

2010-2011-2012-2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

APPROPRIATION BILL (NO. 2) 2013-2014

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance and Deregulation,
Senator the Honourable Penny Wong)

Table of Acronyms and Defined Terms

AOFM	The Australian Office of Financial Management
AFM	Advance to the Finance Minister
AI Act	<i>Acts Interpretation Act 1901</i>
BAF	Building Australia Fund
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CRF	Consolidated Revenue Fund
EIF	Education Investment Fund
Finance Minister	Minister for Finance and Deregulation
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMA Regulations	<i>Financial Management and Accountability Regulations 1997</i>
GST	Goods and Services Tax
HHF	Health and Hospitals Fund
LI Act	<i>Legislative Instruments Act 2003</i>
PB Statements	Portfolio Budget Statements

Appropriation Bill (No. 2) 2013-2014

General Outline

1 This Explanatory Memorandum accompanies *Appropriation Bill (No. 2) 2013-2014* (the Bill).

2 The main purposes of the Bill are to propose appropriations from the Consolidated Revenue Fund (CRF) for services that are not the ordinary annual services of the Government.

3 Appropriations for the ordinary annual services of the Government must be contained in a separate Bill from 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. Annual appropriations that are for the ordinary annual services of the Government are proposed in *Appropriation Bill (No. 1) 2013-2014*. Other annual appropriations that are not for the ordinary annual services of the Government are proposed in *Appropriation (Parliamentary Departments) Bill (No. 1) 2013-2014*.

4 This Explanatory Memorandum should be read in conjunction with the 2013-2014 Portfolio Budget Statements (PB Statements) which contain detail on the appropriations set out in Schedule 2 of the Bill. The PB Statements are published and tabled in the Parliament in relation to the Bill.

Structure of appropriations in the Bill

5 The Bill provides for the appropriation of specified amounts for expenditure by Australian Government agencies, primarily being agencies under the *Financial Management and Accountability Act 1997* (FMA Act) plus payments to bodies under the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

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

7 Part 2 of the Bill proposes appropriations to make payments of the amounts in Schedule 2 for State, ACT, NT and local government items (clause 7), administered items (clause 8), administered assets and liabilities items (clause 9), other departmental items (clause 10) and CAC Act body payment items (clause 11).

8 Part 3 of the Bill specifies the ways in which the amounts in Schedule 2 may be adjusted.

9 Part 4 deals with the general drawing rights limits applicable for the current year (current year is defined in clause 3 of the Bill) to the *Building Australia Fund*, *Education Investment Fund* and the *Health and Hospitals Fund* established by the *Nation Building Funds Act 2008*. This Part also deals with the general drawing rights limits, for the current year, for the purposes of section 9 and section 16 of the *Federal Financial Relations Act 2009*, which is detailed under the subheadings “General purpose financial assistance” and “National partnership payments”. Part 4 also deals with adjustments to the general drawing rights limit for the Goods and Services Tax (GST).

10 Part 5 deals with credits to Special Accounts (clause 18), the conditions that apply to payments of State, ACT, NT and local government items (clause 19 and Schedule 1) and provides for amounts to be appropriated as necessary (clause 20). Clause 20 recognises that the appropriations proposed in the Bill may also be varied by the FMA Act.

Financial Impact

11 The Bill, if enacted, would appropriate the amounts specified in Schedule 2.

Statement of compatibility with human rights

1 The Bill seeks to appropriate money for the ordinary annual services of the Government.

2 Accordingly, this Appropriation Bill performs an important constitutional function, by authorising the withdrawal of money from the Consolidated Revenue Fund for the broad purposes identified in the Bill.

3 However, as the High Court has emphasised, beyond this, the Appropriation Acts do not create rights and nor do they, importantly, impose any duties.

4 Given that the legal effect of Appropriation Bills is limited in this way, the Appropriation Bill is not seen as engaging, or otherwise affecting, the rights or freedoms relevant to the *Human Rights (Parliamentary Scrutiny) Act 2011*.

5 Detailed information on the relevant appropriations, however, is contained in the Budget Papers and the Portfolio Budget Statements.

Notes on clauses

Part 1—Preliminary

Clause 1—Short title

1 This clause specifies that the short title of the Bill, once enacted, will be *Appropriation Act (No. 2) 2013-2014*.

Clause 2—Commencement

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

Clause 3—Definitions

3 Clause 3 defines the key terms used in the Bill, such as “administered item”, “Agency”, “GST qualifying amount”, “other departmental item”, “current year”, and “State, ACT, NT and local government item”.

Clause 4—Portfolio Statements

4 Clause 4 declares that the PB Statements 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 accordance with subsection 15AB(1) of the AI Act. The purpose of the PB Statements is to provide information on the proposed allocation of resources to Government outcomes by agencies within each portfolio. The PB Statements provide information to enable Parliament to understand the purpose of appropriations proposed in the Bill. The term “Portfolio Statements” is defined in the Bill, at clause 3, to mean the Portfolio Budget Statements.

Clause 5—Notional payments, receipts etc.

5 Clause 5 ensures that payments between agencies result in a debit from the appropriation for the paying agency. For example, the payments of the amounts in Schedule 2 from one FMA Act agency to another do not require, in a constitutional sense, an appropriation, because both agencies operate within the CRF. 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 notional payments are made.

6 Clause 5 provides that notional transactions between agencies are to be treated as if they were real transactions. Notional transactions, therefore, require the use of a drawing right and the debiting of an appropriation made by Parliament. When 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), it is to be treated as a “real” payment.

7 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. This does not mean every internal transfer of public money involves a notional payment and receipt. As explained in regulation 19 of the *Financial Management and Accountability Regulations 1997* (FMA Regulations), some transfers of public money from one official account to another do not involve a notional payment or debiting an appropriation.

Part 2—Appropriation items

Clause 6—Summary of appropriations

8 Clause 6 sets out the total of the appropriations in Schedule 2 of the Bill. Importantly, the amounts in Schedule 2 may be adjusted under the provisions in Part 3 of the Bill. In particular:

- State, ACT, NT and local government items and administered items may be reduced in accordance with clause 12;
- Administered assets and liabilities items and other departmental items may be reduced in accordance with clause 13;
- CAC Act body payment items may be reduced in accordance with clause 14; and
- items may be increased by a determination under clause 15 (Advance to the Finance Minister).

9 The amounts in Schedule 2 of the Bill may be adjusted further in accordance with sections 30, 30A, 31 and 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 recoverable 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 2 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 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 2. 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 FMA Regulations, in accordance with section 31 of the FMA Act. For example, FMA Regulation 15 prescribes amounts that offset costs in relation to the activities of an agency and amounts that relate to an employee's leave (including amounts received under the paid parental leave scheme that was established on 1 January 2011). FMA Regulation 15 also establishes a mechanism for agencies to hold money in a trust or similar arrangement as departmental.
- 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 transferred between Appropriation Acts.

Clause 7— State, ACT, NT and local government items

10 Clause 7 provides administered appropriations for financial assistance to the States, ACT, NT and local governments. State, ACT, NT and local government items are appropriated separately for outcomes, making it clear what the funding is intended to achieve. The amount specified in Schedule 2 for an outcome may be applied by an agency for the purpose of making payments to any of the States, ACT, NT or local government authorities for the purpose of achieving that outcome.

11 Clauses 7 and 18 delegate Parliament's power under section 96 of the Constitution to impose terms and conditions on payments of financial assistance to the States to the responsible Ministers listed in Schedule 1 of the Bill. Schedule 1 also lists the Ministers who may determine the amounts and timing of those payments. There is a process in clause 12 for dealing with State, ACT, NT and local government items that are not fully expensed or spent during the year. These payments are usually made pursuant to eligibility rules and conditions established by the Government or Parliament. Specifically, the Finance Minister manages payments to State, ACT, NT and local governments 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 items

12 Subclause 8(1) provides for the appropriation of new administered outcome 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 an amount set out in Schedule 2 opposite an outcome for an agency under the heading “New Administered Outcomes”. New Administered Outcomes are those administered by an agency on behalf of the government (e.g. certain grants, benefits and transfer payments).

13 As with administered items in *Appropriation Bill (No. 1) 2013-2014*, New Administered Outcomes are appropriated separately for outcomes (i.e. unlike departmental items, the split across outcomes is not notional), making it clear what the funding is intended to achieve. Schedule 2 specifies how much can be expended on each outcome. New Administered Outcomes are proposed when:

- an agency seeks administered operating appropriations for the first time (including existing agencies that have received departmental operating appropriations in the past);
- annual administered operating appropriations are proposed for the first time, for programs previously funded by special appropriations; and
- an agency’s outcomes are changed to reflect new program objectives, strategies and/or activities.

14 The purposes for which each administered item can be spent are set out in subclause 8(2). Subclause 8(2) provides that where the PB 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 (e.g. abolishing a department will not affect 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).

15 New administered outcomes are those administered by an agency on behalf of the Government (e.g. certain grants, benefits and transfer payments). These payments are usually made pursuant to eligibility rules and conditions established by the Government or the 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 the Government or the Parliament; and
- there is a process in clause 12 for dealing with administered items that are not fully expensed or spent during the financial year.

16 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 9—Administered assets and liabilities items

17 Clause 9 provides amounts in Schedule 2 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 Schedule 2 of this Bill, or Schedule 1 to *Appropriation Bill (No. 1) 2013-2014*.

18 Amounts appropriated for administered assets and liabilities items can be subject to a reduction process in accordance with clause 13 of the Bill. Under clause 13, 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.

19 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 10—Other departmental items

20 Clause 10 appropriates departmental non-operating appropriations in the form of equity injections and loans, over which the agency also exercises control. 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 investment in assets to facilitate departmental activities and for Designated Collecting Institutions to purchase heritage and cultural assets; and
- “loans” can be provided to agencies when an investment in future departmental activities is expected to result in a direct return such as an efficiency saving (these are generally not formal loans established in contracts).

21 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 other departmental items can be subject to a reduction process in accordance with clause 13 of the Bill. Under clause 13, a written request must be made to the Finance Minister to enable a determination to be made to reduce an other departmental item of an agency.

22 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 11—CAC Act body payment items

23 Clause 11 provides for direct appropriations of money for CAC Act bodies to be paid from the CRF by the relevant department. Clause 11 provides that payments for CAC Act bodies must be used for the purposes of those bodies.

24 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 separate from the Commonwealth, and as a result, do not debit appropriations or make payments from the CRF.

25 CAC Act body payments are initiated by requests to the relevant portfolio departments 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 hold the amounts paid to them on their own account.

26 Subclause 11(2) provides that if a CAC Act body is subject to another Act that requires amounts appropriated by Parliament for the purposes of that body to be paid to the body, then the full amount of the CAC Act body payment must be paid to the body. The purpose of subclause 11(2) is to clarify that subclause 11(1) is not intended to qualify any obligations in other legislation regulating a CAC Act body, where that other legislation requires the Commonwealth to pay the full amount appropriated for the purposes of the body.

27 The full amount of the CAC Act body payments specified in Schedule 2 may be reduced in accordance with clause 14. Subclause 14(6) provides that subclause 11(2) does not prevent the CAC Act body payments in Schedule 2 being reduced.

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

Part 3—Adjusting appropriation items

29 Part 3 of the Bill provides for reductions or increases to the amounts specified in Schedule 2. The reduction provisions are contained in clauses 12 through 14 inclusive. The Advance to the Finance Minister provision that can increase the amounts specified in Schedule 2 is contained in clause 15.

30 The reduction provisions were amended in the 2010-11 Budget Bills to introduce additional mechanisms for initiating the reduction of unspent items. The purpose of those changes was to increase the efficiency of the reduction process particularly when surplus appropriations result from government decisions.

Clause 12—Reducing State, ACT, NT and local government items and administered items

31 Clause 12 provides for amounts of State, ACT, NT and local government items and 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 Bills.

32 Clause 12 limits the amount that may be applied for those items to the amount reported in an agency's annual report. Subclause 12(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 2 of the Bill may be increased or reduced by the other clauses of Part 3 of the Bill or in accordance with sections 30, 30A and 32 of the FMA Act. The amount in the annual report must therefore be compared with the amount for the item in Schedule 2, together with any adjustments that have been made to that amount.

33 Subparagraph 12(2)(a)(i) retains a power for the Finance Minister to make a written determination specifying that subclause 12(1) does not apply in relation to the item. Subparagraph 12(2)(a)(ii) enables 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 12(2)(b) is to ensure that the amount published for the item can be corrected if, for example, the amount is erroneous. Additionally, the power in paragraph 12(2)(b) is to provide the Finance Minister with the capacity to make a written determination in those cases where an agency has failed to specify a required amount in its annual report. In those cases, the amount specified in the determination as the required amount will be taken to be the required amount for the purposes of subclause 12(1).

34 Subclause 12(3) provides that a determination made under subclause 12(2) is a legislative instrument.

35 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 12(3) provides that a determination reducing a State, ACT, NT and local government items or 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 12(3) also confirms subsection 54(2) of the LI Act, which provides that instruments made under Appropriation Acts are not subject to sunseting.

Clause 13—Reducing administered assets and liabilities items and other departmental items

36 Clause 13 provides a process for reducing administered assets and liabilities items and other departmental items. Generally, these items remain available until the appropriation is spent or reduced in accordance with clause 13. This clause enables surplus departmental item appropriation amounts to be reduced to promote the efficient, effective, economical and ethical management 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 13 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 (e.g. where an amount appropriated as departmental is to be reclassified as administered and a new administered appropriation is provided). The existing departmental 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.

37 Paragraph 13(1)(a) enables the Prime Minister, or a Minister acting on behalf of the Prime Minister, to request the Finance Minister to reduce an administered assets and liabilities item or an other departmental item for an agency. Paragraph 13(1)(b) enables the Minister responsible for a particular agency to request the Finance Minister to reduce an administered assets and liabilities item or an other departmental item for an agency for which they are responsible. Paragraph 13(1)(c) enables the Chief Executive of an agency for which the Finance Minister is responsible, to request the Finance Minister to reduce an administered assets and liabilities item or an other departmental item for that agency. 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, on the basis that it is requesting a determination to be made and it is the determination that has substantive effect.

38 Subclause 13(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 to reduce excess appropriations. However, if the Finance Minister does:

- the determination must be for the amount specified in the request: subclause 13(2);
- the determination may not reduce the item below nil: subclause 13(3); and
- the item in Schedule 2 will be taken to be reduced in accordance with the determination of the Finance Minister: subclause 13(4).

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 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 a departmental 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 sunseting.

41 Subclause 13(5) provides that a determination made under subclause 13(2) once made, must not be rescinded, revoked, amended or varied, other than to correct an error. Subclause 13(5) applies despite 33(3) of the AI Act. This subclause intends to exclude the operation of 33(3) of the AI Act from determinations made under subclause 13(2). The purpose of subclause 13(5) is to ensure that the appropriation, if reduced under the clause, cannot be restored by means of a later determination.

Clause 14—Reducing CAC Act body payment items

42 Clause 14 provides a similar process for reducing CAC Act body payment items to the process for reducing administered assets and liabilities items and other departmental items. Paragraph 14(1)(a) enables the Prime Minister, or a Minister acting on behalf of the Prime Minister, to request that the Finance Minister reduce a CAC Act body payment item for an agency. Paragraph 14(1)(b) enables the Minister responsible for a particular agency to request the Finance Minister to reduce a CAC Act body payment item for a body for which they are responsible. Paragraph 14(1)(c) enables the Secretary of the Department of Finance and Deregulation to request the Finance Minister to reduce a CAC Act body payment item for a body in the Finance and Deregulation portfolio. Subclause 14(7) assists readers by noting that a request under subclause 14(1) is not a legislative instrument within the meaning of section 5 of the LI Act, on the basis that it is requesting a determination to be made and it is the determination that has substantive effect.

43 Subclause 14(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 an excess CAC Act body payment item. However, if the Finance Minister does:

- the determination must be for the amount specified in the request: subclause 14(2);
- the determination may not reduce the CAC Act body payment item below nil: subclause 14(3); and
- the CAC Act body payment item in Schedule 2 will be taken to be reduced in accordance with the determination of the Finance Minister: subclause 14(4).

44 Subclause 14(6) provides that the full amount that is required to be paid to a CAC Act body by subclause 11(2) of the Bill may be reduced in accordance with this clause 14.

45 Subclause 14(8) provides that a determination made under subclause 14(2) is a legislative instrument.

46 Despite subsection 44(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 14(8) 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 14(8) also confirms subsection 54(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to sunseting.

47 Subclause 14(5) provides that a determination made under subclause 14(2) once made, must not be rescinded, revoked, amended or varied, other than to correct an error. Subclause 14(5) applies despite subsection 33(3) of the AI Act. This subclause intends to exclude the operation of subsection 33(3) of the AI Act from determinations made under subclause 14(2). The purpose of subclause 14(5) is to ensure that the appropriation, if reduced under the clause, cannot be restored by means of a later determination.

Clause 15—Advance to the Finance Minister

48 Clause 15 enables the Finance Minister to provide additional appropriations for items when satisfied there is an urgent need for that expenditure, and the existing appropriation is inadequate. This additional appropriation is referred to as the Advance to the Finance Minister (AFM). Subclause 15(1) establishes the criteria about which the Finance Minister must be satisfied before determining to add an amount to an item of an agency. The Finance Minister will only consider issuing an amount under subclause 15(1) if satisfied there is an urgent need for expenditure that is not provided for, or is insufficiently provided for, in Schedule 2, because of an omission or understatement, or because of unforeseen circumstances¹. Generally, the other appropriation adjustment options in Part 3 of the Bill or under sections 30, 30A and 32 of the FMA Act must have been exhausted before the Finance Minister will make a determination under subclause 15(2).

49 Subclause 15(2) enables the Finance Minister to make a determination to add an amount from the AFM to an item in Schedule 2, to a new item not already in Schedule 2, or to a new outcome.

50 A further AFM provision will be requested in the Additional Estimates Appropriation Bills for the current year if pressures at that time suggest the AFM in this Bill will be close to being exhausted before the end of the financial year.

51 Clause 15(3) provides that the total amount that can be determined under the AFM provision is \$380 million.

52 Subclause 15(4) provides that a determination under subclause 15(2) is a legislative instrument, which must be tabled in Parliament but is not subject to disallowance or sunseting.

¹ Under the AFM guidelines, expenditure is urgent if required within two weeks. The guidelines are available at <http://www.finance.gov.au/budget/budget-process/advance-to-finance-minister.html>.

53 A subclause 15(2) determination is not subject to disallowance as this would frustrate the purpose of the provision, which is to provide additional appropriation for urgent expenditure. Further, an AFM is not subject to the sunset provisions of the LI Act, because the amount allocated from the AFM would be extinguished when it is spent.

Part 4—General drawing rights limits

Clause 16—General drawing rights limits

54 The Finance Minister manages the spending of appropriations 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 annual or special 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.

55 In addition to any conditions or limits imposed by drawing rights issued by the Finance Minister, Parliament may also approve annual general drawing rights limits for the following special appropriations:

- the amounts that may be debited or spent from 3 Special Accounts established by the *Nation-building Funds Act 2008*; and
- the amounts that may be spent for general purpose financial assistance or national partnership payments under the *Federal Financial Relations Act 2009*.

56 Specifying a general drawing rights limit in clause 16, and thereby limiting the ability to issue drawing rights to that limit, is an effective mechanism to manage expenditure of public money as the official or Minister making a payment of public money cannot do so without the authority of a valid drawing right under the FMA Act. The purpose of so doing is to provide Parliament with a transparent mechanism by which it may review the rate at which amounts are committed for expenditure.

57 Note that clause 16 is not an appropriation for either of the *Nation-building Funds Act 2008* or the *Federal Financial Relations Act 2009*.

Nation-building Funds Act 2008

58 For the purposes of section 109 of the *Nation-building Funds Act 2008*, subclause 16(1) provides the general drawing rights limit for the *Building Australia Fund* (BAF) for the current year.

59 The BAF is established under section 12 of the *Nation-building Funds Act 2008*. It consists of the investments of the BAF and the BAF Special Account, which is a Special Account recognised under section 21 of the FMA Act and

established under section 13 of the *Nation-building Funds Act 2008*. The general drawing rights limit applies to the main purposes of the BAF, namely making payments in relation to the creation or development of transport infrastructure, communications infrastructure, energy infrastructure and water infrastructure. The general drawing rights limit does not apply to payments for eligible Nation Broadband Network matters.

60 For the purposes of section 199 of the *Nation-building Funds Act 2008*, subclause 16(2) provides the general drawing rights limit for the *Education Investment Fund* (EIF) for the current year.

61 The EIF is established under section 131 of the *Nation-building Funds Act 2008*. It consists of the investments of the EIF and the EIF Special Account, which is a Special Account recognised under section 21 of the FMA Act and established under section 132 of the *Nation-building Funds Act 2008*. The general drawing rights limit applies to the main purposes of the EIF, namely making payments in relation to the creation or development of higher education infrastructure, research infrastructure, vocational education and training infrastructure, and eligible education infrastructure, as well as any transitional Higher Education Endowment Fund payments.

62 For the purposes of section 267 of the *Nation-building Funds Act 2008*, subclause 16(3) provides the general drawing rights limit for the *Health and Hospitals Fund* (HHF) for the current year.

63 The HHF is established under section 214 of the *Nation-building Funds Act 2008*. It consists of the investments of the HHF and the HHF Special Account, which is a Special Account recognised under section 21 of the FMA Act and established under section 215 of the *Nation-building Funds Act 2008*. The general drawing rights limit applies to the main purposes of the HHF, namely making payments in relation to the creation or development of health infrastructure.

64 It is important to note that this Bill will not appropriate amounts to be paid from the BAF, EIF or HHF. The intention for specifying general drawing rights limits in subclauses 16(1) to 16(3) inclusive is to set maximum limits on the amounts that may be covered by drawing rights issued by the Finance Minister under the FMA Act for the current year, for the purposes to which the limits apply.

65 Under section 27 of the FMA Act, the Finance Minister is able to issue drawing rights, without which no public money may be spent, thereby providing a control mechanism over spending. That power has been delegated to various officials. Clause 16 places a limit over the amount of drawing rights that may be issued.

66 Specifying a general drawing rights limit, and thereby limiting the ability to issue drawing rights to that limit, is an effective mechanism to manage expenditure of public money as the official or Minister making a payment of public money cannot do so without the authority of a valid drawing right under the FMA Act. The purpose of so doing is to provide Parliament with a transparent mechanism by which it may review the rate at which amounts committed to the BAF, EIF and HHF are expended.

67 The general drawing rights limits for the current year for the BAF, EIF and HHF are specific to the current year applicable to this Act and will not limit the general drawing rights limits that may be specified in regard to any other year.

Federal Financial Relations Act 2009

68 For the purposes of paragraph 9(3)(b) of the *Federal Financial Relations Act 2009*, subclause 16(4) provides the general drawing rights limit for general purpose financial assistance for the current year.

69 This general drawing rights limit applies for the current year to the amount that the Treasurer can credit to the COAG Reform Fund and the total amount covered by drawing rights authorising debits from that Fund for the purposes of making a grant of general purpose financial assistance to a State, the Australian Capital Territory or the Northern Territory.

70 The COAG Reform Fund was established by section 5 of the *COAG Reform Fund Act 2008*, which is a Special Account under section 21 of the FMA Act. The purposes of the COAG Reform Fund Special Account are provided at section 6 of the *COAG Reform Fund Act 2008*.

71 If a general drawing rights limit is not indicated in an Appropriation Act for the purposes of paragraph 9(3)(b) of the *Federal Financial Relations Act 2009* for a financial year, amounts cannot be credited to the COAG Reform Fund under paragraph 9(2)(a) of the *Federal Financial Relations Act 2009*, and drawing rights must not be issued authorising debits from the COAG Reform Fund for the purposes to which the limit applies.

72 For the purposes of paragraph 16(3)(b) of the *Federal Financial Relations Act 2009*, subclause 16(5) provides the general drawing rights limit for national partnership payments for the current year.

73 This general drawing rights limit applies for the current year to the amount that the Treasurer can credit to the COAG Reform Fund and the total amount covered by drawing rights authorising debits from that Fund for the purposes contained in paragraphs 16(1)(a) to (c) inclusive of the *Federal Financial Relations Act 2009*. These purposes relate to making a grant of financial assistance to a State to support the delivery by the State of specified

outputs or projects, facilitate reforms by the State, or reward the State for nationally significant reforms.

74 If a general drawing rights limit is not indicated in an Appropriation Act for the purposes of paragraph 16(3)(b) of the *Federal Financial Relations Act 2009* for a financial year, amounts cannot be credited to the COAG Reform Fund under paragraph 16(2)(a) of the *Federal Financial Relations Act 2009* and drawing rights must not be issued authorising debits from the COAG Reform Fund for the purposes to which the limit applies.

75 It is important to note that this Bill will not appropriate amounts to be paid under sections 9 and 16 of the *Federal Financial Relations Act 2009*. The intention for specifying general drawing rights limits in subclauses 16(4) and 16(5) is to set maximum limits on the amounts that may be covered by drawing rights issued by the Finance Minister under the FMA Act for the current year, for the purposes to which those limits apply.

Clause 17—Adjustments for GST

76 The effect of this clause will be to increase a general drawing rights limit by the amount of any GST qualifying amount in respect of an amount paid from a fund named in clause 16.

77 Some payments from the BAF, EIF, HHF and the COAG Reform Fund may include a GST qualifying amount and the relevant general drawing rights limit is adjusted accordingly. The appropriation itself is not affected by clause 17 because that is increased by the operation of section 30A of the FMA Act. Essentially, clause 17 clarifies that the amounts specified for the general drawing rights limits for 2013-14 are exclusive of any GST qualifying amounts that may arise in respect of acquisitions made in reliance on that limit.

Part 5—Miscellaneous

Clause 18—Crediting amounts to Special Accounts

78 Clause 18 provides that if the purpose of an item in Schedule 2 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 by another Act (section 21). The determination or Act that establishes the Special Account will specify the purposes of the Special Account.

Clause 19—Conditions etc. applying to State, ACT, NT and local government items

79 Clause 19 deals with Parliament's power under section 96 of the *Australian Constitution* to provide financial assistance to the States. Clause 19 delegates the power to the responsible Ministers listed in Schedule 1 of the Bill, by providing the Ministers named in Schedule 1 with the power to determine:

- conditions under which payments to the States, ACT, NT and local government may be made: paragraph 19(2)(a); and
- the amounts and timing of those payments: paragraph 19(2)(b).

80 Subclause 19(4) provides that determinations made under subclause 19(2) are not legislative instruments, because these determinations are not altering the appropriations approved by Parliament. Determinations under subclause 19(2) will simply determine how appropriations for State, ACT, NT and local government items will be paid. The determinations are issued when required. However, payments can be made without either determination.

81 Although financial assistance is provided to the ACT, NT and local governments without reference to section 96 of the Constitution, those payments are administered in the same way. Therefore the Ministers identified in Schedule 1 may set the amounts and timing and impose terms and conditions on those payments. Subclause 19(5) also notes that clause 19 will not limit the powers of the Commonwealth under section 96 of the Constitution to provide financial assistance to a State which is not appropriated by a State, ACT, NT and local government item.

Clause 20—Appropriation of the Consolidated Revenue Fund

82 Clause 20 provides that the CRF is appropriated as necessary for the purposes of the Bill. Significantly, this clause means that there is an appropriation in law when the Act commences. That is, the appropriations are not made or brought into existence just before they are paid but when the Royal Assent is given. This clause indicates that the amounts appropriated may be affected by the FMA Act, in particular sections 30, 30A and 32 (see clause 6), after the Bill receives the Royal Assent.

Schedule 1—Payments to or for the States, ACT, NT and local government

83 In accordance with clause 19, Schedule 1 lists the Ministers responsible for determinations on payments to or for the States, ACT, NT and local government.

Schedule 2—Services for which money is appropriated

84 Schedule 2 specifies the services for which amounts will be appropriated by the Bill. Schedule 2 contains a summary table which lists the total amounts for each portfolio. A separate summary table is included with further detail for each portfolio, with other tables detailing the appropriations for each agency.

85 Schedule 2 includes, 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. More details about the appropriations in Schedule 2 are contained in the PB Statements and the second reading speech.