



## Appropriation Bill (No. 3) 2010-2011

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## Appropriation Bill (No. 3) 2010-2011

**Date introduced:** 10 February 2011

**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 home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

### Purpose

To appropriate about \$1.36 billion for the ordinary annual services of government.

### Background

#### Constitutional aspects

##### Annual appropriations

Section 83 of the *Australian Constitution* provides that no money may be withdrawn from the Treasury except 'under appropriation made by law'. Acts authorising expenditure are either:

- special appropriations, or
- one of (usually) six annual appropriation Acts.

Special appropriations—which account for more than 80 per cent of expenditure—are expenditure authorised by Acts for particular purposes. An example of a special appropriation is the Tax Benefits A and B paid under the *A New Tax System (Family Assistance) (Administration) Act 1999*. The remainder of expenditure is funded by annual appropriations. Appropriation Bill (No. 3) 2010-2011 (the Bill) is an annual appropriation Bill.

## 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.<sup>1</sup> There are therefore 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.<sup>2</sup>

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

Section 53 of the *Australian Constitution* provides, among other things, 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.

## Additional estimates

Each year, 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.

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 expenditure. The process whereby additional funds are provided is called ‘additional estimates’ and usually begins around November of the budget year. The approved additional funding is 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.

## Terms used in the Bill

### Departmental and administered expenses

Departmental expenses are the costs incurred in running agencies, for example, salaries, supplies of goods and services, and other day-to-day operating expenses. Administered expenses are the costs of providing the programs that agencies administer. Most administered expenses are funded

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1. Section 54 states that any proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriations.
  2. The Compact was updated to take account of adoption of accrual budgeting.

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through special appropriations but 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.

### Reduction processes

Appropriations can be reduced. It is sometimes the case that an appropriation for a departmental expense exceeds what is needed. However, departmental items do not automatically lapse if they are not spent. In these circumstances, a 'reduction process' to extinguish the unspent amount is available. Under this process, on request in writing from a minister, the Finance Minister may issue a determination to reduce the agency's departmental expenses appropriation. In short, the excess of the amount allocated over the amount expended can be extinguished.

Appropriations for administered expenses are also subject to an annual process to extinguish amounts that are not required. The amount identified as expenditure 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.

A process exists for reducing payments to bodies to which the *Commonwealth Authorities and Companies Act 1997* (CAC Act) applies (see below). This process is almost identical to that for departmental items.

### 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 of an outcome is outcome 1 in the Attorney-General's portfolio, which 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.<sup>3</sup>

Programs contribute to outcomes. For example, program 1.3 'justice services' contributes to the above outcome.

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3. Attorney-General's Department, *Portfolio budget statements 2010-11*, Commonwealth of Australia, Canberra, 2010, p. 23, viewed 15 February 2011, [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](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)

## Advance to the Finance Minister

The advance to the Finance Minister (AFM) provides flexibility in 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.

## Portfolio Budget Statements

When the budget is brought down, the government releases Portfolio Budget Statements.<sup>4</sup> They contain, amongst other things, information on all sources of funding for an agency—including annual Appropriation Bills—and how the agency proposes to spend those funds. The Portfolio Budget Statements are ‘relevant documents’ for the purposes of paragraph 15AB (2)(e) of the *Acts Interpretation Act 1901*. This means that the Portfolio Budget Statements can be used to help interpret an Act.

## Portfolio Additional Estimates Statements

Portfolio Additional Estimates Statements are the counterparts of Portfolio Budget Statements and contain explanations of the funding sought through the additional estimates Appropriation Bills.<sup>5</sup>

## CAC Act body

As noted above, a CAC Act body is a Commonwealth authority or company established under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). Examples of CAC Act bodies are the Australian War Memorial and the Australian Broadcasting Corporation. 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. Payments to CAC Act bodies used to be made ‘directly’ to the bodies. Since 2008–09, in recognition of the fact that CAC Act bodies are legally and financially separate, payments to CAC Act bodies have been made ‘indirectly’ through portfolio departments. For example, funding for the Australian Broadcasting Corporation and the Special Broadcasting Corporation are made through the Department of Broadband, Communications and

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4. Australian Government budget website, *Portfolio budget statements 2010-11*, viewed 15 February 2011, <http://www.budget.gov.au/2010-11/content/pbs/html/index.htm>

5. Australian Government budget website, *Portfolio additional estimates statements 2010-11*, viewed 15 February 2011, <http://www.budget.gov.au/2010-11/content/paes/html/index.htm>

the Digital Economy, this being the relevant portfolio department. The department then passes the funds to the CAC Act bodies.

## Special Accounts

A Special Account is an appropriation mechanism that notionally sets aside an amount within the Consolidated Revenue Fund to be spent for specific purposes. The appropriation authority is section 20 or 21 of the *Financial Management and Accountability Act 1997* (FMA Act). The type of appropriation provided by a Special Account is a special appropriation. The appropriation amount is limited up to the balance of the Special Account and this remains available until the Special Account is abolished. An example of a Special Account is that established for the Future Fund. A Special Account can be established by:

- a legislative instrument made by the Finance Minister under section 20 of the FMA Act, or
- an enabling Act, under section 21 of the FMA Act.

## Basis of policy commitment

In his second reading speech for the Bill, the Special Minister of State and Special Minister of State for the Public Service and Integrity, Gary Gray MP, described the appropriations for programs administered by:

- the Department of Agriculture, Fisheries and Forestry
- the Attorney-General's Department
- the Australian Federal Police
- the Federal Magistrates Court of Australia
- the Australian Sports Commission
- the Department of Broadband, Communications and the Digital Economy
- Centrelink
- the Department of Climate Change and Energy Efficiency
- the Department of Education, Employment and Workplace Relations
- the Department of Finance and Deregulation
- the Department of Foreign Affairs and Trade
- AusAID
- the Department of Health and Ageing
- the Department of Immigration and Citizenship
- the Department of Infrastructure and Transport
- the Department of Innovation, Industry, Science and Research
- the Murray Darling Basin Authority
- the Department of the Prime Minister and Cabinet

- the Department of Regional Australia, Regional Development and Local Government, and
- the Department of Resources, Energy and Tourism.<sup>6</sup>

Information on some of the proposed expenditure can be found in the Mid-year Economic and Fiscal Outlook 2010-11, appendix A.<sup>7</sup>

## Reclassifications

The second reading speech refers to reclassifications of appropriations and outlines two major reclassifications, namely, \$45.6 million in the Department of Climate Change and \$85.9 million in AusAID. These reclassifications appear in the relevant Portfolio Additional Estimates Statements.

Where previously appropriated funds are reclassified, the government cannot simply proceed and spend the funds under the new classifications. Rather, the government must seek parliamentary approval to spend the funds under the new classifications. That is why the Bill seeks approval to spend the reclassified funds.

## Financial implications

The Bill appropriates about \$1.36 billion for the ordinary annual services of government compared with about \$71.95 billion in Appropriation Act (No. 1) 2010-11. **Schedule 2** shows the amounts and the portfolios for which funds are appropriated.

## Key provisions

As the provisions are virtually identical to those in previous Appropriation Acts (No. 3), this Digest highlights some of the key provisions.

## Part 2—Appropriation items

**Clause 6—Summary of appropriations**—states that the total of the items specified in **Schedule 1** is \$1 359 781 000.

**Clause 7** provides that the amount specified in a departmental item for an agency may be applied for the departmental expenditure of the agency. The note to the clause observes that the Finance

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6. G Gray, 'Second reading speech: Appropriation Bill (No. 3) 2010-2011', House of Representatives, *Debates*, 10 February 2011, p. 7, viewed 16 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2011-02-10%2F0021%22>

7. Australian Government 2010-11 Budget website, *Mid-year economic and fiscal outlook 2010-11*, viewed 15 February 2011, <http://www.budget.gov.au/2010-11/content/myefo/html/index.htm>



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’. **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 are 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 discussed above, a process exists whereby unspent departmental expenses appropriations can be abolished. **Clause 10—Reducing departmental items** contains this process. **Subclause 10(1)** specifies who can request reductions in departmental expenses. **Paragraph 10(1)(a)** empowers the Prime minister or the Minister who is responsible 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. **Subclause 10(2)** specifies that the Finance Minister may make a determination reducing a departmental item by the amount specified in the request. **Subclause 10(3)** provides that the determination will have no effect to the extent that it would reduce the departmental item below nil.

**Clause 11—Reducing administered items** contains the process for extinguishing appropriations for administered items that are not needed. **Subclause 11(1)** provides that if an amount 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 determine that an amount, published in the financial statements of an agency, is taken to be the amount specified in his or her determination, while the effect of **paragraph 11(2)(b)** is to ensure that the amount published in the annual report can be corrected. **Subclause 11(3)** provides that the Finance Minister’s determination, made under **subclause 11(2)**, is a legislative instrument, that section 42 (relating to disallowance) of the *Legislative Instruments Act 2003* applies to the determination, but that Part 6 (relating to sunset provisions) of the *Legislative Instruments Act 2003* does not apply to the determination. 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**.

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As noted above, the Advance to the Finance Minister (AFM) provides flexibility in the budget process by authorising the Finance Minister to expend money, by determination, in certain circumstances.

**Clause 13** deals with the AFM.

**Subclause 13(1)** provides that if the Finance Minister has made a determination under subsection 13(2) of *Appropriation Act (No. 1) 2010-2011* before the Bill commences—thereby changing an amount authorised under *Appropriation Act (No. 1) 2010-2011*—then the determined amount is to be disregarded for the purposes of section 13(3) of *Appropriation Act (No. 1) 2010-2011* when the Bill commences. The effect of **subclause 13(1)** is to ensure that the amount of the AFM remains at \$295 million and is not reduced by the amount of a determination. As the Note to **subclause 13(1)** states:

This means that, after the commencement of this Act, the Finance Minister has access to \$295 million under section 13 of the *Appropriation Act (No. 1) 2010-2011*, regardless of amounts that have already been determined under that section.

**Subclause 13(2)** is designed to ensure that expenditure on the same item is not authorised twice: once under the AFM and once under the Bill. **Subclause 13(2)** provides that if the Bill appropriates an amount for particular expenditure (**paragraph 13(2)(a)**) and if, before the Bill commences, the Finance Minister has determined an amount—the advanced amount—under section 13 of the *Appropriation Act (No. 1) 2010-2011* for the expenditure, the amount the Bill appropriates is taken to be reduced (but not below nil) by the advanced amount. The Explanatory Memorandum contains the following example:

For example if the Bill provides \$20 million for a grants program and an advanced amount of \$5 million is determined by the Finance Minister under [*Appropriation Act (No. 1) 2010-2011*] for a particular grant payment under that program, then the amount appropriated by the Bill, once enacted, will be reduced by \$5 million (i.e. appropriating only \$15 million for the grants program).<sup>8</sup>

## Part 4—Miscellaneous

**Clause 15—Appropriation 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—Services for which money is appropriated

**Schedule 1** lists the portfolios and the amounts that the Bill appropriates to each. The following is the **Summary** of appropriations in the Bill.

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8. Explanatory Memorandum, Appropriation Bill (No. 3) 2010-2011, p. 15.

## SUMMARY

### Summary of Appropriations (bold figures)—2010-2011 Budget Appropriation (italic figures)—2010-2011

Portfolio	Departmental \$'000	Administered \$'000	Total \$'000
Agriculture, Fisheries and Forestry	<b>3,350</b> <i>439,073</i>	<b>19,028</b> <i>216,474</i>	<b>22,378</b> <i>655,547</i>
Attorney-General's	<b>40,617</b> <i>3,369,841</i>	<b>183,423</b> <i>595,021</i>	<b>224,040</b> <i>3,964,862</i>
Broadband, Communications and the Digital Economy	<b>22,476</b> <i>231,644</i>	<b>16,620</b> <i>1,337,860</i>	<b>39,096</b> <i>1,569,504</i>
Climate Change and Energy Efficiency	<b>88,803</b> <i>107,962</i>	<b>2,537</b> <i>1,442,934</i>	<b>91,340</b> <i>1,550,896</i>
Defence	<b>2,921</b> <i>23,398,747</i>	<b>1,462</b> <i>120,415</i>	<b>4,383</b> <i>23,519,162</i>
Education, Employment and Workplace Relations	<b>5,076</b> <i>1,095,335</i>	<b>27,373</b> <i>6,016,961</i>	<b>32,449</b> <i>7,112,296</i>
Families, Housing, Community Services and Indigenous Affairs	<b>1,450</b> <i>550,961</i>	<b>6,620</b> <i>1,818,353</i>	<b>8,070</b> <i>2,369,314</i>
Finance and Deregulation	- <i>438,875</i>	<b>11,178</b> <i>229,715</i>	<b>11,178</b> <i>668,590</i>
Foreign Affairs and Trade	<b>43,476</b> <i>1,578,830</i>	<b>249,114</b> <i>3,930,921</i>	<b>292,590</b> <i>5,509,751</i>
Health and Ageing	<b>4,419</b> <i>689,234</i>	<b>146,505</b> <i>6,214,252</i>	<b>150,924</b> <i>6,903,486</i>
Human Services	<b>22,121</b> <i>3,820,897</i>	- <i>6,336</i>	<b>22,121</b> <i>3,827,233</i>
Immigration and Citizenship	<b>58,823</b> <i>1,212,878</i>	<b>239,718</b> <i>783,449</i>	<b>298,541</b> <i>1,996,327</i>
Infrastructure and Transport	<b>6,000</b> <i>232,243</i>	<b>14,319</b> <i>596,795</i>	<b>20,319</b> <i>829,038</i>
Innovation, Industry, Science and Research	<b>460</b> <i>357,749</i>	<b>7,323</b> <i>1,890,287</i>	<b>7,783</b> <i>2,248,036</i>
Prime Minister and Cabinet	<b>6,056</b> <i>427,397</i>	<b>79,520</b> <i>653,823</i>	<b>85,576</b> <i>1,081,220</i>
Resources, Energy and Tourism	- <i>207,702</i>	- <i>922,971</i>	- <i>1,130,673</i>
Sustainability, Environment, Water, Population and Communities	<b>26,613</b> <i>832,490</i>	<b>158</b> <i>1,850,510</i>	<b>26,771</b> <i>2,683,000</i>
Treasury	<b>5,729</b> <i>4,287,648</i>	<b>16,493</b> <i>43,339</i>	<b>22,222</b> <i>4,330,987</i>
<b>Total: Bill 3</b>	<b>338,390</b> <i>43,279,506</i>	<b>1,021,391</b> <i>28,670,416</i>	<b>1,359,781</b> <i>71,949,922</i>

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