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Appropriation Bill (No. 6) 2008–09

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Economics Section

Contents

Appropriation Bill (No. 6) 2008–09

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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 $1 830.889 million for the non-ordinary ('other') annual services of the government in support of the Nation Building and Jobs Plan.

Background

On 3 February 2009, the Rudd Government announced the National Building and Jobs Plan (the Plan).[1] The context was the deterioration in the Australian and world economies. The Plan's purpose is to provide additional fiscal stimulus to counter the contraction in the economy. 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, Parliament House, Canberra, 3 February 2009, at http://www.pm.gov.au/media/Release/2009/media_release_0784.cfm, accessed on 3 March 2009. The *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 on 3 March 2009.

2. Hon. Kevin Rudd (Prime Minister) and Hon. Wayne Swan (Treasurer), *Economic Security Strategy*, joint press release, Parliament House, Canberra, 14 October 2008, at http://www.pm.gov.au/media/Release/2008/media_release_0550.cfm, accessed on 3 March 2009.

3. Hon. Kevin Rudd (Prime Minister), *$4.7 billion Nation Building Package*, media release, Parliament House, Canberra, 12 December 2008, at

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Section 83 of the Constitution provides that no monies may be withdrawn from the Consolidated Revenue Fund except 'under an appropriation made by law'.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

Other annual services include:

- grants of financial assistance to the states, territories, and local government
- new administered expenses (see below)
- 'non-operating' costs, and
- payments to CAC Act bodies (see below).

Non-operating costs comprise:

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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.

- equity injections, which are provided to agencies to allow them, for example, to invest in non-financial assets such as buildings and railway lines
- loans are provided to agencies when an investment is expected to yield a return, for example, increased productivity
- 'previous years' outputs' appropriations replenish money spent on departmental expenses (see below) in a previous year
- 'administered assets and liabilities' appropriations fund additions to administered assets and the discharge of administered liabilities.

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*.[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.

5. *Acts Interpretation Act 1901*, at 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.

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]

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

The Bill appropriates $1 830.889 million. The Bill is the fifth to appropriate money for other annual services for financial year 2008–09. The other items of legislation to do so are:

- *Appropriation Act (No. 2) 2008–09*

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

- Appropriation Bill (No. 4) 2008–09[8]
- *Appropriation (Economic Security Strategy) Act (No. 2) 2008–09*, and
- *Appropriation (Nation Building and Jobs) Act (No. 2) 2008-09*.

The Nation Building and Jobs Plan is the main fiscal stimulus package the government has introduced. The *Appropriation (Nation Building and Jobs) Act (No. 2) 2008-09* appropriated some funds for the Nation Building and Jobs Plan. In his second reading speech for Appropriation Bill (No. 5) 2008–09, the Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer, the Hon. Chris Bowen (the Minister), stated that additional funding is needed to underpin the Nation Building and Jobs Plan. Whereas Appropriation Bill (No. 5) 2008–09 provides additional funding for ordinary annual services, Appropriation Bill (No. 6) 2008-09 (the Bill) appropriates funds for other annual services in support of the Nation Building and Jobs Plan. As the Minister noted in the second reading speech for the Bill:

> Appropriation Bill (No. 6) 2008-2009 provides additional funding for payments of a capital nature, such as for the purchase of administered assets and for payments to the states, territories and local government authorities.[9]

There are three components to the appropriations. The largest—for the Department of Infrastructure, Transport, Regional Development and Local Government—is an equity injection of $1 188.9 million into the Australian Rail Track Corporation (pages 19 and 20 of the Bill refer). The Australian Rail Track Corporation is a wholly-owned Commonwealth company, and is the main vehicle through which the Commonwealth funds investment in rail. Investment in the Hunter Valley coal lines is a major component of the proposed investment.

The second component—also for the Department of Infrastructure, Transport, Regional Development and Local Government—is the bringing forward of $711 million for spending on roads. Of this, the Bill provides for $391.989 million in 2008–09 (pages 19 and 20 of the Bill refer). The $391.989 million will be paid to the states, territories and local government.

The third component is $250 million for the Department of the Environment, Water, Heritage and the Arts (pages 17 and 18 of the Bill refer). According to the second reading speech, the government proposes to bring forward expenditure totalling $500 million over four years, beginning in 2008–09, to expedite the return of water to the Murray Darling

8. This Bill is not yet an Act.

9. Hon. Chris Bowen, Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer, 'Second reading speech: Appropriation Bill (No. 6) 2008–09', House of Representatives, *Debates*, 26 February 2009, p. 1.

Basin. The $500 million is in response to the agreement with Senator Xenophon to bring forward expenditure to buy water to return to the Basin.[10]

Main provisions

For the most part, the Bill's provisions are identical to those in *Appropriation Act (No. 2) 2008–09* and *Appropriation (Nation Building and Jobs) Act (No. 2) 2008-09*.

Part 1—Preliminary

Clause 3 contains definitions. 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*.

Item means any of the following:

(a) a State, ACT, NT and local government item;

(b) an administered item;

(c) an administered assets and liabilities item;

(d) an other departmental item;

(e) a CAC Act body payment item.

Other departmental item means an amount set out in Schedule 2 in relation to an Agency:

(a) opposite the heading "Equity Injections"; or

(b) opposite the heading "Loans"; or

(c) opposite the heading "Previous Years' Outputs".

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10. See Senator Penny Wong (Minister for Climate Change and Water), *Press Conference*, 18 February 2009, at http://www.environment.gov.au/minister/wong/2009/pubs/tr20090218.pdf, accessed on 5 February 2009.

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

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. 5) 2008-2009*.

Portfolio Supplementary Estimates Statements means the Portfolio Supplementary Estimates Statements that were tabled in the Senate or the House of Representatives in relation to the Bill for the *Appropriation (Economic Security Strategy) Act (No. 1) 2008-2009* and the Bill for the *Appropriation (Economic Security Strategy) Act (No. 2) 2008-2009*.

Part 2—Appropriation items

Clause 6 provides that the total of the items in **Schedule 2** is $1 830 889 000.

Clause 7 deals with payments to the states, territories and local governments. **Subclause 7(2)** specifies that if 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 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)(j)**. **Subclause 9(2)** specifies that if 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 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 legislation requires the Commonwealth to pay the full amount appropriated for the purpose of the body.[11]

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

11. Explanatory Memorandum, Appropriation Bill (No. 6), p. 8.

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.[12]

Section 44(2) of the *Legislative Instruments Act 2003* lists legislative instruments that are not subject to disallowance.[13] The list includes Item 38 'Instruments made under Annual Appropriation Acts'. **Subclause 12(3)** of the Bill 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* 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.

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 (**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 sunsetting 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,** in the case of CAC Act bodies, a similar request must come from the Secretary of the Department if the Finance minister is responsible for the body (**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)**.

Part 4—Miscellaneous

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 15—Crediting amounts to Special Accounts** provides

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12. ibid, p. 9.

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

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 16 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 16:**

> … deals with Parliament's power under section 96 of the *Australian Constitution* to provide financial assistance to the States. Clause 16 delegates the power to the responsible Ministers listed in Schedule 1 of the Bill, by providing the Ministers named in Schedule 1 with the power to determine:
>
> · conditions under which payments to the States, the ACT and NT and local councils may be made: paragraph 16(2)(a); and
>
> ·the amounts and timing of those payments: paragraph 16(2)(b).[14]

Subclause 16(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 16(2)(a)** provides that payments must accord with the conditions attached to the payments—as established by the process set out in **subclause 16(3)**—and also with any determination as to the amounts and timing of payments **paragraph 16(2)(b)**. **Subclause 16(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 16(4)** provides that determinations mentioned in **paragraph 16(2)(a)** and determinations made under **paragraph 16(2)(b)** are not legislative instruments. The Explanatory Memorandum explains that the reason is:

> … because the determinations are not altering the appropriations approved by Parliament. Determinations under subclause 16(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.[15]

Clause 17 Appropriation of the Consolidated Revenue Fund provides that the Consolidated Revenue Fund is appropriated for the purposes of this Act, including the

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14. Explanatory Memorandum, Appropriation Bill (No. 6) 2008–09, p. 12.

15. ibid., p. 13.

operation of this Act as affected by the *Financial Management and Accountability Act 1997*.

Schedule 1 lists the agency—in this case the Department of Infrastructure, Transport, Regional Development and Local Government—which is responsible for making payments to the states, territories, and local governments, the outcomes for which payments are made, and the Minister 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.

Conclusions

As noted, Appropriation Bill (No. 5) 2008-09 also appropriate funds in support of the Nation Building and Jobs Plan [see the Bills Digest for Appropriation Bill (No. 5) 2008-09].