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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

APPROPRIATION BILL (NO. 1) 2009-2010

EXPLANATORY MEMORANDUM

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

Appropriation Bill (No. 1) 2009-2010

General Outline

1 This explanatory memorandum accompanies *Appropriation Bill (No. 1) 2009-2010* (the Bill).

2 The main purpose of the Bill is to propose appropriations from the Consolidated Revenue Fund (CRF) for the ordinary annual services of the Government.

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*. Other annual appropriations that are not for the ordinary annual services of the Government are proposed in *Appropriation Bill (No. 2) 2009-2010* and *Appropriation (Parliamentary Departments) Bill (No. 1) 2009-2010*.

4 This Explanatory Memorandum should be read in conjunction with the 2009-2010 Portfolio Budget Statements (PBS) which contain details of the appropriations set out in Schedule 1 to the Bill. The PBS are published and tabled in the Parliament together with the Bill.

Structure of appropriations in the Bill

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

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

7 Part 2 of the Bill proposes appropriations to make payments of the amounts in Schedule 1 for departmental items (clause 7), administered items (clause 8) and CAC Act body payments (clause 9).

8 Part 3 of the Bill specifies the ways in which the amounts in Schedule 1 may be adjusted.

9 Part 4 deals with credits to Special Accounts and sets out the amount appropriated under the Act. In addition to the adjustment provisions in Part 3, clause 16 of the Bill recognises that the appropriations in the Bill may also be varied by the FMA Act.

Financial Impact

10 This Bill will appropriate the amounts 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 Act (No. 1) 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’, ‘departmental item’ and ‘current year’.

Clause 4—Portfolio Statements

4 Clause 4 declares that PBS 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 PBS is to provide information on the proposed allocation of resources to Government outcomes by agencies within the portfolio. The PBS provide information, explanation and justification to enable Parliament to understand the purpose of each appropriation proposed in the Bill. The PBS are defined in the Bill to mean the Portfolio Budget Statements.

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. The effect is that when a notional transaction takes place, the paying agency must debit the appropriation made to it by Parliament. For constitutional purposes this means that the real appropriation made by Parliament is extinguished by the amount of the notional payment.

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:

- Departmental items may be reduced in accordance with clause 10.
- Administered items may be reduced in accordance with clause 11.
- CAC Act body payment items may be reduced in accordance with clause 12.
- Items may be increased by a payment from the Advance to the Finance Minister in accordance with clause 13.
- Items may be increased by a payment from the Indigenous Employment Special Account or the Northern Territory Flexible Funding Pool Special Account in accordance with clause 14.

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:

- Items may be increased by the reinstatement of amounts that an agency is repaid, in accordance with section 30 of the FMA Act. 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.
- Items 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 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.

- 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—Departmental items

9 Clause 7 provides that the amount specified in a departmental item for an agency may be applied for the departmental expenditure of the agency. Clause 3 defines:

- ‘departmental item’ to be the total amount set out in Schedule 1 in relation to an agency under the heading ‘Departmental Outputs’; and
- ‘expenditure’ to be payments for expenses, acquiring assets, making loans or paying liabilities.

10 While the departmental outputs in Schedule 1 may be divided between outcomes, the different amounts against outcomes are notional. The total appropriation for departmental expenses represents the departmental item.

11 Departmental items involve costs over which an agency has control. Departmental appropriations can be used to make any payment related to the functions of the agency including on purposes covered by other items whether or not they are in the Act for an agency. Expenditure typically covered by departmental items includes employee expenses, suppliers and other operational expenses (eg, replacement and maintenance of existing departmental assets). There can also be occasions when an agency, such as a portfolio department, needs to cover matters in relation to other areas of the Government. Examples can include whole-of-Government activities or a portfolio department assisting with the formation and initial costs of a new portfolio body (for which the department might later be reimbursed).

12 Departmental items are not expressed in terms of a particular financial year and do not automatically lapse. Because the cash to meet expenses such as

employee entitlements can be required at times other than when the expenses are incurred, the departmental appropriations remain available until required. Departmental items are available until they are spent or reduced in accordance with clause 10.

13 The Finance Minister manages the payment from 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.

14 Amounts appropriated for departmental outputs can be subject to a reduction process in accordance with clause 10 of the Bill. Under clause 10, the Minister responsible for an agency, or the Chief Executive of an Agency for which the Finance Minister is responsible, may make a written request to ask the Finance Minister to make a determination to reduce the agency's departmental appropriation.

Clause 8—Administered items

15 Subclause 8(1) provides for the appropriation of administered expense amounts to be applied by an agency for the purpose of contributing to the outcome for an administered item. An administered item is defined in clause 3 to be an amount set out in Schedule 1 opposite an outcome for an agency under the heading "Administered Expenses". Administered expenses are appropriated separately for outcomes (ie, unlike departmental items, the split across outcomes is not notional), making it clear what the funding is intended to achieve. Schedule 1 specifies how much can be expended on each outcome.

16 The appropriations for administered items in Schedule 1 represent the amounts required to meet the total estimated additional expenses for the administered outcomes for 2009-2010.

17 The purposes for which each administered item can be spent are set out in subclause 8(2). Subclause 8(2) provides that where the PBS 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).

18 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.

19 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—CAC Act body payment items

20 Clause 9 provides for direct appropriations of money for CAC Act bodies to be paid from the CRF by the relevant department. Clause 9 provides that payments for CAC Act bodies must be paid to those bodies to be used for the purposes of those bodies.

21 A CAC Act body is defined in clause 3 to be a Commonwealth authority or 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, their personnel do not debit appropriations or make payments from the CRF.

22 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.

23 Subclause 9(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 9(2) is to clarify that

subclause 9(1) is not intended to qualify any obligations in other legislation regulating a CAC Act body, where that legislation requires the Commonwealth to pay the full amount appropriated for the purposes of the body.

24 The full amount of the CAC Act body payments specified in Schedule 1 may be reduced in accordance with clause 12. Subclause 12(5) provides that subclause 9(2) does not prevent the CAC Act body payments in Schedule 1 being reduced.

Part 3—Adjusting appropriation items

25 Part 3 of the Bill includes provisions that may reduce or increase the amounts specified in Schedule 1. The reduction provisions are contained in clauses 10 through 12 inclusive. The provisions that may increase the amounts specified in Schedule 1 are contained in clauses 13 and 14.

Clause 10—Reducing departmental items

26 Departmental items remain available until the appropriation is spent or reduced in accordance with clause 10. 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 a departmental item if there are government decisions to support that expenditure. Examples of where clause 10 may be appropriate to reduce a 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 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.

27 Paragraph 10(1)(a) enables the Minister responsible for an agency to ask the Finance Minister to reduce a departmental item for that agency. Paragraph 10(1)(b) enables the Chief Executive of an agency for which the Finance Minister is responsible to ask the Finance Minister to reduce a departmental item for that agency. Subclause 10(5) assists readers by noting

that a request under subclause 10(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* (LI Act).

28 Subclause 10(2) enables the Finance Minister to make a written determination to reduce a departmental item. The Finance Minister is not obliged to act on a request to reduce excess departmental output appropriations. However, if the Finance Minister does:

- the determination must not be greater than the amount specified in the request: subclause 10(2);
- the determination may not reduce the departmental item below nil: subclause 10(3); and
- the departmental item in Schedule 1 will be taken to be reduced in accordance with the determination of the Finance Minister: subclause 10(4).

29 Subclause 10(6) provides that a determination made under subclause 10(2) is a legislative instrument.

30 Despite subsection 44(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 10(6) provides that a determination reducing a 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 10(6) also confirms subsection 54(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to sunseting.

Clause 11—Reducing administered items

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

32 Clause 11 limits the amount that may be applied for an administered item to the amount reported for that item 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 administered 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 other adjustments that have been made to that amount.

33 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 the amount specified in his or her determination. The power in paragraph 11(2)(b) is to ensure that the amount published for the administered item can be corrected if, for example, the amount is erroneous or requires updating after the annual report is published.

34 Subclause 11(3) provides that a determination made under subclause 11(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 11(3) provides that a determination regarding 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 an administered item because any such 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 annual Appropriation Acts are not subject to sunseting.

Clause 12—Reducing CAC Act body payment items

36 Clause 12 provides a similar process for reducing CAC Act body payment items to the process for reducing departmental items. Subclause 12(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 12(6) provides that a request under subclause 12(1) is not a legislative instrument within the meaning of section 5 of the LI Act.

37 Subclause 12(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 appropriations. However, if the Finance Minister does:

- the determination will not be greater than the amount specified in the request: subclause 12(2);

- the determination may not reduce the CAC Act body payment item below nil: subclause 12(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 12(4).

38 Subclause 12(5) clarifies that the full amount that is required to be paid to a CAC Act body by subclause 9(2) of the Bill may be reduced in accordance with clause 12.

39 Subclause 12(7) clarifies that a determination made under subclause 12(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 12(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 12(7) also confirms subsection 54(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to sunseting.

Clause 13 – Advance to the Finance Minister

41 Clause 13 provides \$295 million as an advance to the Finance Minister (AFM) to be allocated when he or she is satisfied that there is an urgent need for expenditure during the 2009-2010 financial year, for which Schedule 1 does not provide a sufficient appropriation.

42 Subclause 13(1) establishes the criteria about which the Finance Minister must be satisfied before he or she may determine to add an amount from the AFM to an item of an agency. The Finance Minister will only consider issuing an amount under subclause 13(1) if satisfied there is an urgent need for expenditure that is not provided for, or is insufficiently provided for, in Schedule 1 because of an omission or understatement or because of unforeseen circumstances (ie, according to the AFM guidelines, an urgent need for expenditure is required within two weeks). Generally the other appropriation adjustment options in Part 3 of the Bill or under sections 30 to 32 of the FMA Act must have been exhausted before the Finance Minister will make a determination under subclause 13(2).

43 Subclause 13(2) enables the Finance Minister to make a determination to add an amount from the AFM to an item in Schedule 1, to a new item not already in Schedule 1, or to a new outcome.

44 A further AFM provision will only be requested in the additional estimates bills for the current year if the AFM in this Bill is close to being exhausted.

45 Subclause 13(4) provides that a determination under subclause 13(2) is a legislative instrument, which must be tabled in Parliament but is not subject to disallowance or sunseting.

46 A subclause 13(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. Neither is an AFM subject to the sunseting provisions of the LI Act because the amount allocated from the AFM will be extinguished when it is spent. Further, if the determination did expire after a period, then the recipient of money paid from the AFM would be liable to repay that money as if the amount had not been appropriated in the first place.

Clause 14 – Indigenous Employment Special Account receipts

47 Clause 14 provides appropriations for agencies to spend amounts equal to receipts from the Indigenous Employment Special Account or the Northern Territory Flexible Funding Pool Special Account (the NTFFP).

48 Financial Management and Accountability Determination 2009/08 established the Indigenous Employment Special Account under subsection 20(1) of the FMA Act to develop, promote or assist or implement initiatives that expand employment opportunities for indigenous people. Financial Management and Accountability Determination 2007/21 established the NTFFP under subsection 20(1) of the FMA Act to develop, promote, assist or implement employment creation initiatives in relation to the Northern Territory Emergency Response. The *Purposes* clause of Determination 2007/21 was subsequently varied by Determination 2009/03 and Determination 2009/09.

49 Subclause 14(1) provides that an amount from the Indigenous Employment Special Account or the NTFFP may be added to an item in Schedule 1 if:

- the amount is debited from the Indigenous Employment Special Account or the NTFFP (in accordance with purposes for which amounts may be debited under Determination 2009/08 and Determination

2009/09) to be applied by an agency for the purpose of contributing to achieving an outcome for an administered item; and

- the Finance Minister specifies that item in a written determination.

50 If the conditions in subclause 14(1) are satisfied, then subclause 14(2) provides that an item is increased by the amount of the payment and at the time when an entry recording the payment is made in the accounts and records of the agency.

51 Subclause 14(4) provides that a determination under paragraph 14(1)(b) is a legislative instrument which must be tabled in Parliament, but is not subject to disallowance or sunseting. Unlike a determination under clause 10, 11 or 12 to reduce the amount of an appropriations approved by Parliament, Parliament has already appropriated amounts for the Indigenous Employment Special Account and the NTFFP. The purpose of clause 14 will be to debit an amount from the Indigenous Employment Special Account and/or the NTFFP and credit that amount to an item of an agency. A determination under paragraph 14(1)(b) will not be subject to sunseting for the same reason as a determination under clause 13 in relation to AFM is not subject to sunseting (see paragraph 46 above).

52 The Indigenous Employment Special Account was established to replace the NTFFP to better reflect the range of activities that the Government intended to fund. Although it is anticipated that the Indigenous Employment Special Account may operate alongside the NTFFP Special Account for a short period of time, it is intended that once the balance of the NTFFP Special Account reaches zero that Special Account will be abolished.

Part 4—Miscellaneous

Clause 15—Crediting amounts to Special Accounts

53 Clause 15 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 that Special Account. Special Accounts may be established under the FMA Act by a determination of the Finance Minister (section 20 FMA Act) or another Act (section 21 FMA Act). The determination or Act that establishes the Special Account will specify the purposes of the Special Account.

Clause 16—Appropriations of the Consolidated Revenue Fund

54 Clause 16 provides that the CRF is appropriated as necessary for the purposes of the Bill. Significantly this clause notes that the amounts appropriated 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

54 Schedule 1 specifies the appropriations proposed for the ordinary annual services of the Government. Schedule 1 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 breakdown of the appropriations for each agency.

55 Schedule 1 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.

56 More details about the appropriations in Schedule 1 are contained in the Budget Papers, the PBS and the second reading speech.