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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

APPROPRIATION (WATER ENTITLEMENTS) BILL 2009-2010

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance and Deregulation,
the Honourable Lindsay Tanner MP)

Appropriation (Water Entitlements) Bill 2009-2010

General Outline

1 This explanatory memorandum accompanies *Appropriation (Water Entitlements) Bill 2009-2010* (the Bill).

2 The main purpose of the Bill is to make annual appropriations from the Consolidated Revenue Fund (CRF) for services that are not the ordinary annual services of the Government in relation to water entitlements.

3 Appropriations for the ordinary annual services of the Government must be contained in a separate bill to other appropriations in accordance with sections 53 and 54 of the *Australian Constitution*. Consequently, the Bill proposes appropriations that are not for the ordinary annual services of the Government.

4 This Explanatory Memorandum should be read in conjunction with various Portfolio Statements, in particular:

- the Portfolio Supplementary Estimates Statements (PSES) which contain details on the appropriations set out in Schedule 1 to the Bill and is published and tabled in the Parliament in relation to the Bill and;

- the 2009-2010 Portfolio Budget Statements (PBS) that were published and tabled in the Parliament in relation to the *Appropriation Bill (No. 1) 2009-2010* and *Appropriation Bill (No. 2) 2009-2010.*

Structure of appropriations in the Bill

5 The Bill provides for the appropriation of specified amounts for expenditure by one Australian Government agency (being an agency under the *Financial Management and Accountability Act 1997* (FMA Act)) on activities related to water entitlements.

6 Part 1 of the Bill deals with definitions, the interpretative role of various Portfolio Statements and the concept of notional payments.

7 Part 2 of the Bill proposes appropriations to make payments of the amounts in Schedule 1 for administered items (clause 7), administered assets

and liabilities items (clause 8), other departmental items (clause 9) and CAC Act body payment items (clause 10).

8 Part 3 of the Bill specifies the ways in which the amounts in Schedule 1 may be adjusted. In addition to the adjustment provisions in Part 3, clause 15 of the Bill recognises that the appropriations in the Bill may also be varied by the FMA Act.

9 Part 4 deals with credits to Special Accounts (clause 14) and sets out the amount appropriated under the Act (clause 15). Clause 15 recognises that the appropriations proposed in the Bill may also be varied by the FMA Act.

Financial Impact

10 This Bill will appropriate the amount specified in Schedule 1.

Notes on clauses

Part 1—Preliminary

Clause 1—Short title

1 This clause specifies the short title of the Bill, once enacted, will be *Appropriation(Water Entitlements) Act 2009-2010*.

Clause 2—Commencement

2 Clause 2 provides for the Bill to commence as an Act on the day of Royal Assent.

Clause 3—Definitions

3 Clause 3 defines the key terms used in the Bill, such as 'administered item', 'other departmental item' and 'current year'.

Clause 4—Portfolio Statements

4 Clause 4 declares that the Portfolio Statements (PBS and the PSES) are extrinsic material under paragraph 15AB(2)(g) of the *Acts Interpretation Act 1901* (AI Act) that may be used to ascertain the meaning of certain provisions in the Bill in accordance with subsection 15AB(1) of the AI Act. The purpose of the Portfolio Statements is to provide information on the proposed allocation of resources to Government outcomes by agencies within the portfolio. The Portfolio Statements provide information, explanation and justification to enable Parliament to understand the purpose of each appropriation proposed in the Bill. The Portfolio Statements are defined in the Bill, at clause 3, to mean the PBS and PSES.

Clause 5—Notional payments, receipts etc

5 Clause 5 ensures that payments between agencies result in a debit to the appropriation to the paying agency. For example the payments of the amounts in Schedule 1 of the Bill from one FMA Act agency to another do not require an appropriation. However, for reasons of financial discipline and transparency, the practice has arisen for these payments between agencies to be treated as though they required an appropriation, and to debit an appropriation when such payments are made.

6 Clause 5 provides that these notional transactions between agencies are to be treated as if they were real transactions and therefore require the use of a drawing right and the debiting of an appropriation made by Parliament. Where an FMA Act agency makes a payment, whether to another FMA Act agency, or another part of the same agency (such as a different 'business unit' within the agency) this is to be treated as a 'real' payment. This means that the appropriation made by Parliament is extinguished by the amount of the notional payment, even though no payment is actually made from the CRF. Similarly a notional receipt in such a situation is to be treated by the receiving agency (where relevant) as if it were a real receipt.

Part 2—Appropriation items

Clause 6—Summary of appropriations

7 Clause 6 sets out the total of the appropriations in Schedule 1 of the Bill. Importantly, the amounts in Schedule 1 may be adjusted under the provisions in Part 3 of the Bill. In particular:

- Administered items may be reduced in accordance with clause 11.
- Administered assets and liabilities items and other departmental items may be reduced in accordance with clause 12.
- CAC Act body payment items may be reduced in accordance with clause 13.

8 The amounts in Schedule 1 of the Bill may further be adjusted in accordance with sections 30 to 32 of the FMA Act. Specifically:

- Section 30 allows an agency to re-credit (to an appropriation that had been relied upon for an initial payment by the agency) an amount equivalent to the repayment. The re-crediting or reinstatement authorised by section 30 can result in the total amount paid from the CRF in gross terms exceeding the amount specified in an item. Section 30 also applies to notional transactions between and within agencies.
- Appropriations may be adjusted by amounts recovered by an agency from the Australian Taxation Office for Goods and Services Tax (GST), in accordance with section 30A of the FMA Act. The amounts specified in Schedule 1 exclude recoverable GST. The appropriations shown represent the net amount that Parliament is asked to allocate to particular purposes. Section 30A has the effect of increasing, or supplementing, an appropriation by the amount of the GST qualifying amount arising from payments in respect of the appropriation. As a result, there is sufficient

appropriation for payments under an appropriation item provided that the amount of those payments, less the amount of recoverable GST, can be met from the initial amount shown against the item in Schedule 1. Section 30A also applies to notional transactions between and within agencies.

- Departmental items may be increased to take into account certain other amounts received by an agency, if those receipts are prescribed by the *Financial Management and Accountability Regulations 1997,* in accordance with section 31 of the FMA Act.
- Items may be adjusted to take into account the transfer of functions between agencies, in accordance with section 32 of the FMA Act. It is possible that adjustments under section 32 may result in new items and/or outcomes being created in an Appropriation Act. It might also result in amounts being shifted between Appropriation Acts.

Clause 7—Administered items

9 Subclause 7(1) provides for the appropriation of new administered expense amounts to be applied by an agency for the purpose of contributing to the outcome for an agency. An administered item is defined in clause 3 to be the amounts set out in Schedule 1 opposite an outcome for an agency under the heading "New Administered Expenses". The administered expenses in the Bill are appropriated separately for outcomes to make clear what the funding is intended to achieve. Schedule 1 specifies how much may be expended on each outcome. New Administered Expenses are proposed when an agency is to carry out new administered activities for a new outcome. Schedule 1 does not contain any administered items.

10 The purposes for which each administered item can be spent are set out in subclause 7(2). Subclause 7(2) provides that where the Portfolio Statements indicate a particular activity is in respect of a particular outcome, then expenditure on that activity is taken to be expenditure for the purpose of contributing to achieving that outcome. The outcomes are not, however, necessarily tied to the existence of a particular agency (eg, abolishing a department will not effect the valid operation of an appropriation for an administered item for an outcome of that department, because the purpose of the appropriation does not depend on the existence of the department).

11 New administered expenses are those administered by an agency on behalf of the Government (eg, certain grants, benefits and transfer payments). These payments are usually made pursuant to eligibility rules and conditions established by the Government or Parliament. Specifically:

- administered items are tied to outcomes, departmental items are not;
- administered items must be spent in accordance with rules and conditions established by Government or Parliament; and
- there is a process in clause 11 for dealing with administered items that are not fully expensed or spent during the financial year.

12 The Finance Minister manages payments from administered items by agencies through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act. Drawing rights control who may spend money from appropriations, and allow for conditions and limits to be set by the Finance Minister (or the Finance Minister's delegate) in relation to those activities.

Clause 8—Administered assets and liabilities items

13 Clause 8 provides amounts in Schedule 1 to acquire administered assets, enhance existing administered assets and/or discharge administered liabilities relating to activities administered by agencies on behalf of the Government. Administered assets and liabilities appropriations are provided for functions managed by an agency on behalf of the Government. Administered assets and liabilities items can be applied for any outcomes of the agency in the Appropriation Acts listed in clause 8(1)(a) to (d) inclusive.

14 Amounts appropriated for administered assets and liabilities items can be subject to a reduction process in accordance with clause 12 of the Bill. Under clause 12, the Minister responsible for an agency may make a written request to ask the Finance Minister to make a determination to reduce an item of an agency. If the Finance Minister is responsible for the agency the Chief Executive of the agency may make the request.

15 The Finance Minister manages payments from administered assets and liabilities items by agencies through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act. Drawing rights control who may spend money from appropriations, and they allow for conditions and limits to be set by the Finance Minister (or the Finance Minister's delegate) in relation to those activities.

Clause 9—Other departmental items

16 Clause 9 appropriates departmental non-operating appropriations in the form of equity injections, loans or previous years' outputs, over which the agency also exercises control. Schedule 1 does not contain any other departmental items. This clause provides that the amount specified in other

departmental items for an agency may be applied for the departmental expenditure of the agency. In short:

- ‘equity injections’ can be provided to agencies to, for example, enable investments in new capacity to produce departmental outputs;
- ‘loans’ can be provided to agencies when an investment to produce future departmental outputs is expected to result in a direct return such as an efficiency saving (these are generally not formal loans established in contracts); and
- ‘previous years’ outputs’ appropriations are used to restore appropriations used to deliver departmental outputs in the previous year (eg, when a decision is made to implement a new activity after the date for inclusion in the additional appropriation bills). Expenditure on such activities are met initially from existing appropriations which are then replenished by the previous years’ outputs appropriations in this appropriation bill.

17 Other departmental items are not expressed in terms of a particular financial year and do not automatically lapse. Other departmental items are available until they are spent. For example, equity injection appropriations provide funding to meet the cost expected to be incurred in the Budget year to acquire a new asset; however, for a number of reasons, some part of the appropriation might not be required until a later financial year. Amounts appropriated for an other departmental item can be subject to a reduction process in accordance with clause 12 of the Bill.

18 The Finance Minister manages the payment from other departmental items by agencies through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act. Drawing rights control who may spend from appropriations, and allow for conditions and limits to be set by the Finance Minister (or the Finance Minister’s delegate) in relation to those activities.

Clause 10—CAC Act body payment items

19 Clause 10 provides for direct appropriations of money for CAC Act bodies to be paid from the CRF by the relevant department. Clause 10 provides that payments for CAC Act bodies must be paid to those bodies to be used for the purposes of those bodies. Schedule 1 does not contain any CAC Act body payment items.

20 A CAC Act body is defined in clause 3 to be a Commonwealth authority or a Commonwealth company within the meaning of the CAC Act. Many CAC

Act bodies receive funding directly from appropriations. However, these bodies are legally and financially separate from the Commonwealth and as a result, do not debit appropriations or make payments from the CRF.

21 CAC Act body payments will be initiated by requests to the relevant portfolio agencies from the CAC Act bodies. The Finance Minister manages appropriations for CAC Act bodies through the issuing of drawing rights in accordance with sections 26 and 27 of the FMA Act. Drawing rights control who may spend money from appropriations, and allow for conditions and limits to be set by the Finance Minister (or the Finance Minister’s delegate) in relation to those payments. CAC Act bodies will hold the amounts paid to them on their own account.

22 The purpose of subclause 10(2) is to clarify that subclause 10(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.

23 The full amount of the CAC Act body payments specified in Schedule 1 may be reduced in accordance with clause 13. Subclause 13(5) provides that subclause 10(2) does not prevent the CAC Act body payments in Schedule 1 being reduced.

24 In addition to the annual appropriations, some CAC Act bodies may also receive public money through special appropriations and from related entities such as a portfolio department. Many CAC Act bodies also receive funds from external sources.

Part 3—Adjusting appropriation items

25 Part 3 of the Bill includes provisions that may reduce the amounts specified in Schedule 1. The reduction provisions are contained in clauses 11 through 13 inclusive.

Clause 11—Reducing administered items

26 Clause 11 provides for amounts of administered items which are not required at the end of the current year to be extinguished. If the Government then decides that the amounts should be spent in a later financial year, it must request Parliament to appropriate these amounts in future Appropriation Acts.

27 Clause 11 limits the amount that may be applied for those items to the amount reported in an agency’s annual report. Subclause 11(1) provides that if

the amount published in the annual report is less than the amount of the item, then the relevant item is taken to be reduced to the amount specified in the annual report. The amount of the item specified in Schedule 1 of the Bill may be increased or reduced by the other clauses of Part 3 of the Bill or in accordance with sections 30 to 32 of the FMA Act. The amount in the annual report must therefore be compared with the amount for the item in Schedule 1 together with any adjustments that have been made to that amount.

28 Subclause 11(2) retains a power for the Finance Minister to determine that an amount published in the financial statements of an agency is taken to be an amount specified in his or her determination. The power in paragraph 11(2)(b) is to ensure that the amount published for the item can be corrected if, for example, the amount is erroneous or requires updating after an agency's annual report is published.

29 Subclause 11(3) provides that a determination made under subclause 11(2) is a legislative instrument.

30 Despite subsection 44(2) of the *Legislative Instruments Act 2003* (LI Act), which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 11(3) provides that a determination reducing an administered item is subject to disallowance in accordance with section 42 of the LI Act. Parliament retains the power to disallow a determination to reduce one or more of these items because the determination will reduce the amount of an appropriation authorised by Parliament. Subclause 11(3) also confirms subsection 54(2) of the LI Act, which provides that instruments made under Appropriation Acts are not subject to sunsetting.

Clause 12—Reducing administered assets and liabilities items and other departmental items

31 Administered assets and liabilities items and other departmental items remain available until the appropriation is spent or reduced in accordance with clause 12. This clause enables the Chief Executive of an agency to comply with his or her obligations under section 44 of the FMA Act to promote the efficient, effective and ethical use of any surplus appropriations. Agencies should only spend all of an administered assets and liabilities item or an other departmental item if there are government decisions to support that expenditure. Examples of where clause 12 may be appropriate to reduce an administered assets and liabilities item or an other departmental item include:

- an excessive amount of appropriation was made in error;

- an amount is reclassified and appropriated again under another kind of appropriation (eg, where an amount appropriated as departmental is to be reclassified as administered and a new administered appropriation is provided). The existing appropriation remains legally available even though there is no Government authority to spend the funds;
- efficiency savings result in a program costing less than expected; or
- a program is abolished under Government policy before the appropriation is expended.

32 Paragraph 12(1)(a) enables the Minister responsible for an agency to ask the Finance Minister to reduce an administered assets and liabilities item or an other departmental item for that agency. Paragraph 12(1)(b) enables the Chief Executive of an agency for which the Finance Minister is responsible to ask the Finance Minister to reduce an administered assets and liabilities item or an other departmental item for that agency. Subclause 12(5) assists readers by noting that a request under subclause 12(1) is not a legislative instrument within the meaning of section 5 of the LI Act.

33 Subclause 12(2) enables the Finance Minister to make a written determination to reduce an administered assets and liabilities item or an other departmental item. The Finance Minister is not obliged to act on a request. However, if the Finance Minister does:

- the determination must not be greater than the amount specified in the request: subclause 12(2);
- the determination may not reduce the item below nil: subclause 12(3); and
- the item in Schedule 1 will be taken to be reduced in accordance with the determination of the Finance Minister: subclause 12(4).

34 Subclause 12(6) provides that a determination made under subclause 12(2) is a legislative instrument.

35 Despite subsection 44(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 12(6) provides that a determination reducing an administered assets and liabilities item or other departmental item is subject to disallowance in accordance with section 42 of the LI Act. Parliament retains the power to disallow a determination to reduce one of these items because any such determination will reduce the amount of an appropriation authorised by Parliament. Subclause 12(6) also confirms subsection 54(2) of the LI Act,

which provides that instruments made under Appropriation Acts are not subject to sunsetting.

Clause 13—Reducing CAC Act body payment items

36 Clause 13 provides a similar process for reducing CAC Act body payment items to the process for reducing departmental items. Subclause 13(1) enables a Minister responsible for a CAC Act body, or in the case of a CAC Act body for which the Finance Minister is responsible, the Secretary of the Finance Department, to ask the Finance Minister to reduce a CAC Act body payment item for that body.. Subclause 13(6) assists readers by noting that a request under subclause 13(1) is not a legislative instrument within the meaning of section 5 of the LI Act.

37 Subclause 13(2) enables the Finance Minister to make a written determination to reduce a CAC Act body payment item. The Finance Minister is not obliged to act on a request to reduce excess CAC Act body payment item. However, if the Finance Minister does:

- the determination will not be greater than the amount specified in the request: subclause 13(2);
- the determination may not reduce the CAC Act body payment item below nil: subclause 13(3); and
- the CAC Act body payment item in Schedule 1 will be taken to be reduced in accordance with the determination of the Finance Minister: subclause 13(4).

38 Subclause 13(5) clarifies that the full amount that is required to be paid to a CAC Act body by subclause 10(2) of the Bill may be reduced in accordance with this clause 13.

39 Subclause 13(7) provides that a determination made under subclause 13(2) is a legislative instrument.

40 Despite subsection 44(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 13(7) provides that a determination reducing a CAC Act body payment item is subject to disallowance in accordance with section 42 of the LI Act. Parliament retains the power to disallow a determination to reduce a CAC Act body payment item because any such determination will reduce the amount of an appropriation authorised by Parliament. Subclause 13(7) also confirms subsection 54(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to sunsetting.

Part 4—Miscellaneous

Clause 14—Crediting amounts to Special Accounts

41 Clause 14 provides that if the purpose of an item in Schedule 1 is also the purpose of a Special Account (regardless of whether the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to the Special Account. Special Accounts may be established under the FMA Act by a determination of the Finance Minister (section 20) or another Act (section 21). The determination or Act that establishes the Special Account will specify the purposes of the Special Account.

Clause 15—Appropriations of the Consolidated Revenue Fund

42 Clause 15 provides that the CRF is appropriated as necessary for the purposes of the Bill. Significantly this clause notes that the amounts appropriated by the Bill may be affected by the FMA Act, in particular sections 30 to 32 of the FMA Act (see clause 6).

Schedule 1—Services for which money is appropriated

43 Schedule 1 specifies the services for which amounts will be appropriated by the Bill. Schedule 1 contains a summary table which lists the total amounts for each portfolio. A separate summary table is included with further detail for the portfolio, with another table detailing the appropriation for the agency.

44 Schedule 1includes for information purposes a figure for the previous financial year labelled the Actual Available Appropriation. The figure is printed in italics under each appropriation amount to provide a comparison with the proposed appropriations. The Actual Available Appropriation does not affect the amounts available at law.

45 More details about the appropriations in Schedule 1 are contained in the Portfolio Statements and the second reading speech.