



Appropriation Bill (No. 2) 2008-09

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Appropriation Bill No. 2) 2008-09

Date introduced: 13 May 2008

House: House of Representatives

Portfolio: Finance and Deregulation

Commencement: On Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To appropriate approximately \$12.691 billion for the non-ordinary (or 'other') annual services of government.

Background

Section 83 of the Constitution provides that no monies may be withdrawn from the Consolidated Revenue Fund except 'under an appropriation made by law'.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.

Of the Appropriation Bills introduced to accompany the May Budget, by far the most important in dollar terms is Appropriation Bill (No. 1), which appropriates funds for the 'ordinary' annual services of the government while Appropriation Bill (No. 2) appropriates funds for other annual services. Section 54 of the Constitution requires that there be a separate law appropriating funds for the ordinary annual services of the government. That is why there are separate bills for ordinary annual services and for other annual services. The distinction between ordinary and other annual services was set out in a 'Compact' between the Senate and the government in 1965 (the Compact was updated to take account of the adoption of accrual budgeting).

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Payment categories

Appropriation Bill (No. 2) 2008-2009 (the Bill) funds four categories of payment:

- payments to the states, territories and local government (**clause 7**)
 - these are paid under section 96 of the Constitution
- new administered expenses (**clause 8**)
- ‘non-operating’ costs:
 - appropriations for ‘administered assets and liabilities’ fund, for example, the purchase of new administered assets and the discharge of administered liabilities (**clause 9**)
 - funding in the form of ‘equity injections’ is, for example, for substantial investment in new assets (**clause 10**)
 - ‘loans’ are provided when an investment is expected to result in a return to the investment, for example, productivity gains (**clause 10**)
 - ‘previous years’ outputs’ appropriations replenish funds used to provide departmental outputs in a previous year. This can occur, for example, when the government has decided to introduce a new program but the decision comes too late for the program to be funded through the additional appropriation bills. In such cases, the program is funded initially from existing appropriations. This funding is later replenished in the form of a previous years’ outputs appropriation (**clause 10**), and
- [Commonwealth Authorities and Companies Act 1997](#) (CAC Act) body payments (**clause 11**).

CAC Act bodies are authorities and companies that the Commonwealth has established. Examples are the Australian War Memorial, the Australian Film Commission, and the Australian Broadcasting Corporation. In previous years, payments to CAC Act bodies were funded ‘directly’ through Appropriation Act No. 2. From 2008-09, payments to CAC Act bodies will be paid ‘indirectly’ through portfolio departments. CAC Act bodies are grouped within portfolios. The Bill provides funds to the relevant portfolio department for on-payment to a CAC Act body for the latter’s non-operating costs. For example, under the Bill, funding for the Australian Broadcasting Corporation and the Special Broadcasting Corporation are made ‘indirectly’ through the Department of Broadband, Communications and the Digital Economy, the latter being the relevant portfolio department. The Department of Finance and Deregulation maintains a [list](#) of CAC Act bodies.

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Reductions of administered expenses

From 2008-09, appropriations for administered expenses will be subject to a different process to extinguish unspent appropriations. Under this process, the amount to be reduced will be based on agencies' financial statements in their annual reports. In essence, the amount of the reduction will be the difference between the total of amounts appropriated for administered expenses less the amount shown as having been spent in the financial statements. If the government wishes to spend the reduced amount in another financial year, it will have to seek funding in a future appropriation bill.

Financial implications

The Bill appropriates about \$12.691 billion (compared with about \$10.133 billion in *Appropriation Act (No. 2) 2007-08*).

Main provisions

The Bill recasts substantially the provisions of Appropriation Act No. 2 and Appropriation Act No. 4 of previous years. Some of the recasting flows from the change to the way CAC Act bodies are funded. Other recasting follows from the changes to the reduction process. However, **Schedule 1**—which confers on the ministers named, power to determine the conditions under which payments to the States, the ACT and NT and local government authorities may be made, and the amounts and timing of those payments—and **Schedule 2** which contains the detail of appropriations—are unchanged.

Clause 3 contains definitions. Most definitions are unchanged from previous Appropriation Acts. Several changes are noteworthy:

- the clause introduces a definition of a 'CAC Act body'. This is a Commonwealth authority or company within the meaning of the *Commonwealth Authorities and Companies Act 1997*
- **Clause 3** defines a 'CAC Act body payment item'. This is the amount set out in Schedule 2 in relation to a CAC Act body under the heading "Non-operating"
- the term 'Chief Executive' is defined as having the same meaning as in the *Financial Management and Accountability Act 1997*¹

1. The *Financial Management and Accountability Act 1997* defines Chief Executive to include either a person identified by regulations to be the Chief Executive, or a person who is the Secretary of an Agency under the *Public Service Act 1999* or the *Parliamentary Services Act 1999*, section 5.

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- the definition of ‘item’ is expanded to include ‘a CAC Act body payment item’, and
- **Clause 3** changes the definition of a ‘State, ACT, NT and local government item’ by substituting ‘for an Agency’ for ‘of an entity’.

Part 2—Appropriation items—was formerly titled ‘Basic appropriations’. **Clause 6** of **Part 2** provides that the total of the items in **Schedule 2** is \$12 690 922 000.

Clause 7 deals with payments to the states, territories and local government, and recasts provisions in previous Appropriation Acts. The changes are outlined in the Explanatory Memorandum.² **Subclause 7(2)** is a new provision and specifies that if the Portfolio Budget 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’. Although **clause 8** does not specifically state that it is referring to *new* administered items, the Explanatory Memorandum states that this is the case.³ **Clause 8** contains new provisions compared with previous Appropriation Acts. **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 four categories of non-operating costs. The provisions of **clause 9—Administered assets and liabilities items**—are new. **Subclause 9(1)** provides that the amount identified for an agency’s administered assets and liabilities may be applied to achieving any of the agency’s outcomes, which are specified in **Schedule 2** of the Bill or in Schedule 1 of Appropriation Bill (No. 1) 2008-2009. The wording of **subclause 9(2)** is identical to that in **subclause 8(2)** and **subclause 7(2)**.

Clause 10—Other departmental items—is also new. The Explanatory Memorandum states that **clause 10** authorises funding for three departmental non-operating categories of funding—equity injections, loans and previous years’ outputs.⁴ This seems to be because ‘other departmental item’ is an amount specified in **Schedule 2** of the Bill as defined in **clause 3**. **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. **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

2. Appropriation Bill (No. 2) 2008-09, *Explanatory Memorandum*, paragraph 15, p. 6.

3. *ibid.*, paragraph 16, p. 7.

4. *ibid.*, paragraph 23, p. 8.

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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. The Explanatory Memorandum states:

The purpose of subclause 11(2) is to clarify that subclause 11(1) is not intended to qualify any obligations in other legislation regulating a CAC Act body, where that other legislation requires the Commonwealth to pay the full amount appropriated for the purposes of the body.⁵

Part 3—Adjusting appropriation items—is completely recast compared with previous Appropriation Acts. Three clauses in Part 3 deal with reductions to appropriations. **Clause 12** deals with adjustments to (a) payments to the states, territories and local government and (b) administered items; **clause 13** with (a) administered assets and liabilities and (b) other departmental items, that is, equity injections, loans, and previous years' outputs; and **clause 14** with reductions to CAC Act bodies payment items.

The essence of **subclause 12(1)** is 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)**]. The power in **paragraph 12(2)(a)** may be designed to give the Finance Minister flexibility. According to the Explanatory Memorandum, the power in **paragraph 12(2)(b)** is designed to ensure that the amount published in annual reports can be corrected for errors if necessary.⁶

Subclause 13(1) enables the minister responsible for an agency, or the chief executive of the agency—where the Finance Minister is responsible for the agency—to seek a reduction in administered assets and liabilities and other departmental items, while **subclause 13(2)** empowers the Finance Minister to make a determination that accords with the request. However, the determination cannot reduce the appropriation below zero [**subclause 13(3)**]. Requests are not legislative instruments [**subclause 13(5)**]. However, while the Finance Minister's determinations are legislative instruments and are disallowable, the determinations are not subject to the sunset provisions of the *Legislative Instruments Act 2003* [**subclause 13(6)**].

Clause 14—which deals with reductions to CAC Act bodies payment items is also entirely new and follows from the revised arrangements for payments to CAC Act bodies. The wording in **clause 14** is almost the same as for **clause 13**. However, whereas a request can come from the Chief Executive of an agency for which the Finance Minister is responsible

5. *ibid.*, paragraph 29, p. 9.

6. *ibid.*, paragraph 36, p. 11.

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in the case of **clause 13**, a similar request must come from the Secretary of the Department in the case of CAC Act bodies [**paragraph 14(1)(b)**]. **Subclause 14(5)** confirms that a reduction can be made for a CAC Act body even though it has been allocated funds under **subsection 11(2)**.

Clause 15—Advance to the Finance Minister—changes the wording slightly—compared to previous Appropriation Acts—regarding the circumstances under which the Finance Minister can issue funds from the Advance [**subclause 15(1)**]. **Subclause 15(3)** allocates \$380 million to the Advance. Previously this amount was \$215 million.

Part 4—Reducing State, ACT, NT and local government items, State payments items and administered items in previous Acts—is totally new. The Explanatory Memorandum explains that **Clause 16** has been added to prevent amounts of administered expenses, which were determined under previous Appropriation Acts but which were not spent, to be re-determined and spent. **Clause 16** prevents this by providing that such unspent amounts are ‘extinguished’ or ‘lapsed’ in law.

Concluding comments

The introduction of the Explanatory Memorandum in conjunction with the Bill is a welcome development. It contains useful definitions of terms and explanations of the purposes and effect of various clauses. In some instances, these purposes are not evident from the wording of the clauses. Note that clause 4 provides that the Portfolio Budget Statements are aids to the interpretation of the clauses under section 15AB of the Acts Interpretation Act 1901.

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