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# Appropriation Bill (No. 1) 2010-2011

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Economics Section

## Contents

# Appropriation Bill (No. 1) 2010-2011

**Date introduced:** 11 May 2010

**House:** House of Representatives

**Portfolio:** Finance and Deregulation

**Commencement:** On Royal Assent

**Links:** The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, 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 $71.95 billion for the ordinary annual services of government.

## Constitutional aspects

### Annual appropriations

Section 83 of the *Australian Constitution* provides that no monies may be withdrawn from the Consolidated Revenue Fund except 'under an appropriation made by law'.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 more than 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 balance of spending is funded by annual appropriations. Appropriation Bill (No. 1) 2010–2011 (the Bill) is an annual appropriation.

### Ordinary and other annual services

Section 54 of the *Australian 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). Appropriation Bill (No. 1) is introduced with the Budget and appropriates funds for the 'ordinary annual services of the Government'. Appropriation Bill (No. 2) appropriates funds for other annual services. A third appropriation Bill—Appropriation (Parliamentary Departments) Bill No. 1—funds the parliamentary departments.

### The Senate's powers in relation to ordinary annual services

Section 53 of the *Australian 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.

## Some budget terms and processes

### Departmental expenses

Departmental expenses are essentially the costs of running agencies, for example, salaries, depreciation and other day-to-day operating expenses. It is important to note that while departmental appropriations are designated for specific categories of expense (for example, employee benefits and supplier expenses) and to specific outcomes and programs, these designations are notional. Rather, it is the total appropriation for departmental expenses that is relevant. In other words, an agency is not bound to spend departmental appropriations on the designated purposes and can, for example, reassign funds to outcomes different from what was designated. This provides agencies with flexibility as to how they spend departmental appropriations.

#### Depreciation

Since accrual budgeting was introduced in 1999–2000, agencies have received cash for depreciation even though they may not have needed the funds to replace assets until several years into the future. Agencies were supposed to hold the depreciation appropriations as reserves until such time as they replaced assets.[1] However, the Rudd Government ceased these arrangements. From 1 July 2009, the Government ceased funding for depreciation for collecting institutions in relation to their heritage and cultural assets.

Starting with the 2010–11 Budget, the Government will appropriate funds for asset replacement only when agencies are expected to replace assets. This policy will apply to all other (that is, non-heritage and cultural) agencies in the general government sector. In

1. Agencies returned unspent depreciation reserves to consolidated revenue under the 2009–10 Additional Estimates Acts.

short, asset replacement will cease being on an accrual basis and will revert to the former cash basis. Funding for asset acquisitions will be paid as equity injections, loans or be included in departmental appropriations in the case of minor assets (assets valued at $10 million or less):

> From 2010-11, departmental items include amounts specifically to meet costs associated with the replacement and capitalised maintenance of existing departmental assets valued at $10 million or less.[2]

### Previous years outputs appropriations

Before the 2010–11 Budget, there was a class of appropriations known as 'previous years outputs appropriations'. They were paid to agencies to reimburse them for departmental expenses they incurred in the year before the Budget year when agencies were required to undertake additional activities but for which the government had not provided funds in the additional estimates Bills. In other words, agencies received no additional funding during the period between the additional estimates Bills and the following year's Budget. Previous years outputs appropriations were paid through Appropriation Bill (No. 2).

Starting from 2010–11, recognition of this category of appropriation will cease. In short, agencies will be expected to meet the cost of additional activities from their existing departmental appropriations. Agencies may be reimbursed in the following financial year as explained in the Explanatory Memorandum:

> Departmental items also include supplementation in circumstances when agencies were directed by government to undertake additional responsibilities in the previous financial year. This applies when the direction was given, or a decision to propose further appropriation Bills is made, in a timeframe within which it is not practicable to include the expected expenses in a further appropriation Bill for that financial year
>
> Generally, agencies are expected to meet the cost of additionally directed activities from their existing appropriations, which may then be replenished by a departmental appropriation in the following financial year. Provision of such payments was previously covered by a class of appropriations known as "previous years' outputs" within "other departmental items", currently clause 10 of *Appropriation Bill (No. 2)2010-2011*. The Appropriation Bills no longer recognise the term "Previous years' outputs", as the concept is now integrated within departmental items.[3]

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2. Explanatory Memorandum, Appropriation Bill (No. 1) 2010–11, p. 7, viewed 17 May 2010, http://parlinfo/parlInfo/download/legislation/ems/r4361_ems_1c44a321-d109-4eb4-8c25-6326dcf0d2ea/upload_pdf/342525.pdf;fileType=application%2Fpdf#search=%22appropriation%20bill%20(no.%201)%202010-11%22

3. Ibid.

## Administered expenses

Administered expenses are essentially the costs of the programs that agencies administer on the government's behalf. An example is the age pension. Most administered expenses are funded through special appropriations but some are funded through the appropriation Bills (the Bass Strait Passenger Vehicle Equalisation Scheme is an example of the latter). A key feature of administered expenses is that unlike departmental expenses, agencies cannot control the amounts expended. Thus spending on, say, age pensions is determined by the number of qualifying applicants, the pension rates and so on, none of which the relevant agency controls. Unlike departmental appropriations, administered appropriations must be spent on the outcomes to which they are assigned.

## CAC Act bodies

Agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act) are financially part of the Commonwealth. Bodies subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act) are legally and financially separate from the Commonwealth. Examples of CAC Act bodies are the Australian War Memorial, Screen Australia, and the Australian Broadcasting Corporation. FMA Act agencies are appropriated amounts for the purposes of making payments to CAC Act bodies. For example, the Department of Broadband, Communications and the Digital Economy passes on funding to the Australian Broadcasting Corporation and the Special Broadcasting Corporation. CAC Act bodies have to request payment from the relevant agencies.

## Outcomes and programs

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

> A just and secure society through the maintenance and improvement of Australia's law and justice framework and its national security and emergency management system.[4]

Programs contribute to outcomes. For example, six programs contribute to the above outcome including 'national security and criminal justice' (program 1.6) and 'justice services' (program 1.3).

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4. Australian Government, *Portfolio budget statements 2009-10, Attorney-General's Department*, Commonwealth of Australia, Canberra, 2010, p. 24, viewed 14 May 2010, http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~03+PBS+10_11+AGD+web+FINAL.pdf/$file/03+PBS+10_11+AGD+web+FINAL.pdf

### Reduction processes

Appropriations for departmental and administered expenses can be reduced. It is sometimes the case that an appropriation for a departmental expense exceeds what is needed. However, departmental appropriations 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.

Appropriations for administered expenses may also be subject to an annual process to extinguish amounts if they 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.

As with departmental and administered appropriations, CAC Act body payments may be subject to a reduction process.

### Advance to the Finance Minister

The advance to the Finance Minister (AFM) provides flexibility 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 spending meets certain criteria, namely, that 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.

### Portfolio Budget Statements

When the Budget is brought down, the Government releases Portfolio Budget Statements. They contain, amongst other things, information on the amounts that agencies will receive through the Appropriation Bills as well as from special appropriations and special accounts. 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.

## Financial implications

The Bill appropriates about $71.95 billion for the ordinary annual services of government compared with about $71.28 billion in Appropriation Bill (No. 1) 2008–09. **Schedule 1** contains the amounts appropriated and the purposes for which the funds are appropriated as defined by outcomes. As usual, the single largest portfolio appropriation is for defence with some $23.52 billion.

## Main provisions

The provisions in the Bill are mostly identical to those in Appropriation Act (No. 1) 2009–10. The following therefore focuses on changes from that Act and new provisions in the Bill.

### Part 2—Appropriation items

**Clause 6 Summary of appropriations**—states that the total of the items specified in **Schedule 1** is $71 949 922 000.

**Clause 7** provides that the amount specified in a departmental item for an agency may be applied for its departmental expenditure. The note to the clause observes that the Finance Minister manages the expenditure of public money under the *Financial Management and Accountability Act 1997*.

**Clause 8** deals with 'administered items'. **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.

**Clause 9** deals with 'CAC Act body payment items'. As noted above, CAC Act bodies have to request payment from the relevant agencies. **Subclause 9(1)** empowers agencies to make payments to CAC Act bodies for the purposes of those bodies. **Subclause 9(2)** provides that if a CAC Act body is subject to another Act, and that Act requires that amounts, appropriated by Parliament for the purposes of that body to be paid to the body, then the full amount of the CAC Act body payment must be paid to the body.

### Part 3—Adjusting appropriation items

As noted above, there are processes for reducing departmental appropriations, administered appropriations and payments to CAC Act bodies.

**Clause 10 Reducing departmental items** deals with departmental appropriations. **Subclause 10(1)** specifies who can ask the Finance Minister to reduce departmental expenses. In the past, this power was limited to two categories of person and they will continue to have this power [**paragraphs 10(1)(b)** and **10(1)(c)**]. **Paragraph 10(1)(b)** empowers the Minister for an agency to ask the Finance Minister to reduce a departmental item for that agency, while **paragraph 10(1)(c)** 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 10(1)(a)** creates a third category of person, namely, the Prime Minister or a Minister acting on behalf of the Prime Minister. The Explanatory Memorandum is silent on why it was necessary to introduce this new provision.

**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 item below nil.

**Subclause 10(5)** is new. It provides that despite subsection 33(3) of the *Acts Interpretation Act 1901*, a determination made under **subclause 10(2)** must not be rescinded, revoked, amended or varied. Subsection 33(3) of the *Acts Interpretation Act 1901* provides:

> Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**Subclause 10(5)** thus overrides the power in subsection 33(3) thereby ensuring that a previous determination that the Finance Minister has made cannot be rescinded, revoked, amended or varied.[5] A determination by the Finance Minister is a disallowable instrument [**subclause 10(7)**].

**Clause 11 Reducing administered items** contains the process for extinguishing appropriations for administered items that are not needed. As noted above, in essence, the amount of a reduction is the difference between the amount appropriated and the amount spent as shown in an agency's financial statements. **Subclause 11(1)** provides that if the amount shown in the financial statements of an agency's annual report shows that the expensed amount for 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 override **subclause 11(1)** in three ways:

- when the Finance Minister issues a determination that **subclause 11(1)** does not apply [**subparagraph 11(2)(a)(i)**], or
- when the Finance Minister decides that the amount in the determination should be the same as the amount in the annual report [**subparagraph 11(2)(a)(ii)**], or
- when the annual report does not specify an amount, the Finance Minister can determine the required amount [**paragraph 11(2)(b)**].

5. The Explanatory Memorandum explains that the purpose of **subclause 10(5)** is to ensure that a reduced appropriation cannot be later restored. Explanatory Memorandum, op. cit., p. 11.

The Explanatory Memorandum contains the following explanation of the circumstances under which it may be necessary to invoke **subparagraph 11(2)(a)(ii)** and **paragraph 11(2)(b)**:

> The power in subparagraph 11(2)(a)(ii) is to ensure that the amount published for the administered item in an agency annual report can be corrected through the determination if, for example, the amount published is erroneous or rendered out-of date by later events. Additionally, the power in paragraph 11(2)(b) is to provide the Finance Minister with the capacity to make a written determination in those cases where an agency has failed to specify a required amount in its' [sic] annual report. In those cases the amount specified in the determination as the required amount will be taken to be the required amount for the purposes of subclause 11(1).[6]

**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 of that Act (relating to sunsetting provisions) 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 in **clause 10**. As with **paragraph 10(1)(a)**, **paragraph 12(1)(a)** is a new provision which extends the power to request a reduction—in this case to a CAC Act body payment—to include the Prime Minister or a Minister acting on behalf of the Prime Minister. **Subclause 12(5)** is identical to **subclause 10(5)**, that is, it provides that despite subsection 33(3) of the LI Act, a determination made under **subclause 12(5)** must not be rescinded, revoked, amended or varied.

**Clause 13** deals with the advance to the Finance Minister (AFM). **Subclause 13(1)** contains the criteria the Finance Minister must apply before the Finance Minister can make payments from the AFM. The criteria are that the Finance Minister must be satisfied that there is an urgent need for expenditure that is not provided for, or is insufficiently provided for, in **Schedule 1** because of an omission or understatement or because of unforeseen circumstances. **Subclause 13(3)** limits expenditure from the AFM to $295 million. **Subclause 13(4)** provides that where the Finance Minister has made a determination to expend money from the AFM, the determination is a legislative instrument. Further, the determination must be tabled in Parliament but is not subject to disallowance or sunsetting.

**Clause 14 Determinations under previous Acts** is new. According to the Explanatory Memorandum:

6. Explanatory Memorandum, op. cit., p. 12.

> The purpose of clause 14 is to ensure that any items, which have been reduced by instruments already made under the listed appropriation Acts, cannot be restored by means of a later determination.[7]

**Clause 14**—similar to **subclauses 10(5)** and **12(5)—**provides that despite subsection 33(3) of the *Acts Interpretation Act 1901*, a determination made under any of the following provisions must not be rescinded, revoked, amended or varied on or after 1 July 2010. The 'following provisions' are the previous Appropriation Acts listed in **paragraphs 14(a)** to **14(z)**.

**Clause 15 Reducing items in previous Acts** is also new. The Explanatory Memorandum notes:

> Clause 15 provides a process for reducing departmental items and CAC Act body payment items in a previous Act, which is substantially similar to the process for reducing departmental items (clause 10) and CAC Act body payments (clause 12).[8]

Like **clause 14**, **clause 15** relates to previous Appropriation Acts which are listed in **subclause 15(8)**. **Subclause 15(1)** enables the Prime Minister or a Minister acting on behalf of the Prime Minister to request the Finance Minister to reduce a departmental item in a previous Act [**paragraph 15(1)(a)**] or a CAC Act body payment item in a previous Act [**paragraph 15(1)(b)**]. **Subclause 15(2)** enables but does not require the Finance Minister to make a written determination to reduce a departmental item or a CAC Act body payment item in a previous Act. Where the Finance Minister has made a determination, the effect of the determination is negated if the determination reduces the item below nil in the case of a departmental item [**paragraph 15(3)(a)**] or in the case of a CAC Act body item [**paragraph 15(3)(b)**]. **Subclause 15(5)** provides that that a determination made by the Finance Minister cannot be rescinded, revoked, amended or varied despite subsection 33(3) the *Acts Interpretation Act 1901*. **Subclause 15(6)** provides that a request made under **subclause 15(1)** is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. **Subclause 15(7)** provides that a determination made under **subclause 15(2)** is a legislative instrument and that despite subsection 44(2) of *Legislative Instruments Act 2003*, section 42 of that Act—which relates to disallowance—applies to the determination. **Subclause 15(7)** also provides that Part 6 of the *Legislative Instruments Act* 2003—which relates to sunsetting—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.

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7. Explanatory Memorandum, op. cit., p. 15.

8. Explanatory Memorandum, op. cit., pp. 15-16.

## Part 4—Miscellaneous

**Clause 16 Crediting amounts to Special Accounts** provides that if the purpose of an item in Schedule 1 is also the purpose of a Special Account (regardless of whether the 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 Appropriation of the Consolidated Revenue Fund** provides that the Consolidated Revenue Fund is appropriated for the purposes of the Bill including the operation of the Bill as affected by the *Financial Management and Accountability Act 1997.*

## Schedule 1—Services for which money is appropriated

**Schedule 1** lists the portfolios and the amounts the Bill appropriates to each. The following is the **Summary** from the Bill.

Summary of Appropriations (plain figures)—2010-2011
*Actual Available Appropriation (italic figures)—2009-2010*

| Portfolio | Departmental $'000 | Administered $'000 | Total $'000 |
|---|---|---|---|
| Agriculture, Fisheries and Forestry | 439,073<br>*325,393* | 216,474<br>*235,395* | 655,547<br>*560,788* |
| Attorney-General's | 3,383,986<br>*3,461,534* | 608,317<br>*645,927* | 3,992,303<br>*4,107,461* |
| Broadband, Communications and the Digital Economy | 231,644<br>*253,540* | 1,337,860<br>*1,327,452* | 1,569,504<br>*1,580,992* |
| Climate Change and Energy Efficiency | 107,962<br>*121,511* | 1,442,934<br>*670,390* | 1,550,896<br>*791,901* |
| Defence | 23,398,747<br>*23,542,474* | 120,415<br>*103,666* | 23,519,162<br>*23,646,140* |
| Education, Employment and Workplace Relations | 1,095,335<br>*1,120,418* | 6,016,961<br>*5,659,198* | 7,112,296<br>*6,779,616* |
| Environment, Water, Heritage and the Arts | 832,490<br>*832,141* | 2,228,956<br>*3,771,095* | 3,061,446<br>*4,603,236* |
| Families, Housing, Community Services and Indigenous Affairs | 550,961<br>*576,177* | 1,818,353<br>*1,906,958* | 2,369,314<br>*2,483,135* |
| Finance and Deregulation | 438,875<br>*330,141* | 229,715<br>*215,922* | 668,590<br>*546,063* |
| Foreign Affairs and Trade | 1,578,830<br>*1,468,277* | 3,930,921<br>*3,492,395* | 5,509,751<br>*4,960,672* |
| Health and Ageing | 702,604<br>*677,361* | 6,462,284<br>*5,675,368* | 7,164,888<br>*6,352,729* |
| Human Services | 3,820,897<br>*3,982,963* | 6,336<br>*12,574* | 3,827,233<br>*3,995,537* |
| Immigration and Citizenship | 1,212,878<br>*1,259,107* | 783,449<br>*539,597* | 1,996,327<br>*1,798,704* |
| Infrastructure, Transport, Regional Development and Local Government | 232,243<br>*232,546* | 596,795<br>*605,306* | 829,038<br>*837,852* |
| Innovation, Industry, Science and Research | 357,749<br>*330,375* | 1,890,287<br>*1,794,176* | 2,248,036<br>*2,124,551* |
| Prime Minister and Cabinet | 399,882<br>*349,305* | 14,049<br>*13,403* | 413,931<br>*362,708* |
| Resources, Energy and Tourism | 207,702<br>*213,120* | 922,971<br>*817,172* | 1,130,673<br>*1,030,292* |
| Treasury | 4,287,648<br>*4,068,036* | 43,339<br>*52,832* | 4,330,987<br>*4,120,868* |
| **Total: Bill 1** | **43,279,506**<br>*43,144,419* | **28,670,416**<br>*27,538,826* | **71,949,922**<br>*70,683,245* |

## Concluding comments

It is difficult to relate the items in **Schedule 1** to the measures announced in the second reading speech by the Treasurer, the Hon. Wayne Swan, because the Bill will fund only some of the measures. Further information can, however, be found in the Portfolio Budget Statements for 2010–2011.[9]



9. Australian Government, *Portfolio budget statements 2010–11*, Commonwealth of Australia, Canberra, 2010, viewed 18 May 2010, http://www.budget.gov.au/2010-11/content/pbs/html/index.htm