Parliament of Australia
Department of Parliamentary Services

Parliamentary Library
Information, analysis and advice for the Parliament

BILLS DIGEST

www.aph.gov.au/library

21 May 2010, no. 148, 2009–10, ISSN 1328-8091

Appropriation Bill (No. 2) 2010–2011

Richard Webb
Economics Section

Contents

Appropriation Bill (No. 2) 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 approximately $9.538 billion for the non-ordinary ('other') annual services of government.

Background

Constitutional aspects

Section 83 of the *Australian Constitution* provides that no monies may be withdrawn from the Consolidated Revenue Fund except 'under an appropriation made by law'.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

Appropriation Bill (No. 2) 2010–2011 (the Bill) is an annual appropriation.

Annual appropriation bills: 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 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)—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.

Payments for other services

Payments for other services funded under Appropriation Bill (No. 2) fall into three broad categories:

- payments to the states, territories and local governments
- new administered outcomes, and
- non-operating expenses.

States and territories

Most payments to the states and territories are funded under a special appropriation, namely, the *Federal Financial Relations Act 2009* (FFR Act). Details of payments under the FFR Act can be found in the Department of the Treasury Portfolio Budget Statements.

Payments for non-government schools fall into two categories. On-going payments under the *Schools Assistance Act 2008* are payments 'through' the states, that is, the Commonwealth pays the states which pass the money on to schools. Other payments for non-government schools are made under Appropriation Bill (No. 2).

Local governments

The Commonwealth pays financial assistance grants to local governments under the *Local Government (Financial Assistance) Act 1995*. Since November 2009, payments to local governments for the digital regions initiative have been centralised through state and territory treasuries.[1] All other payments made directly to local governments are paid under Appropriation Bill (No. 2).

New administered outcomes

As noted above, the distinction between ordinary and other annual services was set out in a 'compact' between the Senate and the government in 1965. New administered outcomes are not ordinary annual services because Parliament has not approved them.

Non-operating costs

Agency non-operating costs fall into three broad categories:

1. Australian Government, *Agency resourcing 2010–11: budget paper no. 4,* Commonwealth of Australia, Canberra, 2010, pp. 9-10, viewed 19 May 2010, http://www.budget.gov.au/2010-11/content/bp4/download/bp4.pdf

- equity injections and loans
  - equity injections are provided to agencies to enable them to invest in assets in order to undertake departmental activities. Equity injections are for 'major' investments, that is, those valued at more than $10 million. Loans can be made when the investment is expected to yield a return such as increased efficiency, and
- appropriations for administered assets and liabilities
  - these fund the acquisition of administered assets and reductions in administered liabilities.

The third category of non-operating costs is payments to CAC Act bodies (see the discussion below under 'budget terms and processes'). These payments are made to the responsible portfolio department—for example, the Department of Broadband, Communications and the Digital Economy—for payment to CAC Act bodies, for example, the Australian Broadcasting Corporation.

Budget terms and processes

Departmental and administered expenses

Departmental 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 and programs

Departmental 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:

> 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.[2]

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).

---

2. 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

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 to administered items
- administered assets and liabilities, and other departmental items, and
- CAC Act body payments.

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

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 portfolio department.

Drawing rights

Under the FMA Act, no money can be paid from the Consolidated Revenue Fund (CRF) without a valid drawing right. Drawing rights control payments from the CRF and the use of appropriations, and allow the Finance Minister (or the Finance Minister's delegate) to set conditions and limits relating to those activities. The FMA Act provides that an official or minister must not make a payment of money from the CRF, or debit an appropriation, unless authorised by a valid drawing right.

General drawing rights limits

General drawing rights limits are a mechanism for limiting spending under certain Acts. They do not appropriate money.

The *Nation-building Funds Act 2008* established three so-called nation-building funds—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 *COAG Reform Fund Act 2008* established the COAG Reform Fund as a special account. Its purpose is to make financial assistance grants to the states and territories. An amount in the Building Australia Fund, the Education Investment Fund and the Health and Hospitals Fund may be transferred to the COAG Reform Fund special account.

The *Nation-building Funds Act 2008* and the *Federal Financial Relations Act 2009* (under which most payments to the states and territories are made) contain mechanisms to limit the amounts that can be paid annually under each of these two Acts. The maximum amounts are called the 'general drawing rights limits'. The Bill contains the general drawing rights limits for 2010-11.

Financial implications

The Bill appropriates about $9.538 billion. This compares with $10.629 billion in *Appropriation Act (No. 2) 2009–10*.

Main provisions

The Bill's provisions are mostly the same as those in *Appropriation Act (No. 2) 2009–10*. The following therefore focuses on changes and new provisions.

Part 1–Preliminary

Clause 3 contains definitions. The Bill introduces four new definitions. All relate to the goods and services tax (GST). The new definitions are of **acquisition**; **GST Act** which is defined as having the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* as it applies because of the Division 177 of that Act; **GST qualifying amount**; and **importation**.

Part 2—Appropriation items

Clause 6 Summary of appropriations provides that the total of the items in **Schedule 2** is $9 538 371 000.

Clause 7 deals with payments to the states, territories and local government. **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).**

As noted, administered assets and liabilities are one of the three 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 Act (No. 1) 2010–2011*. 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' and authorises appropriations for equity injections and loans. **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

As noted above, processes exist for reducing appropriations. The Explanatory Memorandum notes that:

> Clauses 12, 13 and 14 have been amended since the previous year's Appropriation Bill, by introducing additional mechanisms for initiating the reduction of unspent items. This has the purpose of increasing the efficiency of the reduction process particularly when surplus appropriations result from government decisions.[3]

3. Explanatory Memorandum, Appropriation Bill (No. 2) 2010–11, p. 10.

Clause 12 deals with reductions to payments to the states, territories and local governments, 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. **Subclause 12(2)** differs from the comparable subclause in *Appropriation Act (No. 2) 2009–10* by changing **paragraph 12(2)(a)** and by the addition of **paragraph 12(2)(b)**.

Paragraph 12(2)(a) is essentially a rewording whose intent has not changed. The Explanatory Memorandum states:

> Subparagraph 12(2)(a)(i) retains a power for the Finance Minister to make a written determination specifying that subclause 12(1) does not apply in relation to the item. Subparagraph 12(2)(a)(ii) enables the Finance Minister to determine that an amount published in the financial statements of an agency is taken to be an amount specified in his or her determination.[4]

With respect to **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. Additionally, the power in paragraph 12(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 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 12(1).[5]

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. **Paragraph 13(1)(a)** is new provision and adds a third category of person, namely, the Prime Minister or a Minister acting on behalf of the Prime Minister, who can request a reduction.

Subclause 13(5) is a new provision. It provides that despite subsection 33(3) of the *Acts Interpretation Act 1901*, a determination made under **subclause 13(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.

4. Explanatory Memorandum, op. cit., p. 11.

5. Ibid.

Subclause 13(5) thus overrides the power in subsection 33(3) thereby ensuring that a determination that the Finance Minister has made cannot be rescinded, revoked, amended or varied. A determination under **subclause 13(2)** is a disallowable instrument [**subclause 13(7)**].

Clause 14 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)(c)]. Paragraph 14(1)(a)** is new and is identical to **paragraph 13(1)(a),** that is, **paragraph 14(1)(a)** and adds a third category of person, namely, the Prime Minister or a Minister acting on behalf of the Prime Minister to those who can request a reduction in a CAC Act body payment. Likewise, **subclause 14(5)** is identical to **subclause 13(5)**, that is, a determination cannot be rescinded, revoked, amended or varied.

Subclause 14(6) confirms that a reduction can be made for a CAC Act body even though it has been allocated funds under **subsection 11(2)**.

As noted above, the advance to the Finance Minister authorises the Finance Minister to expend money when the Finance Minister is satisfied that there is not an adequate appropriation. **Clause 15** deals with the advance**. Subclause 15(1)** sets out the criteria the Finance Minister must be satisfied have been met before issuing an amount to an agency. The criteria are that there is an urgent need for expenditure that is not provided for, or is insufficiently provided for in **Schedule 2** because of an omission or understatement, or because of unforeseen circumstances**. Subclause 15(3)** allocates a maximum of $380 million to the advance.

Clause 16 Determinations under previous Acts is new. The Explanatory Memorandum states:

> The purpose of clause 16 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.[6]

Clause 16 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 referred to are the earlier Appropriation Acts listed in **paragraphs 16(a)** to **16(y)**.

Clause 17 Reducing items in previous Acts is also new.

The Explanatory Memorandum notes:

---

6. Explanatory Memorandum, op. cit., p. 16.

> Clause 17 provides a process for reducing certain classes of appropriation items in previous Acts, which is substantially similar to the process for reducing administered assets and liabilities items and other departmental items (clause 13) and CAC Act body payments (clause 14).[7]

Subclause 17(1) enables the Prime Minister or a Minister acting on behalf of the Prime Minister to request the Finance Minister to reduce:

- an administered assets and liabilities item or an other departmental item in a previous Act [**paragraph 17(1)(a)**] or
- a CAC Act body payment item in a previous Act [**paragraph 17(1)(b)**] or
- an administered capital item in a previous Act [**paragraph 17(1)(c)**] or
- a departmental capital item in a previous Act [**paragraph 17(1)(d)**].

Subclause 17(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 17(3)(b)**] or CAC Act body item [**paragraph 17(3)(b)**]. **Subclause 17(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 17(6)** provides that a request made under **subclause 17(1)** is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. **Subclause 17(7)** provides that a determination made under **subclause 17(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 17(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. **Subclause 17(8)** lists the earlier Acts to which **clause 17** applies.

Part 4—General drawing rights limits

As discussed, the Bill limits 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 limits the amounts that can be paid for general purpose financial assistance and national partnership payments under the *Federal Financial Relations Act 2009*. **Clause 18 General drawing rights limits** contains these provisions. The limits are:

- Building Australia Fund: $ 1 201 100 000 [**subclause 18(1)**]
- Education Investment Fund: $1 163 539 000 [**subclause 18(2)**]

7. Ibid.

- Health and Hospitals Fund: $ 952 633 000 [**subclause 16(3)**]
- general purpose financial assistance: $ 1 000 000 000 [**subclause 16(4)**]
- national partnership payments:
  - general drawing rights limit under the *Federal Financial Relations Act 2009*: $20 000 000 000 [**subclause 18(5)**]

Subclause 18(6)—which is new—provides for an increase to the general drawing rights limit for national partnership payments, previously specified in subsection 16(5) of *Appropriation Act (No. 2) 2009–2010*. For the purposes of the 2009–2010 financial year, the general drawing rights limit is to be increased by $2 000 000 000 from $23 000 000 000 to $25 000 000 000.

Clause 19 Adjustments for GST is new. The Explanatory Memorandum states:

> The effect of this clause will be to increase a general drawing rights limit by the amount of any GST qualifying amount in respect of an amount paid from a fund named in clause 18.
>
> Some payments from the Building Australia Fund, EIF, HHF and the COAG Reform Fund may include a GST qualifying amount and the relevant general drawing rights limit is adjusted accordingly. The appropriation itself is not affected by clause 19 because that is increased by the operation of section 30A of the FMA Act. Essentially, clause 19 clarifies that the amounts specified for the general drawing rights limits for 2010-11 are exclusive of any GST qualifying amounts that may arise in respect of acquisitions made in reliance on that limit.[8]

Part 5—Miscellaneous

Clause 21 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 parliament thinks fit. **Clause 21** 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 22 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.*

8. Explanatory Memorandum, op. cit., p. 21.

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 Services for which money is appropriated**. The summary from **Schedule 2** is shown below.

Concluding comments

It is difficult to relate the items in **Schedule 2** to the measures announced in the second reading speech by the Minister for Finance and Deregulation, the Hon. Lindsay Tanner, 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

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

Portfolio	Payments to States, ACT, NT and local government	New Administered Outcomes	Non-operating	Total
	$'000	$'000	$'000	$'000
Agriculture, Fisheries and Forestry	-	-	1,271	1,271
	-	-	*10,802*	*10,802*
Attorney-General's	6,938	-	162,738	169,676
	7,400	-	*118,014*	*125,414*
Broadband, Communications and the Digital Economy	-	-	329,346	329,346
	-	-	*29,519*	*29,519*
Climate Change and Energy Efficiency	12,025	-	6,601	18,626
	8,045	-	*74,097*	*82,142*
Defence	-	-	3,656,390	3,656,390
	-	-	*2,791,436*	*2,791,436*
Education, Employment and Workplace Relations	1,766,038	-	10,611	1,776,649
	3,060,964	-	*49,072*	*3,110,036*
Environment, Water, Heritage and the Arts	19,525	-	361,118	380,643
	43,424	-	*1,277,350*	*1,320,774*
Families, Housing, Community Services and Indigenous Affairs	-	-	54,507	54,507
	-	-	*169,002*	*169,002*
Finance and Deregulation	-	-	166,091	166,091
	-	-	*122,544*	*122,544*
Foreign Affairs and Trade	-	-	403,463	403,463
	-	-	*218,176*	*218,176*
Health and Ageing	10,241	-	137,909	148,150
	3,920	-	*80,571*	*84,491*
Human Services	-	-	70,744	70,744
	-	-	*68,535*	*68,535*
Immigration and Citizenship	-	-	158,285	158,285
	-	-	*65,894*	*65,894*
Infrastructure, Transport, Regional Development and Local Government	702,475	-	1,182,350	1,884,825
	792,265	-	*3,797*	*796,062*
Innovation, Industry, Science and Research	-	-	61,263	61,263
	-	-	*79,268*	*79,268*
Prime Minister and Cabinet	-	-	10,893	10,893
	-	-	*12,418*	*12,418*
Resources, Energy and Tourism	-	-	17,049	17,049
	-	-	*2,330*	*2,330*
Treasury	-	-	230,500	230,500
	-	-	*65,748*	*65,748*
Total: Bill 2	**2,517,242**	**-**	**7,021,129**	**9,538,371**
	3,916,018	-	*5,238,573*	*9,154,591*