputs) are costs incurred in running agencies, for example, salaries, depreciation and other day-to-day operating expenses. Administered expenses (items) are the costs of providing the programs that agencies administer. While most administered expenses are funded through special appropriations, some are funded through the Appropriation Bills. The Bass Strait Passenger Vehicle Equalisation Scheme is an example of an administered expense funded as an ordinary annual service.

Outcomes

Departmental outputs and administered expenses contribute to outcomes. Outcomes are the results or consequences for the community that the government wishes to achieve. An example, in the Attorney-General's portfolio, is:

> An equitable and accessible system of federal civil justice.[2]

1. Available at Hhttp://www.budget.gov.au/2008-09/content/paes/html/index.htmH [accessed 19 December 2008].

2. Attorney-General's Portfolio, Portfolio Additional Estimates Statements 2008-09, p. 10.

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.

Reduction processes

It is sometimes the case that an appropriation for a departmental expense exceeds what is needed. However, departmental items do not automatically lapse if they are not spent. In these circumstances, a 'reduction process' to extinguish the unspent amount 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 expenses appropriation. In short, the excess of the amount allocated over the amount expended can be extinguished.

Appropriations for administered expenses are also subject to an annual process to extinguish amounts that are not required. The amount identified as spending on administered expenses in agencies' financial statements—as published in their annual reports—is the basis for this process. In short, the amount of the reduction is the difference between the amount appropriated and the amount spent as shown in the agency's financial statements.

Financial implications

Appropriation Bill (No. 3) 2008-09 (the Bill) appropriates about $2.053 billion compared with about $60.875 billion in Appropriation Act (No. 1) 2008-09. As usual, additional expenditure on defence is the biggest category ($846.4 million).[3] However, agencies involved in the regulation of financial markets—Treasury, the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investment Commission (ASIC)—will also receive additional funding. ASIC will receive an additional $11.2 million, APRA $8.3 million and Treasury $0.7 million.[4]

In his second reading speech, the Minister for Finance and Deregulation the Hon. Lindsay Tanner (the Minister) mentioned some of the items for which funding is being sought. This Bills Digest therefore does not examine these. However, the Appendix at the end contains links to the Portfolio Additional Estimates Statements in which information on the purposes for funding is sought can be found.

3. Appropriation Bill (No. 3) 2008-09, p. 27.

4. ibid, p. 74.

Reclassification of appropriations

The Minister's second reading speech also referred to reclassifications of appropriations:

> The appropriations that I have outlined so far are proposed to meet additional funding requirements that have arisen since the last budget. There is a further category of requirement for additional appropriation, referred to as a 'reclassification of appropriation', that is also proposed in Appropriation Bill (No. 3). These amounts need to be re-appropriated to align the purpose of the proposed spending with the correct appropriation type. The additional appropriations are fully offset by savings against the original appropriations and thus do not lead to additional expenditure.[5]

Details of these reclassifications can not be found in the Bill because they are aggregated with other amounts. Details can, however, be found in the Portfolio Additional Estimates Statements. For example, with respect to the Bureau of Meteorology, the Minister referred to the reclassification of $20 million from payments to the states, territories and local government to administered expenses. This can be found on pages 44 and 46 of the Portfolio Additional Estimates Statements for the Environment, Water, Heritage and the Arts portfolio.

Main provisions

Most of the provisions in the Bill are identical to those in *Appropriation Act (No. 1) 2008-09*.[6] Further, provisions in *Appropriation Act (No. 1) 2008-09* which are redundant—for example, those relating to section 31 agreements which have been overtaken by other legislation—have been dropped from the Bill. This Bills Digest therefore focuses on differences between the Bill's provisions and those in *Appropriation Act (No. 1) 2008-09*. The main difference is in **clause 13**, which deals with the Advance to the Finance Minister (see below).

Part 1—Preliminary

Clause 3 contains definitions. It defines 'Portfolio Statements' to mean (a) the Portfolio Budget Statements, and (b) the Portfolio Supplementary Estimates Statements and (c) the Portfolio Additional Estimates Statements.

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5. Lindsay Tanner, Minister for Finance and Deregulation, 'Second reading speech: Appropriation Bill (No. 3) 2008-09', House of Representatives, *Debates*, 4 December 2008, p. 10.

6. Available at Hhttp://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/8A6F4B526B89E23ACA2574FC007F2656?OpenDocument&mostrecent=1H [accessed 19 December 2008].

The reference to Portfolio Supplementary Estimates Statements[7] is to the Statements released in support of the Appropriation (Economics Security Strategy) Bill No. 1 2008-09 and the Appropriation (Economics Security Strategy) Bill No. 2 2008-09 which the government introduced to provide fiscal stimulus to the economy.

Clause 4 provides that the Portfolio Statements are relevant documents for the purposes of section 15AB of the *Acts Interpretation Act 1901*.[8]

Part 2—Appropriation items

Clause 6 Summary of appropriations states the total of the items specified in **Schedule 1** is $2 052 939 000. **Schedule 1** lists all the agencies that are to be funded, the amount of funding, and whether the item is departmental or administered.

Clause 8 deals with 'administered items'. **Clause 8** is identical to section 8 in *Appropriation Act (No. 1) 2008-09* except that **subclause 8(2)** refers to 'Portfolio Statements' whereas section 8 in *Appropriation Act (No. 1) 2008-09* refers to 'Portfolio Budget Statements'. **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 Statements indicate that an activity is for an outcome, the amount in the administered item is taken to contribute towards the achievement of that outcome.

A CAC Act body is a Commonwealth authority or company within the meaning of the *Commonwealth Authorities and Companies Act 1997* (the CAC Act) [9]. **Clause 9** deals with 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. For example, for the Broadband, Communications and the Digital Economy Portfolio, **Schedule 1** shows an administered expense for the Special Broadcasting Service Corporation of $331 000.[10]

Part 3—Adjusting appropriation items

As noted, a process exists whereby appropriations for departmental expenses that are not needed can be abolished. **Clause 10—Reducing departmental items** contains this process. **Subclause 10(1)** specifies who can request reductions in departmental expenses.

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7. Available at Hhttp://www.budget.gov.au/2008-09/content/pses/html/index.htmH [accessed 19 December 2008].

8. The Explanatory Memorandum explains the significance of section 15AB at page 3.

9. Available at Hhttp://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/7117415663243706CA2574730019A325?OpenDocument&mostrecent=1H [accessed 19 December 2008].

10. Appropriation Bill (No. 3) 2008-09, p. 24.

Paragraph 10(1)(a) empowers 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. **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 have no effect to the extent that it would reduce the departmental item below nil.

Clause 11—Reducing administered items contains the process for extinguishing appropriations for administered items that are not needed. **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. **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. **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*[11] applies to the determination, but that Part 6 (relating to sunsetting provisions) of the *Legislative Instruments Act 2003* does not apply to the determination. In short, this means that the Finance Minister's determinations are disallowable by Parliament, but once made, will not expire.

Clause 12 contains the process for reducing CAC Act body payments. This is almost identical to that for departmental items (**clause 10**). One difference is that 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 for this difference is 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.

Clause 13–Advance to the Finance Minister (AFM) differs from the comparable sections in previous Appropriation Acts. The Minister, in the second reading speech, gave the following explanation for the change:

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11. Available at Hhttp://www.comlaw.gov.au/ComLaw/Management.nsf/lookupindexpagesbyid/IP200402738?OpenDocumentH [accessed 19 December 2008].

> Based on current indications, we expect demand for issues from the advance to be greater than the $295 million provided in Appropriation Act (No. 1) and the $380 million provided in Appropriation Act (No. 2). It is important that the government can maintain its ability to issue amounts from the advance in the event that there is an urgent need for expenditure. Accordingly, clause 13 of Appropriation Bill (No. 3) provides that, irrespective of the amounts issued from the advance, at the commencement of Appropriation Act (No. 3), the amount available to be issued will be restored to the original limit of $295 million. A similar clause has been added to Appropriation Bill (No. 4) which will restore the limit to $380 million.
>
> In addition, a new clause is included in bills (No. 3) and (No. 4) providing that where amounts included in those bills have also been subject to an issue from the advance, for example, where an amount is determined after the additional estimates bills are finalised, then the appropriation in the bill will be reduced by the amount of the advance. This change will prevent appropriations for the same expenditure from both the advance and the bill.[12]

The Explanatory Memorandum contains the following explanation of **clause 13**:

> Clause 13 of the Bill provides that, irrespective of the amounts issued from the AFM before the commencement of the Bill, the amount available under section 14 of Act No. 1 will be restored to the original amount of $295 million. The provision has been added to the Bill to ensure that there will be sufficient scope to provide amounts from the AFM for the remainder of the financial year.[13]

Clause 13 relates to section 14 of the *Appropriation Act (No. 1) 2008-09*. Section 14 allows the Finance Minister to spend up to $295 million if the Finance Minister is satisfied that there is an urgent need for expenditure that is not provided for—or is insufficiently provided for—because of an erroneous omission or understatement or because the expenditure was unforeseen. Under subsection 14(2), expenditure from the Advance to the Finance Minister is treated as if it had been included in Schedule 1 of *Appropriation Act (No. 1) 2008-09* where Schedule 1 contains all the amounts appropriated. In other words, the effect of subsection 14(2) is to treat expenditure from the Advance to the Finance Minister as if it had been included in—and hence appropriated by—*Appropriation Act (No. 1) 2008-09*. Subsection 14(3) provides that the amount expended from the Advance must not exceed $295 million.

Subclause 13(1) provides that if the Finance Minister has determined—under subsection 14(2) of *Appropriation Act (No. 1) 2008-09*—to increase an amount in Schedule 1 of that Act because of expenditure from the Advance, then that amount is to be disregarded for the purposes of determining the maximum amount of the Advance. In

12. Lindsay Tanner, Minister for Finance and Deregulation, 'Second reading speech: Appropriation Bill (No. 3) 2008-09', House of Representatives, *Debates*, 4 December 2008, p. 7.

13. Explanatory Memorandum, Appropriation Bill (No. 3) 2008-09, p. 11.

other words, for the purposes of determining the amount of the Advance, prior expenditure from the Advance is to be disregarded, so that the Advance is reinstated to a maximum of $295 million.

Subclause 13(2) is designed to prevent double appropriations—once under the Bill and once from the Advance to the Finance Minister—for the same activity/item. **Paragraph 13(2)(a)** relates to expenditure under the Bill while **paragraph 13(2)(b)** relates to the Advance to the Finance Minister. **Subclause 13(2)** provides that if the Bill appropriates funds for a particular expenditure [**paragraph 13(2)(a)**] and the Finance Minister has already made a determination, before the Bill commences, for expenditure for the same purpose from the Advance to the Finance Minister [**paragraph 13(2)(b)**], then the amount that the Bill appropriates is reduced by the amount already expended from the Advance to the Finance Minister.

Concluding comments

As noted, most to the Bill's provisions are identical to those in *Appropriation Act (No. 1) 2008-09.* The treatment of the Advance to the Finance Minister in **clause 13** is, however, unusual and raises the question of why the Bill adopts the approach it does to reinstating the amount of the Advance to $295 million. Presumably, an alternative approach would be to increase the amount of the Advance. The Minister's second reading speech does not elucidate on the reasons the Minister expects issues from the Advance to be greater than $295 million provided in *Appropriation Act (No. 1) 2008-09* and $380 million in *Appropriation Act (No. 2) 2008-09.* As it was, Appropriation Act (No. 1) 2008-09 increased the Advance by $120 million to $295 million.

Appendix: Links to Portfolio Additional Estimates Statements 2008-09

Main link: http://www.budget.gov.au/2008-09/content/paes/html/index.htm

Agriculture, Fisheries and Forestry: http://www.daffa.gov.au/about/budget/budget_2008-2009/portfolio_additional_estimates_statements_2008-09

Attorney-General's:
http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_Budgets_Budget2008_AdditionalEstimateStatements_PortfolioAdditionalEstimatesStatements2008-2009

Broadband, Communications and the Digital Economy:
http://www.dbcde.gov.au/department/governance_and_administration/budget

Defence: http://www.defence.gov.au/budget/08-09/paes/

Defence portfolio: Department of Veterans' Affairs:
http://www.dva.gov.au/media/publicat/budget/08/pbs/2008-09_DVA_13_Portfolio_Additional_Estimates_Statements.pdf

Department of Education, Employment and Workplace Relations:
http://www.deewr.gov.au/NR/rdonlyres/6BB861A8-449B-41D8-B8BA-CA7F2245FE32/0/200809PAES20081201.pdf

Environment, Water, Heritage and the Arts:
http://www.environment.gov.au/about/publications/budget/2008/paes/pubs/dewha-2008-09-paes.pdf

Families, Housing, Community Services and Indigenous Affairs:
http://www.fahcsia.gov.au/internet/facsinternet.nsf/aboutfacs/budget/budget2008-08_paes_0809.htm

Finance and Deregulation: http://www.finance.gov.au/publications/portfolio-budget-statements/08-09/portfolio-additional-estimates-statements.html

Foreign Affairs and Trade: http://www.dfat.gov.au/dept/budget/index.html

Human Services: http://www.humanservices.gov.au/dhs/publications/budget/0809-financial-year.html

Immigration and Citizenship:
http://www.immi.gov.au/about/reports/budget/budget08/index.htm

Infrastructure, Transport, Regional Development and Local Government:
http://www.infrastructure.gov.au/department/statements/2008_2009/paes/index.aspx

Innovation, Industry, Science and Research: http://www.innovation.gov.au/General/Corporate/Pages/PortfolioAdditionalEstimatesStatements200809.aspx

Prime Minister and Cabinet: http://www.dpmc.gov.au/accountability/budget/2008-09/index.cfm#aes

Prime Minister and Cabinet portfolio: Department of Climate Change: http://www.climatechange.gov.au/budget/0809/paes0809.html

Resources, Energy and Tourism: http://www.ret.gov.au/Department/Documents/2008-09%20PAES-FINAL-011208.pdf

Treasury: http://www.budget.gov.au/2008-09/content/paes/html/index_tsy.htm