Appropriation Bill (No.4) 1995-96
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Bills Digest
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Appropriation Bill (No. 4) 1995-96

Date Introduced: 26 October 1995
House: House of Representatives
Portfolio: Finance
Commencement: Royal Assent

Purpose

To authorise the Minister for Finance to issue an additional $576,570,000 from the Consolidated Revenue Fund (CRF) in addition to the funds allocated under the Appropriation Act (No. 2) 1995-96 for proposed expenditure on capital works and services; payments to the States and Territories; and other services.

This Bill contains allocations of topical interest, namely:

$32,000,000, for payment to New South Wales

- towards infrastructure costs associated with the establishment of the Fox Film Studios at the Sydney Showground [Division 814 (item No. 01) at p. 16 of the Bill]; and
- for development of the Royal Agricultural Society of New South Wales site at Homebush in Sydney [Division 814 (item No. 02) at p. 16 of the Bill]; and

$800,000 to the Attorney-General’s Department in respect of Hon. Dr C. Lawrence, Minister for Health, legal costs in relation to the Marks Royal Commission [Division 807 (item No. 02 at p. 15 of the Bill)].

Background

Annual authorisations for expenditure are contained in the Appropriation Act (No. 1), which authorises expenditure for the ordinary services of government, and the Appropriation Act (No. 2), which deals with expenditure on capital
works and services, payments to the States and other purposes not authorised by special legislation. The Parliamentary Departments are covered by the Appropriation (Parliamentary Departments) Act. Additional appropriations may be sought in further Appropriation Bills, usually known as the additional estimates, when the appropriation sought in the Appropriation Acts is insufficient for the financial year.

The Appropriation Act (No. 2) 1995-96 appropriated $4,365,461,000 from the CRF.

Outline

The Schedules to the Bill deal with the proposed allocation of funds appropriated by the Bill, a total of $5,765,570,000.

The majority of funds proposed to be appropriated go to the Department of Finance, $326,450,000. The major proposed outlay to the Department of Finance, $322,000,000, is for payment to Qantas in respect of withholding tax on certain aircraft financing transactions.

The proposed appropriation gives effect to arrangements announced in the Qantas sale prospectus, namely:

A dispute exists between the Australian Taxation Office and Qantas in relation to potential withholding tax liabilities associated with some of Qantas’ aircraft financing transactions. Qantas effectively bears the financial risk to third parties associated with any withholding tax liabilities arising from the aircraft financing transactions. Qantas maintains that no withholding tax liabilities exist in relation to the relevant transactions.

In order to remove uncertainty about this for investors in Qantas, the Commonwealth has indemnified Qantas for any settlement payment made by Qantas in respect of these aircraft financing transactions.

To settle the matter, Qantas has offered to make a payment to the ATO to settle all possible past, present and future withholding tax obligations of the parties associated with the relevant financing transactions. The ATO has accepted the offer. Qantas will be reimbursed by the Commonwealth for the settlement payment under the indemnity and its after tax profits will not be affected. Qantas intends to make the settlement payment to the ATO in the six months ending 30 June 1996 immediately following the appropriation of funds by the Commonwealth.

The second highest amount allocated, $70,151,000, is for the Department of the Treasury. The majority of this allocation, $69,400,000 is a loan to the Papua New Guinea to provide balance of payments assistance.

The third highest amount allocated, $46,944,000, is for the Department of Communications and the Arts. The majority of this allocation, $32,000,000, is for payment to New South Wales:
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- towards infrastructure costs associated with the establishment of the Fox Film Studios at the Sydney Showground [Division 814 (item No. 01) at p. 16 of the Bill]; and
- for development of the Royal Agricultural Society of New South Wales site at Homebush in Sydney [Division 814 (item No. 02) at p. 16 of the Bill].

The Australian Democrats Leader, Senator Kernot, is reported in *The Sydney Morning Herald* of October 31 as signalling that the Australian Democrats would not back legislation for the funds unless the Minister for Finance answered certain questions, including:

- the conditions under which Fox will control the site;
- the benefits to Fox of the Commonwealth's contribution; and
- environmental and heritage considerations.

The Federal Opposition's communications spokesperson, Senator Alston, is reported in *The Sydney Morning Herald* of October 30 as being critical of the Government's allocation and saying that:

> it was an extraordinary sum of money and well beyond what we imagined it would be.

The announced positions of the Federal Opposition and the Australian Democrats raises the obvious prospect that the legislation may encounter difficulties in the Senate.

The other topical allocation proposed by this Bill is in respect to the Attorney-General's Department. Division 807 (item No. 02 at p. 15 of the Bill) provides for an allocation of $800,000 to the Attorney-General's Department in respect of the Hon. Dr C. Lawrence's legal costs in relation to the Marks Royal Commission.

**Remarks**

The prospect of this Bill not receiving Senate approval raises the perennial question about the role of the Senate and its powers in relation to money bills.

Section 53 of the Constitution provides:

*Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.*

*The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.*

*The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.*
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The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications. Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Section 53 deals with the powers of the House of Representatives and the Senate in relation to money bills, that is, bills appropriating revenue or moneys or imposing taxation. This bill is an example of a money bill.

The first paragraph of section 53 provides that bills appropriating revenue or moneys or imposing taxation shall not originate in the Senate. The Bill, as per the requirement in section 53, did not originate in the Senate. The Bill originated in the House of Representatives.

The second paragraph of section 53 provides that the Senate may not amend bills imposing taxation or bills appropriating revenue or moneys for the ordinary annual services of the government. The paragraph does not prevent the Senate amending appropriation bills which do not deal with the ordinary annual services of the government.

The question of what an appropriation for the ordinary annual service of the government is has not been definitively settled by the courts. However, the High Court in Brown v. West 169 C.L.R. 195, quoting from House of Representatives Practice (2nd ed), held:

the contemporary parliamentary practice adopted in the light of these provisions. Pursuant to certain principles stated by the Treasurer in 1965, the Bills which are treated as Bills for the ordinary annual services of the Government (the expenditure being described as "for the service of the year") are Appropriation Bill (No. 1) introduced in August, Appropriation Bill (No. 3) usually introduced in the following April, and Supply Bill (No. 1) usually introduced in April or May to make an interim appropriation of funds for the service of the financial year next following until the ensuring Appropriation Act (No. 1) commences: see pp. 419-421. These Bills are not subject to amendment by the Senate. Appropriation Bill (No. 2) contains appropriations for capital works and equipment, grants to States under s. 96 of the Constitution and new policies not authorized by special legislation: p. 421. This Bill relates to expenditure "in respect of the year", and the Senate and the House of Representatives consider that Appropriation Bill (No. 2) is subject to amendment by the Senate: p. 421. Each financial year Appropriation Act (No. 4) and Supply Act (No. 2) follow Appropriation Act (No. 2) in the way in which Appropriation Act (No. 3) and Supply Act (No. 1) follow Appropriation Act (No. 1): see Browning concerning the corresponding Bill, p. 421.²

On the basis of the High Court's obiter dicta in Brown v. West it is arguable that this Bill does not appropriate revenue for the ordinary annual services of government, and as such, can be amended by the Senate.

While the Senate may amend proposed laws appropriating revenue or moneys which are not for the ordinary annual services of government, paragraph 3 of section 53 provides that it may not so amend where the amendment would increase any proposed charge or burden on the people. As noted by R.D. Lumb:
It is difficult to argue that if the Senate were to amend this Bill by removing the Fox Film Studios appropriation or the Hon. Dr C. Lawrence appropriation that it would be a burden on the people.

If this Bill were taken to appropriate money for the ordinary annual services of government, and as such, cannot be amended by the Senate, it remains open for Senate, under paragraph 4 of section 53, to return the Bill to the House of Representatives requesting that it omit or amend any items or provisions contained in it. Where this occurs, the House of Representatives may, if it thinks fit, make any omission or amendment.

It is notable that the Government has chosen to place the Fox and Lawrence appropriations in this Bill (Appropriation Bill (No. 4) 1995-96) rather than Appropriation Bill (No. 3) 1995-96. A consequence of inserting the Fox and Lawrence appropriations in Appropriation Bill (No. 3) would have been that if the Bill were not enacted the continued day to day operations of certain Commonwealth government agencies or programs may have be threatened. In plain English, some agencies or programs may have run out of money.

While a failure to enact this Bill (ie. the House of Representatives not agreeing to any Senate amendments) would not result in the day to day operations of Commonwealth agencies or programs being threatened, it may have a number of serious consequences.

One issue to consider is the status of the statements made in the Qantas public share offer prospectus (June 1995) concerning the Government indemnity for Qantas for the payment by Qantas of its disputed withholding tax liabilities. As noted above, the prospectus clearly states that Qantas intends to make its payment after the appropriation of funds by the Commonwealth (in this Bill). To that extent, the prospectus does not "assure" that there will be an appropriation. The prospectus could not make an assurance, in any event.

In a theoretical sense, statements in a prospectus invite consideration of obligations under the Corporations Law and the Trade Practices Act 1974, particularly in relation to whether they could be viewed as misleading. This issue is raised if only to be noted and dismissed. Under the Corporations Law the statement is not misleading if, after reasonable inquiries, the person making the statement had reasonable grounds to believe until the time of the issue of the prospectus that the statement was true and not misleading (or that the omission was not material). It is suggested that the prospectus statement is not misleading.

Under the Trade Practices Act 1974 a statement is misleading if it is false in terms of existing facts. A prediction for the future is misleading if it was either
false or made with reckless disregard for whether it was true or false. Clearly, the statement in the prospectus properly raises the qualification of awaiting the passage of appropriation by the Parliament, and is therefore not misleading.

What is noted, however, is that the prospectus states that the "... Commonwealth had indemnified Qantas for any settlement payment made by Qantas to the ATO ...". The unresolved issue is what happens if the appropriation is not made by the Parliament.

The consequences of New South Wales not receiving $32 000 000 for the infrastructure costs associated with the establishment of the Fox Film Studios and the development of the new Royal Agricultural Society of New South Wales site at Homebush are unclear and dependant on any arrangements, particularly contractual, that may exist between the Commonwealth, New South Wales and Fox Film Studios.

Main Provisions

The effect of clause 3 is to authorise the Minister for Finance to issue from the CRF an additional $576 570 000 from the CRF for the year ending 30 June 1996 (Schedule 2 gives a portfolio and program breakup of the proposed expenditure).

Clause 4 deals with payments to the States. Schedule 2 deals payments to States and Territories by each Department. Payments to States detailed in Schedule 1 must be made on the terms and conditions determined by the specified Minister. Similarly, payments to a State or Territory for purposes specified in Division 977 of Schedule 2, including:

- financial assistance for wholesale sales tax exemption to Queensland.

Endnotes


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Appropriation Bill (No. 3) 1995-96

Date Introduced: 26 October 1995
House: House of Representatives
Portfolio: Finance
Commencement: Royal Assent

Purpose

To authorise the Minister for Finance to issue an additional $836 356 000 from the Consolidated Revenue Fund, in addition to funds appropriated by the Appropriation Act (No. 1) 1995-96, for the annual services of government.

Background

Annual authorisations for expenditure are contained in the Appropriation Act (No. 1), which authorises expenditure for the ordinary services of government, and the Appropriation Act (No. 2), which deals with expenditure on capital works and services, payments to the States and other purposes not authorised by special legislation. The Parliamentary Departments are covered by the Appropriation (Parliamentary Departments) Act.

Additional appropriations may be sought in further Appropriation Bills, commonly known as additional estimates, when the appropriation sought in the Appropriation Bills is insufficient for the financial year.

The major additional appropriations sought by this Bill include:

Department of Defence - $187 324 000. The major item, $102 827 000, for which additional funds are sought is in respect to running costs. The Second Reading Speech to the Bill states that these funds are to largely meet increases associated with the second foldback under the APS Workplace Bargaining
Appropriation Bill (No. 3) 1995-96

Agreement 1992-94 and the 1995-96 APS Enterprise Agreement. An amount of $46 387 000 is also sought for defence facilities. The Second Reading Speech to the Bill states that these funds are largely attributable to an increased provision for reconfiguration of Russell Offices Building N annex, Salisbury redevelopment, HMAS Waterhen modernisation, Duntroon redevelopment and the Defence National Storage and Distribution Centre.

Department of Employment, Education and Training - $91 542 000. The major item, $54 818 000, for which additional funds are sought is in respect to running costs. It is unclear from the Second Reading Speech and the Bill why such a large additional sum is required. However, it is probable that this amount is largely to meet costs associated with the APS Workplace Bargaining Agreement 1992-94 and/or the 1995-96 APS Enterprise Agreement. An amount of $28 542 000 is also sought for the Employment Services Regulatory Authority. The Second Reading Speech to the Bill states that these funds are largely associated with an increase in the payments for contracted case managers.

Department of the Treasury - $61 785 000. The major item, $39 403 000, for which additional funds are sought is in respect to the Australian Taxation Office. This amount is being sought in respect to running costs. It is unclear from the Second Reading Speech and the Bill why such a large additional sum is required. However, it is probable that this amount is largely to meet costs associated with the APS Workplace Bargaining Agreement 1992-94 and/or the 1995-96 APS Enterprise Agreement.

Main Provisions

Clause 3 authorises the Minister for Finance to issue $836 356 000 from the CRF for the purposes specified in the Schedule to the Bill. The Schedule to this Bill gives a portfolio and program breakdown of proposed expenditure.

Clause 4 allows for additional appropriations for increases in salaries that become payable in 1995-96.

Other provisions of this Bill primarily provide for item changes that may arise from the creation of various proposed agencies, such as the National Film and Sound Archive, the National Science and Technology Centre, the Gene Technology Authority, the Economic Planning Advisory Commission and the Australian Competition and Consumer Commission.
Appropriation (Parliamentary Departments) Bill (No. 2) 1995-96

Date Introduced: 26 October 1995
House: House of Representatives
Portfolio: Finance
Commencement: Royal Assent

Purpose

To authorise the Minister for Finance to issue $3 192 000 from the Consolidated Revenue Fund (CRF), in addition to funds appropriated by the Appropriation (Parliamentary Departments) Act 1995-96, for the operation of the Parliamentary Departments during 1994-95.

Background

Prior to 1981 the appropriation for Parliamentary Departments was included in Appropriation Bill (No. 1), which appropriates funds for the ordinary annual services of the Government for the upcoming financial year.

Since 1982, the appropriation for the Parliamentary Departments has been by a separate Bill following the Government's consideration of the report of the Senate Select Committee on Parliament's Appropriations and Staffing tabled on 18 August 1981. The Government agreed to a separate Appropriation Bill for Parliamentary Departments and further agreed that the Bill would not be treated as a Bill for the ordinary annual services of the Government. The Bill is intended to cover both recurrent and capital expenditure and recognises that detailed control by the Parliament over individual items in this area is not necessary.
Outline

The *Public Service Act 1922* provides that the administration of the Parliament is conducted by five Parliamentary departments - the Department of the House of Representatives, the Department of the Senate, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department.

The Department of the House of Representatives and the Department of the Senate are responsible for the provision of procedural, information and administrative services to Members and Senators respectively. The Department of the Parliamentary Library is responsible for the provision of library, reference and research services to Members and Senators.

The Department of the Parliamentary Reporting Staff is responsible for the provision of transcripts or proceedings of both Houses and their committees. Included in this Department are the Parliamentary Information Systems Office and the Sound and Vision Office. The Joint House Department performs building management, maintenance and catering functions associated with Parliament House.

The additional appropriations sought by Bill relate to the running costs of the Parliamentary Departments. It is stated in the Second Reading Speech to this Bill that the additional appropriations sought relate primarily to adjustments to running costs carryovers from 1994-95, approved salary increases and foldback adjustments under enterprise bargaining arrangements, together with supplementation for parliamentary committee activities.

The major additional appropriations sought by this Bill:

- Parliamentary Reporting Staff - $823 000; and
- Senate - $797 000.

Main Provisions

The Minister Finance will be authorised to issue $3 192 000 from the CRF for the purposes specified in the Schedule of this Bill during 1996-96 (clause 3).

Clause 4 of the Bill allows the Minister to appropriate additional funds from the CRF for increases in salaries and the payments during the year ending 30 June 1995. Amounts issued must be reported to the Parliament.

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6 November 1995
This Digest does not have any legal status. Other sources should be consulted to determine whether this Bill has been enacted and, if so, whether the subsequent Act reflects further amendments.

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