



Appropriation Bill (No. 4) 2010-2011

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Appropriation Bill (No. 4) 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 \$1.024 billion for the non-ordinary ('other') annual services of government.

Background

Additional estimates

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 seek 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.

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Section 83 of the *Australian Constitution* provides that no money may be withdrawn from the Treasury except 'under appropriation made by law'.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 *A New Tax System (Family Assistance) (Administration) Act 1999*. The remainder of expenditure is funded by annual appropriations. Appropriation Bill (No. 4) 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 ordinary annual services.¹ 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 1965.²

Other annual services

Under the Bill, other services fall into three categories:

- administered expenses in the form of some payments to the states, territories and local governments, which are paid under section 96 of the *Australian Constitution*
- administered expenses for new outcomes, and
- 'non-operating' costs (sometimes called 'capital' costs).

Payments to the states, territories and local governments

How Federal government payments are made *for* the states, territories and local governments is somewhat confusing. First, a distinction needs to be made between payments made 'to' the states and those made 'through' the states. Payments 'to' the states are funds that the states use for their

1. Section 54 states that the proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

2. The Compact was updated to take account of the adoption of accrual budgeting.

own purposes, for example, government schools and hospitals. Payments 'to' the states are the largest component of payments *for* the states, and the great bulk of these are made under the *Federal Financial Relations Act 2009*. Payments made 'through' the states are funds that the states pass on to other bodies, for example, 'on-going' grants for non-government schools (see below).

Payments to local governments fall into two categories: financial assistance grants, and grants made directly to local governments. Financial assistance grants for local governments are paid under the *Local Government (Financial Assistance) Act 1995*. An example of a grant paid directly to local governments is payments under the roads to recovery program.

In summary, payments *for* the states have four components:

- payments 'to' the states for their own-purposes
- payments 'through' the states
- financial assistance grants for local governments, and
- payments made directly to local governments.

Appropriation Acts for 'other' services (such as those proposed under the Bill) appropriate funds for payments made directly to local governments. The Bill also appropriates *some* payments for non-government schools. Payments for non-government schools fall into two categories: 'on-going' and 'other'. 'On-going' non-government schools payments, that are classified as made 'through' the states, are made under the *Schools Assistance Act 2008*. 'Other' non-government schools payments are made under the Appropriation Acts for 'other' services.

New administered outcomes

By their nature, payments for new administered outcomes cannot be classified as ordinary annual services and so are appropriated as an 'other' service. There are no new administered outcomes in the Bill.

Non-operating costs

Non-operating costs are:

- 'equity injections' into agencies to fund, for example, major investment in new assets to produce departmental outputs
- 'administered assets and liabilities' appropriations which fund, for example, the purchase of new administered assets and the reduction/extinguishment of administered liabilities, and
- payments to bodies established under the *Commonwealth Authorities and Companies Act 1997* (CAC Act bodies) for their non-operating costs.

Terms used in the Bill

Departmental and administered expenses

Departmental expenses (outputs) 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 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

Budget allocations 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 CAC Act body payments (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, 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.³

3. Attorney-General's Department, *Portfolio budget statements 2010-11*, Commonwealth of Australia, Canberra, 2009, p. 23, viewed 16 February 2011,

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

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.⁴ 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.⁵

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

[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)

4. Australian Government 2010-11 Budget website, *Portfolio budget statements*, viewed 16 February 2011, <http://www.budget.gov.au/2010-11/content/pbs/html/index.htm>
5. Australian Government 2010-11 Budget website, *Portfolio Additional Estimates Statements*, viewed 16 February 2011, <http://www.budget.gov.au/2010-11/content/paes/html/index.htm>

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'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 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 expended 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.

General drawing rights limits

Under the *Financial Management and Accountability Act 1997* (FMA Act), no money can be paid from the Consolidated Revenue Fund without a valid drawing right. Drawing rights control payments from the Consolidated Revenue Fund and the use of appropriations. They allow conditions and limits to be set by the Finance Minister (or the Finance Minister's delegate) in relation to those activities.⁶ The FMA Act also provides that an official or minister must not make a payment of money from the Consolidated Revenue Fund, or debit an appropriation, unless they are authorised by a valid drawing right. General drawing rights limits cap how much money can be spent from a particular year. General drawing rights do not appropriate funds.

Basis of policy commitment

In his second reading speech, 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:

- AusAID
- the Department of Climate Change and Energy Efficiency

6. In practice, the power to issue drawing rights has been delegated to various departmental and agency officials.

- the Department of Defence
- the Department of Education, Employment and Workplace Relations
- the Department of Immigration and Citizenship, and
- the Department of Regional Australia, Regional Development and Local Government.⁷

Information on some of the proposed expenditure can be found in the Mid-year Economic and Fiscal Outlook 2010-11, appendix A.⁸

Financial implications

The Bill appropriates about \$1.024 billion for other annual services of government compared with about \$0.31 billion in *Appropriation Act (No.4) 2009-2010*.

Key provisions

The Bill's provisions are virtually identical to those in past Appropriation Acts appropriating funds for other annual services.

Part 2—Appropriation items

Clause 6—Summary of appropriations appropriates \$1 023 870 000 for additional other annual services.

Clause 7 deals with payments to the states, territories and local governments. **Subclause 7(1)** provides that where an amount is identified as a payment to the states, territories and local governments and the amount is for an agency outcome, the amount can be applied for the purpose of achieving that outcome. **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 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)**.

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7. G Gray, 'Second reading speech: Appropriation Bill (No. 4) 2010-11', House of Representatives, *Debates*, 10 February 2010, p. 10, viewed 16 February 2011, [http://parlinfo.parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=appropriation%20Bill%20\(No.%204\)%202010-11%20Date%3A10%2F02%2F2011%20Dataset%3Ahansardr,hansardr80;rec=1;resCount=Default](http://parlinfo.parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=appropriation%20Bill%20(No.%204)%202010-11%20Date%3A10%2F02%2F2011%20Dataset%3Ahansardr,hansardr80;rec=1;resCount=Default)
 8. Australian Government 2010-11 Budget website, *Mid-year economic and fiscal outlook 2010-11*, viewed 16 February 2011, <http://www.budget.gov.au/2010-11/content/myefo/html/index.htm>

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As noted above, administered assets and liabilities appropriations are a non-operating cost. **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 in the Schedules in various Appropriation Acts, may be applied to achieving any of the agency's outcomes. The wording of **subclause 9(2)** is identical to that in **subclauses 7(2)** and **8(2)**.

As noted above, 'other' departmental non-operating appropriations comprise equity injections, loans and previous years' outputs. **Clause 10** authorises funding for departmental non-operating costs by providing that the amount specified in another departmental item for an Agency may be applied for the departmental expenditure of the Agency as a whole.

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 in the appropriation. **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. **Schedule 2** shows the names of the CAC Act bodies and the amounts to be paid to each.

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 Prime Minister, 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 in response to 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 deals with reductions to CAC Act body 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)**).

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

Clause 15 deals with the AFM. **Subclause 15(1)** provides that if the Finance Minister has made a determination under subsection 15(2) of *Appropriation Act (No. 2) 2010-2011* before the Bill commences—thereby changing an amount authorised under *Appropriation Act (No. 2) 2010-2011*—then the determined amount is to be disregarded for the purposes of section 15(3) of the *Appropriation Act (No. 2) 2010-2011* when the Bill commences. In other words, the effect of **subclause 15(1)** is to ensure that the amount of the AFM remains at \$380 million and is not reduced by the amount of a determination. As the Note to **subclause 15(1)** states:

This means that, after the commencement of this Act, the Finance Minister has access to \$380 million under section 15 of the *Appropriation Act (No. 2) 2010-2011*, regardless of amounts that have already been determined under that section.

Subclause 15(2) is designed to ensure that the same item of expenditure is not authorised twice: once under the AFM and once under the Bill. **Subclause 15(2)** provides that if the Bill appropriates an amount for particular expenditure (**paragraph 15(2)(a)**) and if, before the Bill commences, the Finance Minister has determined an amount—the advanced amount—under section 15 of the *Appropriation Act (No. 2) 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 program and an advanced amount of \$5 million is determined by the Finance Minister under [*Appropriation Act (No. 2) 2010-2011*] for a particular 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 program).⁹

Part 4—General drawing rights limits

Section 16 of *Appropriation Act (No. 2) 2010-2011* limited the amounts that can be paid annually—that is, general drawing rights limits—from the three funds established under the *Nation-building Funds Act 2008*, namely, the Building Australia Fund, the Education Investment Fund, and the Health and Hospitals Fund. Section 16 also limited the amounts that can be paid for general purpose financial assistance to the states, territories and local government and national partnership payments to the states and territories under the *Federal Financial Relations Act 2009*. General purpose financial assistance for the states includes the GST and other payments, which the states can spend as they wish. **Clause 16—General drawing rights limits** changes the limits on the Education Investment Fund and the Health and Hospitals Fund.

9. Explanatory Memorandum, Appropriation Bill (No. 4) 2010-2011, p. 15.

Subclause 16(1) increases the limit on expenditure from the Building Australia Fund by \$120 000 000 from \$1 201 100 000 to \$1 321 100 000. Similarly, **subclause 16(2)** increases the limit on the Education Investment Fund by \$73 419 000 from \$1 163 539 000 to \$1 236 958 000 while **subclause 16(3)** increases the limit on the Health and Hospitals Fund by \$151 520 330 from \$952 633 000 to \$1 104 153 330. **Subclause 16(4)** increases the limit on general purpose financial assistance payable under proposed *Appropriation Act (No. 2) 2010-11* from \$1 billion to \$1.5 billion.

Part 5—Miscellaneous

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—Conditions etc. applying to State, ACT, NT and local government items** 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 established by the Minister listed in **Schedule 1** in relation to the relevant outcome.

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

Schedule 1

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

Schedule 2

Appropriations are set out in **Schedule 2** the summary of which is shown below.

SUMMARY

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

Portfolio	Payments to States, ACT, NT and local government \$'000	New Administered Outcomes \$'000	Non- operating \$'000	Total \$'000
Agriculture, Fisheries and Forestry	-	-	-	-
	-	-	1,271	1,271
Attorney-General's	670	-	15	685
	6,938	-	162,738	169,676
Broadband, Communications and the Digital Economy	-	-	-	-
	-	-	329,346	329,346
Climate Change and Energy Efficiency	2,890	-	53,525	56,415
	12,025	-	6,601	18,626
Defence	-	-	113,800	113,800
	-	-	3,656,390	3,656,390
Education, Employment and Workplace Relations	118,061	-	-	118,061
	1,766,038	-	10,611	1,776,649
Families, Housing, Community Services and Indigenous Affairs	-	-	-	-
	-	-	54,507	54,507
Finance and Deregulation	-	-	-	-
	-	-	166,091	166,091
Foreign Affairs and Trade	-	-	235,288	235,288
	-	-	403,463	403,463
Health and Ageing	-	-	352	352
	10,241	-	137,909	148,150
Human Services	-	-	6,893	6,893
	-	-	70,744	70,744
Immigration and Citizenship	-	-	192,956	192,956
	-	-	158,285	158,285
Infrastructure and Transport	-	-	-	-
	702,475	-	1,182,350	1,884,825
Innovation, Industry, Science and Research	-	-	2,042	2,042
	-	-	61,263	61,263
Prime Minister and Cabinet	129,832	-	2,000	131,832
	-	-	40,648	40,648
Resources, Energy and Tourism	-	-	7,350	7,350
	-	-	17,049	17,049
Sustainability, Environment, Water, Population and Communities	1,196	-	157,000	158,196
	19,525	-	331,363	350,888
Treasury	-	-	-	-
	-	-	230,500	230,500
Total: Bill 4	252,649	-	771,221	1,023,870
	2,517,242	-	7,021,129	9,538,371

Concluding comments

A notable feature of the Bill is the proposed increases in general drawing rights limits in **clause 16**. In aggregate, the increases amount to almost \$849 million. While general drawing rights limits do not appropriate funds but rather limit the amounts that can be spent, the increases are quite

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substantial. However, as noted in the Minister's second reading speech, \$500 million is the estimated increase in royalties payable to Western Australia.

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