



Appropriation Bill (No. 4) 2008-09

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Appropriation Bill (No. 4) 2008-09

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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 \$1 041 million for the non-ordinary (or ‘other’) annual services of government.

Background

Section 83 of the Constitution of Australia provides that no monies may be withdrawn from the Consolidated Revenue Fund except ‘under an appropriation made by law’.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.

Of the appropriation bills introduced to accompany the May Budget, by far the most important, in dollar terms, is Appropriation Bill (No. 1). This appropriates funds for the ‘ordinary’ annual services of the government while Appropriation Bill (No. 2) appropriates funds for ‘other’ annual services. A third Appropriation Bill—Appropriation (Parliamentary Departments) Bill No. 1—funds the parliamentary departments.

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 1965.¹

1. The Compact was updated to take account of the adoption of accrual budgeting.

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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 3 and 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](#)² 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 outputs/expenses are the costs of running agencies, for example, salaries, depreciation and other day-to-day operating expenses. Administered expenses are the costs of programs that agencies administer. While most administered expenses are funded through special appropriations, some are funded through the Appropriation Bills.

Outcomes

Departmental outputs and administered expenses contribute to outcomes. They 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.³

Categories of payment for other services

Payments for other services fall into four categories:

- payments to the states, territories and local government

(these are paid under section 96 of the Constitution)

2. Available at <http://www.budget.gov.au/2008-09/content/paes/html/index.htm> [accessed 22 December 2008].

3. Attorney-General’s Portfolio, Portfolio Additional Estimates Statements 2008-09, p. 10.

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- new administered expenses
- ‘non-operating’ (sometimes called ‘capital’) costs:
 - appropriations for ‘administered assets and liabilities’ fund, for example, the purchase of new administered assets and the reduction of administered liabilities
 - funding in the form of ‘equity injections’ is, for example, for substantial investment in new assets
 - ‘loans’ are provided when an investment is expected to result in a return to the investment, for example, productivity gains
 - ‘previous years’ outputs’ appropriations replenish funds used to provide departmental outputs in a previous year. This can occur, for example, when the government has decided to introduce a new program but the decision comes too late for the program to be funded through the additional appropriation bills. In such cases, the program is funded initially from existing appropriations. This funding is later replenished in the form of a previous years’ outputs appropriation, and
- payments to CAC Act bodies (these are payments made to authorities and companies established under the [Commonwealth Authorities and Companies Act 1997](#) (CAC Act). Examples of CAC Act bodies are the Australian War Memorial, the Australian Film Commission, and the Australian Broadcasting Corporation).

In previous years, payments to CAC Act bodies were made ‘directly’ to the bodies through Appropriation Act No. 2. Beginning in 2008-09, payments to CAC Act bodies are paid ‘indirectly’ through portfolio departments. Appropriation Bill (No. 4) 2008-09 (the Bill) provides funds to the relevant portfolio department for on-payment to a CAC Act body. For example, under the Bill, funding for the Australian Broadcasting Corporation, the Special Broadcasting Corporation, and the Australian Communications and Media Authority are made ‘indirectly’ through the Department of Broadband, Communications and the Digital Economy, the latter being the relevant portfolio department. The Department of Finance and Deregulation maintains a list of CAC Act bodies.⁴

Reduction processes

The Bill contains processes for reducing amounts that have been appropriated but which are subsequently found to be more than was needed. Reductions can apply to:

- payments to the states, territories and local governments
- administered assets and liabilities, and other departmental items, and
- CAC Act body payments.

4. Available at <http://www.finance.gov.au/publications/flipchart/docs/FMACACFlipchart.pdf> [accessed 22 December 2008].

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These processes are essentially the same as those available to the reduction of departmental and administered expenses for ordinary annual services.⁵

Beginning in 2008-09, the process for reducing appropriations for payments to the states, territories and local governments is different from the process in previous years. Under the new process, the amount reduced is based on agencies' financial statements in their annual reports. In essence, the amount of the reduction is the difference between the total of amounts appropriated less the amount shown as having been spent in agencies' financial statements.

Financial implications

The Bill appropriates about \$1 041 million.⁶ This compares with about \$12 691 million in Appropriation Act (No. 2) 2008-09.

Main provisions

For the most part, the Bill's provisions are identical to those in *Appropriation Act (No. 2) 2008-09*. The Bill differs from *Appropriation Act (No. 2) 2008-09* in that the Bill omits provisions that are not relevant, for example, Part 4 which dealt with reducing payments to the states, territories and local governments in previous Acts. This Bills Digest therefore focuses on differences between the Bill's provisions and those in *Appropriation Act (No. 2) 2008-09*. The main difference is in **clause 15**, which deals with the Advance to the Finance Minister.

Part 1—Preliminary

Clause 3 contains definitions. Most definitions are identical to those in *Appropriation Act (No. 2) 2008-09*. The following are some of the definitions in **clause 3**:

- CAC Act body: this is a Commonwealth authority or company within the meaning of the *Commonwealth Authorities and Companies Act 1997*
- CAC Act body payment item: this is the amount set out in **Schedule 2** in relation to a CAC Act body
- Chief Executive is defined as having the same meaning as in the *Financial Management and Accountability Act 1997*

5. See the [HBills Digest](#) H no.71, 2008–09 for Appropriation Bill (No. 3) 2008-09 for a description of these processes and the relevant provisions.

6. Appropriation Bill (No. 4) 2008-2009, p. 16.

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- Portfolio Statements mean (a) the Portfolio Budget Statements, and (b) the Portfolio Supplementary Estimates Statements and (c) the Portfolio Additional Estimates Statements, and
- [Portfolio Supplementary Estimates Statements](#)⁷ are the Statements tabled in relation to the [Appropriation \(Economics Security Strategy\) Bill No. 1 2008-09](#) and the [Appropriation \(Economics Security Strategy\) Bill No. 2 2008-09](#).

Part 2—Appropriation items

Clause 6 provides that the total of the items in **Schedule 2** is \$1 041 383 000.

Clause 7 deals with payments to the states, territories and local governments. **Subclause 7(2)** specifies that if the Portfolio Statements indicate that certain activities are intended to be for a particular outcome, then expenditure on those activities is taken to be as contributing to the outcome.

Clause 8 deals with ‘administered items’. **Subclause 8(1)** provides that the amount identified for an administered item in an outcome can be used to contribute to that outcome. The wording of **subclause 8(2)** is identical to that in **subclause 7(2)**.

Clause 9 deals with administered assets and liabilities. **Subclause 9(1)** provides that the amount identified for an agency’s administered assets and liabilities may be applied to achieving any of the agency’s outcomes, which are specified in **paragraphs 9(1)(a) to 9(1)(f)**. **Subclause 9(2)** specifies that if the Portfolio Statements indicate that certain activities were intended to be for a particular outcome, then expenditure on those activities is taken to be as contributing to the outcome.

Clause 10—Other departmental items—provides that the amount specified in an other departmental item for an Agency may be applied for the departmental expenditure of the Agency.

Clause 11 deals with CAC Act body payments. **Subclause 11(1)** provides that an amount, appropriated for a CAC Act body payment item, may be paid to the body for that body’s purposes. **Subclause 11(2)** provides that if an Act provides that a CAC Act body must be paid amounts that are appropriated by the Parliament for the purposes of the body, and **Schedule 2** contains a CAC Act body payment item for that body, then the body must be paid the full amount specified in the item. According to the Explanatory Memorandum:

The purpose of subclause 11(2) is to clarify that subclause 11(1) is not intended to qualify any obligations in other legislation regulating a CAC Act body, where that

7. Available at [Hhttp://www.budget.gov.au/2008-09/content/pses/html/index.htm](http://www.budget.gov.au/2008-09/content/pses/html/index.htm)H [accessed 22 December 2008].

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legislation requires the Commonwealth to pay the full amount appropriated for the purpose of the body.⁸

Part 3—Adjusting appropriation items

Three clauses in **Part 3** deal with reductions to appropriations:

- **clause 12** deals with reductions of (a) payments to the states, territories and local governments and (b) administered items
- **clause 13** deals with reductions of (a) administered assets and liabilities and (b) other departmental items, and
- **clause 14** deals with reductions to CAC Act bodies payment items.

Subclause 12(1) stipulates that the amount by which payments to the states, territories and local governments and for administered items can be reduced is the difference between what has been appropriated and what has been spent, the latter being the amount shown in agencies' financial statements. However, **paragraph 12(2)(a)** gives the Finance Minister power to determine that **subclause 12(1)** does not apply or that **subclause 12(1)** applies as if the amount in the annual report were the amount that the Finance Minister determines **paragraph 12(2)(b)**. The Explanatory Memorandum states:

The power in paragraph 12(2)(b) is to ensure that the amount published for the item can be corrected if, for example, the amount is erroneous or requires updating after an agency's annual report is published.⁹

Subclause 12(3) provides that a determination made under **subclause 12(2)** is a legislative instrument, that section 42 (relating to disallowance) of the *Legislative Instruments Act 2003*¹⁰ 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 short, this means that the Finance Minister's determinations are disallowable by Parliament, but once made, will not expire.

Subclause 13(1) enables the minister responsible for an agency, or—where the Finance Minister is responsible for the agency—the chief executive of the agency, to seek a reduction in administered assets and liabilities, and other departmental items, while **subclause 13(2)** empowers the Finance Minister to make a determination that accords with the request. However, the determination cannot reduce the appropriation below zero

8. Explanatory Memorandum, Appropriation Bill (No. 4) 2008-09, p. 8.

9. *ibid*, p. 9.

10. Available at <http://www.comlaw.gov.au/ComLaw/Management.nsf/lookupindexpagesbyid/IP200402738?OpenDocument> [accessed 22 December 2008]

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(**subclause 13(3)**). Requests are not legislative instruments (**subclause 13(5)**). While the Finance Minister's determinations are legislative instruments and are disallowable, the determinations—like those in **subclause 12(3)**—are not subject to the sunset provisions of the *Legislative Instruments Act 2003* (**subclause 13(6)**).

The wording in **clause 14**—which deals with reductions to CAC Act bodies payment items—is almost the same as for **clause 13**. However, whereas a request can come from the Chief Executive of an agency for which the Finance Minister is responsible in the case of **clause 13**, a similar request must come from the Secretary of the Department in the case of CAC Act bodies (**paragraph 14(1)(b)**). **Subclause 14(5)** confirms that a reduction can be made for a CAC Act body even though it has been allocated funds under **subclause 11(2)**.

Clause 15—Advance to the Finance Minister differs from the comparable sections in previous appropriation acts. The Minister for Finance and Deregulation, the Hon. Lindsay Tanner, in the second reading speech for Appropriation Bill (No. 3) 2008-09, gave the following explanation:

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.¹¹

Clause 15 relates to section 15 of *Appropriation Act (No. 2) 2008-09*. Section 15 allows the Finance Minister to spend up to \$380 million if he or she 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 15(2), expenditure from the Advance to the Finance Minister is treated as if it had been included in Schedule 2 of *Appropriation Act (No.2) 2008-09* (Schedule 2 enumerates the services for which money is appropriated). In other

11. Lindsay Tanner, Minister for Finance and Deregulation, 'Second reading speech: Appropriation Bill (No. 3) 2008-09', House of Representatives, *Debates*, 4 December 2008, p. 10–11.

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words, the effect of subsection 15(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. 2) 2008-09*. Subsection 15(3) provides that the amount expended from the Advance must not exceed \$380 million.

Subclause 15(1) provides that if the Finance Minister has determined—under subsection 15(2) of *Appropriation Act (No. 2) 2008-09*—to increase an amount in Schedule 2 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 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 \$380 million.

Subclause 15(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 15(2)(a)** relates to expenditure under the Bill while **paragraph 15(2)(b)** relates to the Advance to the Finance Minister. **Subclause 15(2)** provides that if the Bill appropriates funds for a particular expenditure (**paragraph 15(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 15(2)(b)**), then the amount that the Bill appropriates is reduced by the amount already expended from the Advance to the Finance Minister.

Part 5—Miscellaneous

Clause 16—Crediting amounts to Special Accounts provides that if a purpose of a special account is a purpose that an item covers—irrespective of whether that item expressly refers to the special account—then amounts may be debited against the appropriation for that item and credited to the special account.

Clause 17 deals with the conditions attached to grants of financial assistance to the states, territories and local governments.

Section 96 of the Constitution provides in part:

... the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

According to the Explanatory Memorandum, **clause 17**:

... delegates Parliament's power under section 96 of the Constitution to provide financial assistance to the States to the responsible Minister listed in Schedule 1 of the Bill.¹²

12. Explanatory Memorandum, p. 14.

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Subclause 17(1) provides that it applies to payments to the states, territories and local government for the outcomes listed in column 2 of **Schedule 1**. **Paragraph 17(2)(a)** provides that payments must accord with the conditions attached to the payments—as established by the process set out in **subclause 17(3)**—and also with any determination as to the amounts and timing of payments **paragraph 17(2)(b)**. **Subclause 17(3)** provides that the way terms and conditions are established is for the relevant Minister to make a determination in writing before or after the Act commences. **Subclause 17(4)** provides that determinations mentioned in **paragraph 17(2)(a)** and determinations made under **paragraph 17(2)(b)** are not legislative instruments. The Explanatory Memorandum explains that the reason the determinations are not legislative instruments is:

... because the determinations are not altering the appropriations approved by Parliament. Determinations under subclause 17(2) will simply determine how appropriations for State, ACT, NT and local government items will be paid. The determinations are issued when required. However, payments can be made without either determination.¹³

Schedule 1 lists the agencies responsible for making payments to the states, territories, and local governments, the outcomes for which payments are made, and the names of the Ministers responsible for determining conditions and for determining payments.

Schedule 2 lists the services for which money is appropriated. The appropriations are broken down by agency, and by the form that the payments take, for example, new administered expenses.

Concluding comments

As noted, most of the Bill's provisions are identical to those in *Appropriation Act (No. 2) 2008-09*. The treatment of the Advance to the Finance Minister in **clause 15** is, however, unusual and raises the question of why the Bill adopts the approach it does to reinstating the amount of the Advance to \$380 million. Presumably, an alternative approach would be to increase the amount of the Advance.

13. *ibid.*

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