



Appropriation Bill (No. 5) 2008-09

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Economics Section

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Appropriation Bill (No. 5) 2008-09

Date introduced: 26 February 2009

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 \$384 million for the ordinary annual services of government.

Background

On 3 February 2009, the Rudd Government announced the National Building and Jobs Plan (the Plan).¹ The context was the deteriorating Australian and world economies. The Plan's purpose is to provide additional fiscal stimulus to counter the contraction in the economy. Appropriation Bill (No. 5) 2008-09 (the Bill) appropriates additional funding in support of the Plan. The Plan is the fourth fiscal stimulus package and follows the Economic Security Strategy,² the Nation Building Package,³ and the Council of Australian Governments (COAG) funding package.⁴

1. Hon. Kevin Rudd (Prime Minister), *\$42 Billion Nation Building and Jobs Plan*, media release, 3 February 2009, at http://www.pm.gov.au/media/Release/2009/media_release_0784.cfm. Accessed 9 February 2009. A comprehensive document, *Updated Economic and Fiscal Outlook*, which deals with the Plan is on the Australian Government Budget website at http://www.budget.gov.au/2008-09/content/uefo/download/Combined_UEFO.pdf. Accessed 9 February 2009.
2. Hon. Kevin Rudd (Prime Minister), and Hon. Wayne Swan (Treasurer), *Economic Security Strategy*, joint press release, 14 October 2008, at http://www.pm.gov.au/media/Release/2008/media_release_0550.cfm, accessed on 3 March 2009.

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Constitutional aspects

Section 83 of the Constitution provides that no monies may be withdrawn from the Consolidated Revenue Fund except ‘under an appropriation made by law’.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 80 per cent 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 twenty per cent 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)

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3. Hon. Kevin Rudd (Prime Minister), *\$4.7 billion Nation Building Package*, media release 12 December 2008, at http://www.pm.gov.au/media/Release/2008/media_release_0687.cfm, accessed on 3 March 2009.
 4. Council of Australian Governments, *Intergovernmental Agreement on Federal Financial Relations*, Communiqué, 29 November 2008, at http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/, accessed on 3 March 2009.

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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*.⁵ This means that the Portfolio Budget Statements can be used to help interpret an Act. Portfolio Additional Estimates Statements are the counterparts of Portfolio Budget Statements and contain explanations of the funding sought through the additional estimates Appropriation Bills.⁶

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.

Budget terms and processes

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.⁷

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5. *Acts Interpretation Act 1901*, at [http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/6DE566A4924AEC10CA25748E00280B3B/\\$file/ActsInterp1901_WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/6DE566A4924AEC10CA25748E00280B3B/$file/ActsInterp1901_WD02.pdf), accessed on 3 March 2009.
 6. For 2008–09, these are at <http://www.budget.gov.au/2008-09/content/paes/html/index.htm>, accessed on 3 March 2009.
 7. Attorney-General’s Portfolio, Portfolio Additional Estimates Statements 2008-09, p. 10.

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Reduction processes

Departmental expenses and administered expenses Budget allocations can be reduced. 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.

In effect, the unused amounts are returned to consolidated revenue.

Financial implications

The Bill appropriates \$384.179 million, and is the fifth to appropriate money for ordinary annual services for financial year 2008–09. The other items of legislation to do so are:

- [Appropriation Act \(No. 1\) 2008–09](#)
- [Appropriation Bill \(No. 3\) 2008–09](#)⁸
- [Appropriation \(Economic Security Strategy\) Act \(No. 1\) 2008–09](#), and
- [Appropriation \(Nation Building and Jobs\) Act \(No. 1\) 2008-09](#).

The Nation Building and Jobs Plan is the main fiscal stimulus package the government has introduced to counter the current downturn in the economy. The *Appropriation (Nation Building and Jobs) Act (No. 1) 2008-09* appropriated some funds for the Nation Building and Jobs Plan. In his second reading speech for the Bill, the Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer, the Hon. Chris Bowen (the Minister), stated that additional funding would be needed to underpin the Nation Building and Jobs Plan. The Bill provides some of this additional funding. [Appropriation Bill (No. 6) 2008-09 also contains additional funding in support of the Nation Building and Jobs Plan. See also the [Bills Digest](#) for Appropriation Bill (No. 6) 2008-09].

8. This Bill is not yet an Act.

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The Bill appropriates \$285.619 million for the Department of Education, Employment and Workplace Relations (\$15.541million is for departmental expenses and \$270.078 million for administered expenses. Of the \$285.619 million, \$223.3 million is to be expended as follows:

- \$43.7 million is for the expected increase in commencements and completion claims under the Australian apprenticeships system
- \$38.8 million is to assist apprentices and trainees to return to the workforce and continue training. Employers and training organisations will be encouraged to retain apprentices and trainees through an additional payment on completion of training
- \$34 million will be provided to keep open, until 31 March 2009, 241 ABC Learning centres, which the receiver has assessed to be unviable under the ABC Learning business model
- \$36.8 million will be provided to ensure that any Australian worker made redundant will receive assistance to help them re-enter the workforce, and
- \$70 million is to meet an expected increase in expenditure against the General Employee Entitlements and Redundancy Scheme.

The Department of Infrastructure, Transport, Regional Development and Local Government will receive an additional \$20.066 million in 2008–09 (\$3.666 million for departmental expenses and \$16.4 million for administered expenses). According to the Minister, the Department will be provided with an additional \$16.4 million in 2008–09 and \$195 million in total over two years to implement the East Kimberley Development Package. The package is designed to support economic development in the region through investment in social and common use infrastructure. Payment is conditional on joint assessments, with the Western Australian government, of potential infrastructure investments.

The Bill provides \$28.486 million to the Department of Families, Housing, Community Services and Indigenous Affairs (\$17.395 million for departmental expenses and \$11.091 million for administered expenses). According to the Minister, the funding will allow the doubling of the Emergency Relief Program until 30 June 2011.⁹ The additional \$11.091 million will enable community organisations concerned to respond to the expected increase in demand for emergency relief resulting from the recent deterioration in economic conditions.

9. This program provides emergency financial assistance to families and individuals. See the fact sheet at [http://www.facs.gov.au/internet/facsinternet.nsf/via/emergency_relief/\\$File/er_factsheet.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/via/emergency_relief/$File/er_factsheet.pdf), accessed on 5 March 2009.

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The Bill provides \$14.856 million to the Department of Foreign Affairs and Trade to offset the effect of exchange rate fluctuations on its ability to make payments to international organisations on the Australian Government's behalf.

The above figures are taken from the Minister's second reading speech.

Main provisions

Most of the provisions in the Bill are identical to those in the other four items of legislation noted above.

Part 1—Preliminary

Clause 3 contains definitions. There are five definitions of 'Portfolio Statements'. They all refer to the Statements introduced as 'relevant documents' in support of various Acts:

- Portfolio Additional Estimates Statements
- Portfolio Budget Statements
- Portfolio Supplementary Additional Estimates Statements
- Portfolio Supplementary Additional Estimates Statements No. 2, and
- Portfolio Supplementary Estimates Statements.

[Portfolio Additional Estimates Statements](#) means the Portfolio Additional Estimates Statements that were tabled in the Senate or the House of Representatives in relation to the Bill for the *Appropriation Act (No. 3) 2008–2009* and the Bill for the *Appropriation Act (No. 4) 2008–2009*.

[Portfolio Budget Statements](#) means the Portfolio Budget Statements that were tabled in the Senate or the House of Representatives in relation to the Bill for the *Appropriation Act (No. 1) 2008–2009* and the Bill for the *Appropriation Act (No. 2) 2008–2009*.

[Portfolio Supplementary Additional Estimates Statements](#) means the Portfolio Supplementary Additional Estimates Statements that were tabled in the Senate or the House of Representatives in relation to the Bill for the *Appropriation (Nation Building and Jobs) Act (No. 1) 2008–2009* and the Bill for the *Appropriation (Nation Building and Jobs) Act (No. 2) 2008–2009*.

[Portfolio Supplementary Additional Estimates Statements No. 2](#) means the Portfolio Supplementary Additional Estimates Statements that were tabled in the Senate or the House of Representatives in relation to the Bill for this Act and the Bill for the *Appropriation Act (No. 6) 2008–2009*.

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The reference to [Portfolio Supplementary Estimates Statements](#) is to the Statements released in support of the *Appropriation (Economics Security Strategy) Act No. 1 2008–09* and the *Appropriation (Economics Security Strategy) Act (No. 2) 2008–09*.

Clause 4 provides that the Portfolio Budget Statements, Portfolio Supplementary Estimates Statements, Portfolio Additional Estimates Statements, Portfolio Supplementary Additional Estimates Statements and Portfolio Supplementary Additional Estimates Statements No. 2 are relevant documents for the purposes of section 15AB of the *Acts Interpretation Act 1901*.¹⁰

Part 2—Appropriation items

Clause 6 Summary of appropriations states the total of the items specified in **Schedule 1** is \$384 179 000. **Schedule 1** lists all the agencies that are to be funded, the amount of funding, and the breakdown of funding between departmental and administered expenses.

Clause 8 deals with ‘administered items’. **Subclause 8(1)** confirms that if an amount is specified in an administered item to be for an outcome, then money can be expended to achieve that outcome. **Subclause 8(2)** provides that where the Portfolio Budget Statements, Portfolio Supplementary Estimates Statements, Portfolio Additional Estimates Statements, Portfolio Supplementary Additional Estimates Statements or Portfolio Supplementary Additional Estimates Statements No. 2 indicate that an activity is for an outcome, the amount in the administered item is taken to contribute towards the achievement of that outcome.

Clause 9 deals with ‘CAC Act body payment items’. A CAC Act body is a Commonwealth authority or company within the meaning of the *Commonwealth Authorities and Companies Act 1997* (the CAC Act).¹¹ The amounts to be paid to CAC Act bodies are shown in **Schedule 1** as ‘Payments to CAC Act bodies’. For example, in the Defence Portfolio, **Schedule 1** shows an administered expense for the Australian War Memorial of \$38.597 million. **Subclause 9(1)** provides that the amount specified in a CAC Act body payment item may be paid to the body and used for the body’s purposes. **Subclause 9(2)** provides that if an Act provides that a CAC Act body must be paid amounts that are appropriated by the Parliament for the body’s purposes [**paragraph 9(2)(a)**] and **Schedule 1** contains a CAC Act body payment item for that body [**paragraph 9(2)(b)**], then the body must be paid the full amount specified in the item. The Explanatory Memorandum explains:

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

11. *Commonwealth Authorities and Companies Act 1997*, at <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/7117415663243706CA2574730019A325?OpenDocument&mostrecent=1>, accessed on 3 March 2009.

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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.¹²

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. **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* applies to the determination, but that Part 6 (relating to sunset provisions) of the *Legislative Instruments Act 2003* does not apply to the determination.¹³ 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, in the case of CAC Act bodies, a similar request must come from the Secretary of

12. Explanatory Memorandum, Appropriation Bill (No. 5) 2008–09, p.7.

13. *Legislative Instruments Act 2003*, at <http://www.comlaw.gov.au/ComLaw/Management.nsf/lookupindexpagesbyid/IP200402738?OpenDocument>, accessed on 3 March 2009.

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the Department if the Finance minister is responsible for the body [**paragraph 12(1)(b)**]. 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.

Special accounts are essentially ledgers in which all expenditure and revenue related to a particular purpose are recorded. This simplifies identification of all financial activities related to that purpose. **Clause 13 Crediting amounts to Special Accounts** provides that if any of the purposes of a Special Account is a purpose that is covered by an item, then amounts may be debited (expended) against the appropriation for that item and credited to that Special Account.

Clause 14 provides that the Consolidated Revenue Fund is appropriated for the purposes of this Act, including the operation of this Act as affected by the *Financial Management and Accountability Act 1997*.

Concluding comments

Addition funding of \$1 830.9 million in support of the Nation Building and Jobs Plan is contained Appropriation Bill (No. 6) 2008-09.

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