



Appropriation Bill (No. 2) 2009-2010

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Economics Section

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Appropriation Bill (No. 2) 2009-2010

Date introduced: 12 May 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 approximately \$10.629 billion for the non-ordinary ('other') annual services of government.

Background

Constitutional aspects

Section 83 of the Constitution of Australia provides that no monies may be withdrawn from the Consolidated Revenue Fund except 'under an appropriation made by law'.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
- six (usually) annual appropriation acts.

Appropriation Bill (No. 2) 2009-2010 (the Bill) is an annual appropriation.

Annual appropriation bills: 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 annual appropriation 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).

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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.

Budget terms and processes

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.¹

Portfolio Budget Statements

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.

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 and administered items
- administered assets and liabilities, and other departmental items, and

1. Attorney-General’s Department, *Portfolio Budget Statements 2009-10*, p. 25, viewed 14 May 2009, [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)~03+PBS+09_10+AGD_web+Final.pdf/\\$file/03+PBS+09_10+AGD_web+Final.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)~03+PBS+09_10+AGD_web+Final.pdf/$file/03+PBS+09_10+AGD_web+Final.pdf)

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- CAC Act body payments.

Beginning in 2008-09, the process for reducing appropriations for payments to the states, territories and local governments changed 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.

Advance to the Finance Minister

The advance to the Finance Minister (AFM) provides flexibility to the Budget process by authorising the Finance Minister to expend money when the Finance Minister is satisfied that there is an urgent need for expenditure during the financial year but for which there is not a sufficient appropriation. The Finance Minister can expend money from the AFM only if the proposed expenditure meets certain criteria, namely, there is an urgent need for the expenditure that is not provided for, or is insufficiently provided for, because of an omission or understatement or because of unforeseen circumstances.

Categories of payments for other services: historical

In the past, payments for other services fell into four categories:

- payments to the states, territories and local government (these were paid under section 96 of the Constitution)
- 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

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The fourth category is payments to CAC Act bodies. They are 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.

Before 2008-09, 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. The reason for the change is that CAC Act bodies are legally and financially separate from the Commonwealth and so do not debit appropriations or make payments from the Consolidated Revenue Fund. Rather, funding for CAC Act bodies is now paid to the relevant portfolio departments which, in turn, pass the funds on to the CAC Act bodies.

Categories of payments for other services: new

Payments for other services will change substantially on the commencement of this Bill. As noted, in the past, payments to the states, territories and local governments have been made under Appropriation Bill (No. 2). Beginning with the Bill, payments to the states and territories will be funded predominately under a special appropriation, namely, the [Federal Financial Relations Act 2009](#) (FFR Act). Payments under the FFR Act appear in the [Department of the Treasury Portfolio Budget Statements](#).

The following will continue to be paid under Appropriation Bill (No. 2):

- payments made directly to local government
- some payments through the states and territories for non-government schools that are not paid from the *Schools Assistance Act 2008* or the Council of Australian Governments Reform Fund
- non-operating costs (as before), and
- CAC Act body payments (as before).

As to the reason for the change, according to Budget Paper No. 4 2009-10:

The FFR Act implements the centralised payments arrangement agreed by COAG in the Intergovernmental Agreement on Federal Financial Relations. The detail of the Commonwealth's payments to the States and Territories is now contained in one piece of Commonwealth legislation. This streamlining will also greatly improve public transparency of these payments and the ability of the Parliament to scrutinise the payment arrangements.²

2. Australian Government, *Budget Paper No. 4 Agency Resourcing*, p. 8, viewed 15 May 2009, http://www.budget.gov.au/2009-10/content/bp4/download/bp4_introduction.pdf

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Drawing rights

General drawing rights

The Bill contains a completely new part dealing with general drawing rights limits. As noted, 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’. Drawing rights are, in essence, a control over the power to make payments authorised under appropriations:

Drawing rights provide controls around the expenditure of money and the use of appropriations. They are a statutory control over who may draw upon appropriations and make payments, and they allow for conditions and limits to be set by the Finance Minister (or his delegate) in relation to those activities.³

Sections 26 and 27 of the [Financial Management and Accountability Act 1997](#) (FMA Act) govern drawing rights. Section 26 requires an official or minister to be authorised by a valid drawing right to do any of the following:

- make a payment of public money
- request that an amount be debited against an appropriation, or
- debit an amount against an appropriation.

Section 27, among other things, provides the Finance Minister with the power to issue, revoke or amend drawing rights. Those with power to issue drawing rights (in addition to the Finance Minister) are Chief Executives, Chief Financial Officers, officials who have been delegated the power to issue drawing rights, and all officials who have been issued with drawing rights.⁴

General drawing rights limit

The [Nation-building Funds Act 2008](#) established the Building Australia Fund, the Education Investment Fund, and the Health and Hospitals Fund as well as special accounts for each of those funds. The amounts in these special accounts are appropriated for the purposes for which the Funds were created. The [Nation-building Funds Act 2008](#) and the [Federal Financial Relations Act 2009](#)—which is the special appropriation under which most payments to the states and territories are made—both contain mechanisms to limit

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3. Department of Finance and Administration, Finance Circular No. 2006/09, p. 1, viewed 15 May 2009, http://www.finance.gov.au/Publications/finance-circulars/2006/docs/FC_2006-09_complete.pdf
 4. Department of Finance and Administration, Finance Circular No. 2006/09, p. 1, viewed 15 May 2009, http://www.finance.gov.au/Publications/finance-circulars/2006/docs/FC_2006-09_complete.pdf

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the amounts that can be paid from each special account annually. The maximum amount that can be paid from each special account is called its 'general drawing rights limit'.

According to the Explanatory Memorandum, the reason for the general drawing rights limits is as follows:

The general drawing rights limits provide Parliament with a mechanism by which it may review the maximum amounts that can be paid under each of these Acts in a financial year.⁵

The Bill contains the general drawing rights limits for each special account for 2009-10. The Bill does not appropriate amounts from the funds.⁶

Financial implications

The Bill appropriates about \$10.629 billion. This compares with about \$12.691 billion in Appropriation Act (No. 2) 2008-09.

Main provisions

With the exception of the provisions dealing with the general drawing rights limits, the Bill's provisions are substantially the provisions of Appropriation Act (No. 2) of previous years.

Part 2—Appropriation items

Clause 6 provides that the total of the items in **Schedule 2** is \$10 628 628 000.

Clause 7 deals with payments to the states, territories and local government, and recasts provisions in previous Appropriation Acts. **Subclause 7(2)** provides 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 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)**.

5. Explanatory Memorandum, *Appropriation Bill (No. 2) 2009-2010*, p. 13, viewed 15 May 2009, http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4111_ems_87928089-bf66-48ac-952e-c035a1a5b31a/upload_pdf/329139.pdf;fileType=application%2Fpdf

6. Explanatory Memorandum, *Appropriation Bill (No. 2) 2009-2010*, p. 13, viewed 15 May 2009, http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4111_ems_87928089-bf66-48ac-952e-c035a1a5b31a/upload_pdf/329139.pdf;fileType=application%2Fpdf

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As noted, administered assets and liabilities are one of the four categories of non-operating costs. **Clause 9** deals with administered assets and liabilities items. **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 **Schedule 2** of the Bill or in Schedule 1 of Appropriation Bill (No. 1) 2009-2010. The wording of **subclause 9(2)** is identical to that in **subclause 8(2)** and **subclause 7(2)**.

Clause 10 deals with 'other departmental items'. **Clause 10** authorises funding for three departmental non-operating categories of funding—equity injections, loans and previous years' outputs. **Clause 10** 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 items'. **Subclause 11(1)** provides that an amount appropriated for a CAC Act body payment item may only be applied for payment to the CAC Act body named. **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.

Part 3—Adjusting appropriation items

Clause 12 deals with adjustments to payments to the states, territories and local government, and to administered items. **Subclause 12(1)** provides that the amount by which payments to the states, territories and local government 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)**].

Subclause 13(1) enables the minister responsible for an agency, or the chief executive of the agency—where the Finance Minister is responsible for 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)**]. However, while the Finance Minister's determinations are legislative instruments and are disallowable, the determinations are not subject to the sunset provisions of the *Legislative Instruments Act 2003* [**subclause 13(6)**].

Clause 14—which deals with reductions to CAC Act bodies payment items. The wording in **clause 14** is almost the same as in **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

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can be made for a CAC Act body even though it has been allocated funds under **subsection 11(2)**.

As noted, the advance to the Finance Minister authorises the Finance Minister to expend money when the Finance Minister is satisfied that there is an urgent need for expenditure during the financial year but for which there is not a sufficient appropriation. **Clause 15** deals with the advance. **Subclause 15(3)** allocates a maximum of \$380 million to the advance.

Part 4—General drawing rights limits

As discussed, the Bill seeks to limit the amounts that can be paid annually from the special accounts for three of the funds established under the *Nation-building Funds Act 2008*. Further, the Bill seeks to limit the amounts that can be paid for general purpose financial assistance and national partnership payments under the *Federal Financial Relations Act 2009*. **Clause 16 General drawing rights limits** contains these provisions.

Subclause 16(1) limits the amount for the Building Australia Fund to \$1 025 000 000, **subclause 16(2)** limits the amount for the Education Investment Fund to \$1 390 094 000, while **subclause 16(3)** limits the amount for the Health and Hospitals Fund to \$ 465 700 000. **Subclauses 16(4)** and **16(5)** relate to the *Federal Financial Relations Act 2009*. The former limits the amount for general purpose financial assistance to \$1 000 000 000 while the latter limits the amount for national partnership payments to \$23 000 000 000.

Part 5—Miscellaneous

Clause 18 Conditions etc. applying to State, ACT, NT and local government items

Section 96 of the Australian Constitution allows Parliament to provide financial assistance to the states on such terms and conditions as the Parliament thinks fit. **Clause 18** seeks to ensure that payments made by the states, territories and local governments from financial assistance provided by the Commonwealth must accord with the conditions that the ministers specified in **Schedule 1** establish.

Clause 19 Appropriations of the Consolidated Revenue Fund provides that the Consolidated Revenue Fund is appropriated as necessary for the purposes of the Bill including the operation of the Bill as affected by the *Financial Management and Accountability Act 1997*.

Schedule 1 confers on the ministers named, power to determine conditions under which any payments to and through the states and territories and local government authorities may be made, and the amounts and timing of those payments.

Appropriations are set out in **Schedule 2**.

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