Appropriation Bill (No. 5) 2011–2012

Daniel Weight
Economics Section

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Key areas of expenditure

Department of Broadband, Communications and the Digital Economy

Department of Families, Housing, Community Services and Indigenous Affairs

Department of Health and Ageing

Regional Australia and Local Government
Appropriation Bill (No. 5) 2011–2012

Date introduced: 8 May 2012

House: House of Representatives (Section 53 of the Constitution requires that Bills appropriating revenue or imposing taxation originate in the House)

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 Bill’s 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 an additional $250.3 million for the ordinary annual services of government.

Background

Constitutional aspects

Sections 81 and 83 of the Australian Constitution

Section 81 of the Australian Constitution provides that:

All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund [CRF], to be appropriated for the purposes of the Commonwealth...¹

Section 83 of the Constitution provides that no money may be withdrawn from the CRF ‘except under appropriation made by law’.

The effect of these two sections is that all monies received by the Commonwealth must be paid into the CRF, and must not be spent before there is an Appropriation Act authorising the expenditure.

Appropriation Acts

Acts authorising expenditure are either:

• annual appropriation Acts or
• special, sometimes called ‘standing’, appropriation Acts.

¹ Constitution, section 81.

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Special, or standing, appropriations—which account for more than 80 per cent of expenditure—are expenditure authorised by particular 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*. They do not lapse each year.

The remainder of government expenditure is funded by annual appropriations. Appropriation Bill (No. 5) 2011–12 (the Bill) is an annual Appropriation Bill.

Importantly, Appropriation Acts do not create a source of power for the Commonwealth to spend money; they merely release that money from the CRF. The Commonwealth’s power to spend money must be found in other parts of the Constitution.²

**The ‘ordinary’ versus other annual services of government**

Section 54 of the *Constitution* requires that there be a separate law appropriating funds for the ‘ordinary’ annual services, and that other matters may not be dealt with by such a Bill.³ There must be, therefore, separate annual Appropriation Bills for the ordinary annual services, and for any 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 1965 Compact provided that the following are not regarded as part of the ordinary annual services of government:

(a) the construction of public works and buildings;

(b) the acquisition of sites and buildings;

(c) items of plant and equipment which are clearly definable as capital expenditure;

(d) grants to the States under section 96 of the Constitution; and

(e) new policies not previously authorised by special legislation...⁴

In 1999 the Compact was altered to reflect accrual accounting. The adjustments provided that:

(i) items regarded as equity injections and loans be regarded as not part of ordinary annual services

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3. *Constitution*, section 54: ‘The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.’


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(ii) all appropriation items for continuing activities for which appropriations have been made in the past be regarded as part of ordinary annual services

(iii) all appropriations for existing asset replacement be regarded as provision for depreciation and part of ordinary annual services.5

Adherence to the compact has not always been strict.6

The Senate’s powers in relation to ordinary annual services

Section 53 of the 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.

Appropriations through the year

Budget

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.

Additional Estimates

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. If so, the Government has to seek parliamentary approval for the 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.

Supplementary Additional Estimates

In some years, the Government may decide to introduce further Appropriation Bills following the additional estimates process. When this occurs, this is often done at the same time as the next year’s Budget Bills are tabled. Additional Appropriation Bills tabled late in the year allow the Government to fund new programs announced in the Budget, but which commence before the start

5. Ibid.
6. Ibid.

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of the next financial year, and make other technical adjustments in anticipation of the next year’s Budget.

Terms used in the Bill

Departmental and administered expenses

The Australian Accounting Standards Board requires that government agencies distinguish between revenues and expenses that they administer for the Government, and those over which they have some control. Generally, administered expenses are the costs of providing the programs that agencies run for the Government, while departmental expenses are the costs incurred in running agencies. Examples of departmental expenses include salaries, supplies of goods and services, and other day-to-day operating expenses. Agencies have some discretion about how they expend departmental appropriation, and amounts of departmental appropriation not used in the year of their appropriation may be retained and used in later years.

Appropriation Bills, therefore, must distinguish between ‘administered’ expenses and ‘departmental’ expenses.

Most administered expenses—or programs—are funded through special appropriations that do not lapse every year; however, some programs are funded through the annual 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 simple terms, the Finance Minister may decide to withhold departmental monies not required by a department, and reduce its appropriation accordingly.

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.

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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**

In the *Pharmaceutical Benefits case* the High Court held that:

...there cannot be appropriations in blank, appropriations for no designated purpose, merely authorising expenditure...

Accordingly, the Appropriation Bill aligns both departmental and administered expenses to specific outcomes. An example of such an outcome is Outcome 1 in the Attorney-General’s Department (AGD):

Outcome 1: 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.

Further, individual programs contribute to outcomes. For example, ‘Program 1.3 Justice Services’ contributes to AGD’s Outcome 1. An individual outcome may include multiple programs.

**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 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. 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

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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 Appropriation Acts.

**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.  

**Portfolio Supplementary Additional Estimates Statements**

If an additional Appropriation Bill is tabled after Additional Estimates, further Supplementary Additional Estimates Statements will be provided for relevant departments.

**CAC Act body**

As noted above, a CAC Act body is a Commonwealth authority or company established under the 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 CRF. 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 Service are made to 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 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.

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Basis of policy commitment

As part of the Government’s 2012–13 Budget, the Government has decided to spend additional monies prior to the end of the 2011–12 year.

Appropriation Bill (No. 5) 2011–12 adjusts the appropriation available to departments in relation to ordinary annual services of government. It is related, therefore, to the Appropriation Bill (No. 1) 2011–12, and Appropriation Bill (No. 3) 2011–12.

It gives effect to the Government’s spending decisions that have an impact during the remainder of 2011–12. The major appropriations are for the following departments:

- $34.7 million to the Department of Broadband, Communications and the Digital Economy
- $112.6 million to the Department of Families, Housing, Community Services and Indigenous Affairs
- $44.1 million to the Department of Health and Ageing and
- $43.7 million to the Department of Regional Australia, Local Government, Arts and Sport.\textsuperscript{14}

The Bill also makes minor changes to the appropriations to some other departments.

Financial implications

The Bill appropriates about $250.3 million for the ordinary annual services of government. \textit{Schedule 1} of the Bill shows the amounts and the portfolios for which funds are appropriated.

Key provisions

Many of the key provisions of Appropriation Acts are similar from year to year.

Part 1—Preliminary

Part 1 of the Bill contains formal clauses, such as when the Bill commences and the definitions used.

Part 2—Appropriation items

\textit{Clause 6—Summary of appropriations}—states that the total of the items specified in \textit{Schedule 1} of the Bill is $250 309 000.

\textit{Clause 7} provides that the amount specified in a departmental item for an agency may be applied for the departmental expenditure of the agency.


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Clause 8 deals with ‘administered items’. Subclause 8(1) confirms that if an amount is specified as an administered item for an outcome, then that amount 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 for that activity 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. Paragraphs 10(1)(a) and (b) empower 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 sunsetting provisions) of the Legislative Instruments Act does not apply to the determination. In short, this means that the Finance Minister’s determinations are disallowable by Parliament, but if they are not disallowed they will not expire.

15. The Department of Finance and Deregulation is an example of an agency for which the Finance Minister is responsible.

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Clause 12 contains the process for reducing CAC Act body payments. This is almost identical to that for departmental items in clause 10.

As noted above, the 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) 2011–2012 before the Bill commences—thereby changing an amount authorised under that Act—then the determined amount is to be disregarded for the purposes of section 13(3) of that Act when the Bill commences. The effect of subclause 13(1) is to reset the value of the AFM so that the amount of the AFM remains at $295 million and is not reduced by the amount of any determinations that have been made before the passage of the Bill.

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) 2011–2012 for the expenditure, the amount the Bill appropriates is taken to be reduced (but not below nil) by the advanced amount.

Part 4—Miscellaneous

Clause 14—Credit ing amounts to Special Accounts provides that if an appropriation is made for purposes that that are covered by a Special Account, then the Special Account is replenished by the same amount as the appropriation.

Clause 15—Appropriation of the Consolidated Revenue Fund provides that CRF 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.

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.
## SUMMARY

### Summary of Appropriations (bold figures)—2011-2012

**Actual Available Appropriation (italic figures)—2011-2012**

<table>
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<tr>
<th>Portfolio</th>
<th>Departmental</th>
<th>Administered</th>
<th>Total</th>
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<td>Agriculture, Fisheries and Forestry</td>
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Key areas of expenditure

Amongst other things, the Bill will provide the funding for the following:16

Department of Broadband, Communications and the Digital Economy

- $16.5 million will be provided in 2011–12 ($143.2 million over four years) to assist commercial broadcasters vacate the digital dividend spectrum in a timely fashion17 and
- $20.0 million will be provided in 2011–12 under a measure called ‘National Broadband Network – regional and remote information.’ The Budget Papers say that this money will be provided ‘to improve public understanding, address misconceptions and provide updated information about the National Broadband Network (NBN).’18 The program will focus on regional and remote areas.

Department of Families, Housing, Community Services and Indigenous Affairs

- the first $14 million of a two year measure called ‘Household Assistance Package — information’ will be provided. The total cost of the measure over two years is $36.1 million. The Budget Papers describe this measure as:

  ...an information campaign on the Household Assistance Package, a key element of the Clean Energy Future Plan. The information will raise awareness and understanding across the Australian community of the nature and timing of payments, tax cuts and entitlements that will be available under the package. Information will be provided through print, radio and television and the Clean Energy Future website.19

- the Bill also brings forward $85 million of administered appropriation from 2012–13 to 2011–12 under the Family Support Program to allow organisations earlier access to funds under the program.20

Department of Health and Ageing

- $44.1 million will be provided primarily to meet the increasing costs of some health programs.

Regional Australia and Local Government

- $43.7 million will be provided to fund several once-off grant payments, such as to $12.8 million to attract the production of The Wolverine to Australia, and grants related to sport.

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16. The total of the announced measures may not correspond to the total amount appropriated because of savings and other offsets.
18. Ibid., p. 95.
19. Ibid., p. 140.

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