



## Appropriation Bill (No. 4) 2009–2010

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Economics Section

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## Appropriation Bill (No. 4) 2009–2010

**Date introduced:** 26 November 2009

**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 about \$311 million for the non-ordinary ('other') annual services of government.

### Background

Constitutional aspects

Annual appropriations

Section 83 of the *Australian Constitution* provides that no monies may be withdrawn from the Treasury except 'under appropriation made by law'.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) 2009–2010 (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 of the government. There are therefore separate annual appropriation Bills for ordinary annual services and for 'other'

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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>1</sup>

Other services

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 *Constitution*
- new administered expenses for new outcomes, and
- ‘non-operating’ costs (sometimes called ‘capital’ costs).

With respect to payments to the states, territories and local governments, there was a major change to payments beginning 1 January 2009 resulting from the agreement by the Council of Australian Governments to new arrangements for federal-state financial relations. Under the new arrangements, Treasury makes specific purposes payments to the states monthly. These payments are for National Specific Purpose Payments, National Partnership payments and general revenue assistance. These payments are made under the *Federal Financial Relations Act 2009* and account for the great bulk of payments to the states and territories. Previously, these payments were made under Appropriation Act (No. 2). There are two exceptions to these arrangements: payments made directly to local governments, and some payments made ‘through’ the states for non-government schools that are not paid under the *Schools Assistance Act 2008* or the COAG Reform Fund. The new arrangements claimed to improve transparency. A consequence of transferring the bulk of payments to the states from Appropriation Act (No. 2) to the *Federal Financial Relations Act 2009* was to convert annual appropriations into special appropriations. Before this change, the annual Appropriation Acts used to account for about 20 per cent of total spending. This figure now probably overstates the proportion.

By their nature, new administered expenses for new outcomes cannot be classified as ordinary annual services and so are appropriated as an other service.

Non-operating costs appropriations fall into five categories. The first three are used to produce departmental outputs. The five categories are:

- ‘equity injections’ into agencies to fund, for example, major investment in new assets to produce departmental outputs
- ‘loans’ that are provided when an investment is expected to yield a return such as productivity gains
- ‘previous years’ outputs’ appropriations. They replenish funds used to provide departmental outputs in a previous year. This can occur, for example, when the

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

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- ‘administered assets and liabilities’ appropriations. They are funding, for example, for the purchase of new administered assets and the reduction/extinction of administered liabilities, and
- payments to bodies established under the *Commonwealth Authorities and Companies Act 1997* (CAC Act bodies) for their non-operating costs.

### 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 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 (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

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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

Departmental expenses (outputs) 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:

An equitable and accessible system of federal civil justice.<sup>2</sup>

### Advance to the Finance Minister

The Advance to the Finance Minister (AFM) provides flexibility to 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>3</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

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2. Attorney-General's Department, *Portfolio Budget Statements 2009–10*, Commonwealth of Australia, Canberra, 2009, p. 25, viewed 30 November 2009, [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)~02\\_03+PBS+09\\_10+AGD\\_web+Final.pdf/\\$file/02\\_03+PBS+09\\_10+AGD\\_web+Final.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~02_03+PBS+09_10+AGD_web+Final.pdf/$file/02_03+PBS+09_10+AGD_web+Final.pdf)
  3. Australian Government 2009–10 Budget website, *Portfolio Budget Statements*, viewed 30 November 2009, <http://www.budget.gov.au/2009-10/content/pbs/html/index.htm>

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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>4</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 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.

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4. Australian Government 2009–10 Budget website, *Portfolio Additional Estimates Statements*, viewed 30 November 2009, <http://www.budget.gov.au/2009-10/content/paes/html/index.htm>

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## 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.<sup>5</sup> 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 appropriation in a particular year; they do not appropriate money.

## Depreciation, amortisation and make good funding

Depreciation is the wear and tear on non-financial assets (sometimes called fixed assets) such as computers and plant and equipment. Amortisation refers to the writing-off of so-called 'intangible' assets such as patents and trademarks. In their financial statements, agencies and the parliamentary departments recognise depreciation as an expense (debit) and credit an asset depreciation account annually. The effect is to create a reserve from which the asset can be replaced.

Under accrual budgeting, agencies and the parliamentary departments are funded for their depreciation expense annually. Agencies and the parliamentary departments are also funded for amortisation expenses and the cost of restoring assets. The latter is also called 'make good' money because funds are provided to make good an asset. Agencies and the parliamentary departments hold the depreciation funds until they replace the asset. Some have questioned why agencies and the parliamentary departments are given funds before they need them.<sup>6</sup> The Rudd Government has adopted a two-pronged approach to this matter. The first is to cease funding depreciation annually and, instead, fund agencies and the parliamentary departments only when they replace assets. Government policy with respect to the cessation of depreciation funding is set out in *Operation Sunlight*:

The Government will cease funding for depreciation from 1 July 2009 for collecting institutions in relation to their heritage and cultural assets and from 2010–11 for all other agencies in the general government sector.<sup>7</sup>

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5. In practice, the power to issue drawing rights has been delegated to various departmental and agency officials.
  6. J R Blondal, D Bergvall, I Hawkesworth and R Deighton-Smith, 'Budgeting in Australia', *OECD Journal on Budgeting*, vol. 2008/2, 2008, viewed 1 December 2009, <http://www.oecd.org/dataoecd/59/24/42007191.pdf>
  7. Department of Finance and Deregulation, *Operation Sunlight*, December 2008, p. 18, viewed 30 November, 2009, <http://www.finance.gov.au/financial-framework/financial->

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The second approach is to recover unspent depreciation funds from agencies and the parliamentary departments. The Bill contains a mechanism for recovering unspent funds from the parliamentary departments. Appropriation Bill (No. 3) 2009–2010 contains a mechanism for recovering unspent funds from agencies.

### Basis of policy commitment

The Minister’s second reading speech refers to some of the measures in the Bill. The following are quotes from the Mid-Year Economic and Fiscal outlook 2009–10 relating to some measures.<sup>8</sup>

Department of Infrastructure, Transport, Regional Development and Local Government

#### **Community Infrastructure Program — further funding**

Expense (\$m)

2008–09 2009–10 2010–11 2011–12 2012–13

	2008–09	2009–10	2010–11	2011–12	2012–13
Department of Infrastructure, Transport, Regional Development and Local Government	-	-	-	-	-

The Government will provide \$220 million to local councils under the Regional and Local Community Infrastructure Program and provide \$25 million to establish a Local Government Reform Fund.

Funding provided under the Regional and Local Community Infrastructure Program will support investment in community infrastructure, such as libraries, community centres, sports grounds and environmental infrastructure, and will be delivered in two streams:

- \$100 million shared between all of the nation's councils and shires; and
- \$120 million for larger strategic projects, provided on a competitive basis.

The Local Government Reform Fund will help councils better manage their infrastructure and plan for future needs. It will fast-track local government infrastructure financial and asset management and planning under nationally consistent guidelines. It will also encourage cooperation between councils to improve their capacity to serve local communities.

This funding is in addition to the \$300 million provided in 2008–09 for the Regional and Local Community Infrastructure Program announced at the Australian Council of

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[management-policy-guidance/operation-sunlight/docs/operation-sunlight-enhancing-budget-transparency.pdf](http://www.budget.gov.au/2009-10/content/myefo/html/index.htm)

8. Australian Government 2009–10 Budget website, *Mid-Year Economic and Fiscal Outlook*, viewed 4 January 2010, <http://www.budget.gov.au/2009-10/content/myefo/html/index.htm>

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Local Government on 18 November 2008 and the \$500 million over two years announced on 3 February 2009 in the *Updated Economic and Fiscal Outlook*.<sup>9</sup>

Provision for this funding has already been included in the forward estimates.

Further information can be found in the joint press release of 25 June 2009 by the Prime Minister and the Minister for Infrastructure, Transport, Regional Development and Local Government.

**Note:** The Portfolio Additional Estimates Statements at page 18 show \$24 million over two years for the Local Government Reform Fund.

Department of the Environment, Water, Heritage and the Arts

**National Solar Schools Program — reduced funding**

Expense (\$m)

	2008–09	2009–10	2010–11	2011–12	2012–13
Department of the Environment, Water, Heritage and the Arts	-	-	-7.9	-8.1	-
Department of the Treasury	-	-	-18.4	-18.8	-
Total	-	-	-26.2	-26.8	-

The Government will reduce funding for government and non-government schools under the National Solar Schools Program. The program provides grants of up to \$50,000 to Australian schools to install solar panels and for energy and water efficiency improvements. Funding to install these types of improvements is also being provided under the Building the Education Revolution program.

This measure will provide savings of \$53.1 million over two years from 2010–11, comprising a saving of \$15.9 million in payments by the Department of the Environment, Water, Heritage and the Arts to non-government schools and a saving of \$37.2 million in payments by the Australian Treasury to the States and Territories in relation to government schools.

9. Australian Government 2008–09 Budget website, *Updated Economic and Fiscal Outlook*, viewed 4 January 2010, <http://www.budget.gov.au/2008-09/content/uefo/html/index.htm>

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## Department of Health and Ageing

**Swine flu (H1N1 influenza virus) pandemic response**

Expense (\$m)

	2008–09	2009–10	2010–11	2011–12	2012–13
Department of Health and Ageing	-	45.2	0.8	0.3	0.3
Department of Agriculture, Fisheries and Forestry	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>45.2</b>	<b>0.8</b>	<b>0.3</b>	<b>0.3</b>

*Related capital (\$m)*

Department of Health and Ageing	-	26.0	-	-	-
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The Government will provide \$229.6 million over five years (including \$21.0 million in 2008–09) in response to the H1N1 influenza virus pandemic. This funding supports the following activities designed to manage this pandemic and to enhance preparedness for any future pandemics:

- storage, compounding and distribution of antivirals and personal protective equipment;
- purchase of H1N1 influenza vaccine and associated clinical trials;
- production, processing and distribution of immunisation consent forms;
- monitoring and policy development;
- immunisation awareness campaign;
- purchase of the antiviral Relenza®; and
- immediate communications, border protection, surveillance and health care worker support and training in 2008–09. This included expenditure by the Department of Health and Ageing of \$15.3 million, by the Department of Agriculture, Fisheries and Forestry of \$4.2 million and by the Australian Customs and Border Protection Service of \$1.5 million.

Funding for these programs will consist of up to \$72.6 million of additional funding, with the remaining \$152.8 million of the cost of this measure being met from within the existing resourcing of the Department of Health and Ageing and the Australian Customs and Border Protection Service. The Government will also provide an equity injection of \$4.2 million in 2009–10 to the Department of Agriculture, Fisheries and Forestry as reimbursement for costs incurred in 2008–09.

**Financial implications**

The Bill appropriates about \$0.31 billion for other annual services of government compared with about \$10.63 billion in Appropriation Act (No. 2) 2009–2010.

As discussed below, the Bill also empowers the Finance Minister to require the parliamentary departments to return unspent funds previously allocated for depreciation,

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amortisation and the restoration of assets. There are no estimates of the magnitude of the amounts involved in the Explanatory Memorandum.

## Main provisions

The Bill's provisions are generally similar or identical to those in past Appropriation Acts appropriating funds for other annual services. The following therefore focuses on new or changed provisions.

### Part 1—Preliminary

The Bill introduces provisions whereby the general drawing rights limit is increased by a goods and services tax (GST) qualifying amount. **Clause 3** defines a GST qualifying amount as either an input tax credit or as a decreasing adjustment, both being within the meaning of the GST Act. The GST qualifying amount is discussed below under **clause 17**.

### Part 2—Appropriation items

**Clause 6—Summary of appropriations** appropriates \$310 915 000 for 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 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 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 an other departmental item for an Agency may be applied for the departmental expenditure of the Agency.

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**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 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** 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)(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).

As noted above, the Advance to the Finance Minister (AFM) provides flexibility to the budget process by authorising the Finance Minister to expend money, by determination, in certain circumstances. **Clause 15** deals with the AFM but differs from comparable clauses in previous Appropriation Acts. For example, clause 15 of *Appropriation Act (No. 2) 2009–2010*:

- contained the criteria the Finance Minister had to apply before making payments from the AFM (subsection 15(1))

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- changed an amount in Schedule 2 of *Appropriation Act (No. 1) 2009–2010* by the amount that the Finance Minister had paid from the AFM (subsection 15(2))
- limited expenditure from the AFM to the amount specified (\$380 million) (subsection 15(3)), and
- provided that where the Finance Minister had made a determination to expend money from the AFM, the determination was a legislative instrument (subsection 15(4)).

**Subclause 15(1)** provides that if the Finance Minister has made a determination under subsection 15(2) of *Appropriation Act (No. 2) 2009–2010* before the Bill commences—thereby changing an amount authorised under *Appropriation Act (No. 2) 2009–2010*—then the determined amount is to be disregarded for the purposes of section 15(3) of the *Appropriation Act (No. 2) 2009–2010* 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) 2009–2010*, 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) 2009–2010* 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) 2009–2010*] 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).<sup>10</sup>

#### Part 4—General drawing rights limits

Section 16 of *Appropriation Act (No. 2) 2009–2010* limited the amounts that could 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 could 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*. **Clause 16—General drawing rights limits** changes the limits on the Education Investment Fund and the Health and Hospitals Fund.

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10. Explanatory Memorandum, *Appropriation Bill (No. 4) 2009–2010*, p. 14.

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**Subclause 16(1)** reduces the limit on the Education Investment Fund by \$78 400 000 from to \$1 390 094 000 to \$1 311 694 000 while **subclause 16(2)** increases the limit on the Health and Hospitals Fund by \$1 000 000 to \$466 700 000 from \$ 465 700 000. The Explanatory Memorandum provides the following reasons for the changes:

The changes to the 2009–10 EIF and HHF general drawing right limits reflect minor adjustments in the timing of payments from the Funds. The EIF general drawing right limit also includes funding for the Giant Magellan Telescope, which was announced by the Minister for Innovation, Industry, Science and Research on 20 July 2009.<sup>11</sup>

The effect of **clause 17—Adjustments for GST** is to increase a general drawing rights limit by the amount of any GST qualifying amount. By way of explanation, the GST is a Commonwealth tax. It therefore does not make sense for a Commonwealth agency to pay GST. Division 177 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides that agencies are not liable to pay GST. However, the GST Act also provides that agencies are notionally liable to pay GST, notionally entitled to input tax credits, and notionally have adjustments. Reasons for these notional requirements include that the true cost of an agency's purchases of goods and services would otherwise be understated. To calculate the correct amount of GST notionally payable, a Commonwealth agency, similar to a business, calculates the amount of GST notionally payable by deducting the GST on purchases—the input tax credit—from the GST on its sales. Adjustments can be made to the net amount. Increasing adjustments increase the net amount, and decreasing adjustments decrease the net amount. As to the reason for adding a GST qualifying amount to a general drawing rights limit, the Explanatory Memorandum states:

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.<sup>12</sup>

The effect of **clause 17** is to ensure that all GST qualifying amounts are added to general drawing rights limits, including GST qualifying amounts that have arisen in the past, thereby increasing the general drawing rights limits:

The clause applies to the current year and to 2008–09. This clarifies that the amounts specified for the general drawing rights limits, in both the current year and 2008–09, are exclusive of any GST qualifying amounts that may arise (or has arisen) in respect of acquisitions made in reliance on that limit.<sup>13</sup>

**Clause 17** seems to correct an oversight since general drawing rights limits were introduced in 2008–09.

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11. Ibid., p. 15.

12. Ibid., p. 16.

13. Ibid.

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## Part 5—Reducing departmental and administered items for Parliamentary Departments in previous Acts

**Clause 18—Reducing departmental and administered items for Parliamentary Departments in previous Acts** is the mechanism for recovering from parliamentary departments cash they have received for depreciation, amortisation, and the restoration of assets but which they have not yet used. **Clause 18(6)** defines ‘depreciation and make good amount’ as the total of the amounts of departmental items and administered items from all previous Acts that the Finance Minister has identified as having been provided for the following purposes, but which have not yet been applied:

- (a) meeting depreciation costs;
- (b) meeting amortisation costs;
- (c) meeting the costs of returning an asset to a previous state or condition.

The mechanism for ‘clawing back’ unused funds is to reduce departmental and administered funds allocated under previous Acts. **Subclause 18(1)** provides that the Finance Minister may determine, in writing, that a departmental item or an administered item for an agency in a previous Act is to be reduced by the amount specified in the determination. **Subclause 18(3)** provides that a departmental or administered item is deemed to be reduced by the amount in the written determination.

**Subclause 18(2)** limits the effects of any determination made under **subclause 18(1)**. **Subclause 18(2)** provides that a determination will have no effect where the item is reduced below nil (**paragraph 18(2)(a)**) or, where the amount in the determination, when added to other amounts specified in relation to the agency under **subclause 18(1)**, exceeds the depreciation and make good amount for the parliamentary department (**paragraph 18(2)(b)**). The Explanatory Memorandum explains that **paragraph 18(2)(b)** is:

... intended to confine the amount of the reduction only to amounts identified as being for depreciation and make good amounts that have not yet been applied.<sup>14</sup>

**Subclause 18(4)** provides that a determination under **subclause 14(1)** is a legislative instrument, that section 42 of the *Legislative Instruments Act 2003* (relating to disallowance) 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 determinations are disallowable by Parliament, but once made, will not expire.

**Subclause 18(5)** provides that a determination must not be rescinded, revoked, amended or varied despite subsection 33(3) of the *Acts Interpretation Act 1901*.<sup>15</sup>

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14. *Ibid.*, p. 18.

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**Subclause 18(6)** provides definitions of terms in the context of the operation of **clause 18**. Definitions include those for ‘depreciation and make good amount’ and ‘previous Act’. **Subclause 18(6)** also lists the Acts to which the determinations apply.

## 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 20—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 21—Appropriations 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** 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.

Appropriations are set out in **Schedule 2**.

## Concluding comments

Among other things, the Bill empowers the Finance Minister to reduce past appropriations for depreciation, amortisation and the restoration of assets that the parliamentary departments have not yet spent. When implemented, this will return funds to the Consolidated Revenue Fund. There are no estimates of the magnitude of the expected return of funds.

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15. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue an instrument, it is taken to include a power to repeal, rescind or otherwise vary the instrument.

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