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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**PUBLIC WORKS COMMITTEE AMENDMENT BILL 2006**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Parliamentary Secretary to the Minister for Finance and Administration, Senator the Hon Richard Colbeck)

# PUBLIC WORKS COMMITTEE AMENDMENT BILL 2006

## OUTLINE

The purpose of the Bill is to amend the *Public Works Committee Act 1969* (the Act) to make a number of changes to the value and definition of a public work that requires referral to the Parliamentary Standing Committee on Public Works (the Committee).

The Bill is required to update the threshold value at which projects must be referred to the Committee and allow that value to be otherwise set by regulation as well as to amend the definition of a 'public work'.

The effect of the principles provisions are to require only those public works over \$15 million (formerly \$6 million) be referred to the Committee. The effect of allowing the threshold value to be otherwise set in regulation is to provide for greater flexibility for future updates of the threshold value.

The change to the definition of a 'public work' has the effect of clarifying that works funded through public private partnerships (PPPs) or similar arrangements must be referred to the Committee. The amended definition of a 'public work' also has the effect of including those public works funded through leasing or other similar arrangements.

These funding methods are taken into account by altering the characteristics of a public work, rather than specifically naming the funding method itself. No other changes are made to the definition of a 'public work'. There are also minor changes to the language of the Act.

The purpose of the Bill is to amend that Act to reflect the changes in the Commonwealth public works and procurement environment since the Act was last amended in 1989. This was based on feedback from the Committee and other sources on the practical operation of the Act, especially as it related to new methods of procurement and the increase in construction prices since the threshold was last amended in 1985.

### **Financial impact statement**

There is no net negative financial impact from the amendments. The changes to the threshold will reduce the compliance costs of those projects valued at \$6-15 million. Including works funded through PPPs will have no financial impact, as those works were already being referred to the Committee. Including works funded through leasing arrangements will require a small increase in compliance costs as those projects will now have to be referred to the Committee.

# PUBLIC WORKS COMMITTEE AMENDMENT BILL 2006

## NOTES ON ITEMS

### Clause 1: Short title

1. Clause 1 is a formal provision specifying the short title of the Act.

### Clause 2: Commencement

2. The Act will commence on the day it receives Royal Assent.

### Clause 3: Schedule(s)

3. The amendments to the Act are set out in the Schedule attached to the Bill.

## Part 1: Amendments relating to public works

### Item 1: Section 5 (definition of *public work*)

- i. This clause removes the words describing a *public work*, instead referring them to a new Section, 5AA.

### Item 2: After section 5

- ii. Inserts a revised definition under Section 5AA of a *public work* to include works funded using PPPs and works indirectly funded through leasing or similar arrangements.
- iii. The inclusion of PPPs reflects the current understanding that works funded through PPPs are implicitly covered by the Act. The inclusion of works funded through leasing or other similar arrangements addresses the issue that some fit-outs of leased accommodation, which are included in the Act, fall outside the definition of a 'public work', due to their funding arrangements.
- iv. The specific funding methods are not referred to. Instead, the characteristics of a public work have been amended so as to include these works. Two amendments have been made to achieve this end.
- v. Subparagraph (2)(b)(ii), allows for indirect funding of the work, as per the existing paragraph 3(c) [now 5(c)]. This covers, but is not limited to, deferred payment, payment through a PPP vehicle, or payment through leasing or similar arrangements.
- vi. Subsection (4) removes the requirement that the Commonwealth or Commonwealth authority is proposed to become the owner of the work. Under either funding method, the Commonwealth or

Commonwealth authority may not necessarily become the owner of the work. This addresses the existing paragraph 3(c) [now 5(c)] which only allowed for indirect funding where the Commonwealth (or Commonwealth authority) was intended to become the owner.

- vii. The revised definition does not extend to cover works that are not “for the Commonwealth” (or a Commonwealth authority). An example of this is a pre-commitment lease, where the private sector constructs a building that is subsequently occupied by a Commonwealth (or a Commonwealth authority) tenant.

**Item 3: Subsection 18(8)**

- viii. This clause replaces the current value with a definition, allowing a more specific definition of the threshold amount to be used.

**Item 4: At the end of subsection 18(9)**

- ix. This clause gives a definition to “the threshold amount” which sets the threshold at \$15,000,000 and otherwise allows the amount to be specified in a regulation. The purpose of allowing a regulation to define the threshold amount is to allow the threshold to be altered without having to amend the Act.

**Item 5: Paragraphs 40(2)(a) and (b)**

- x. This clause updates the paragraph references to reflect the altered paragraph numbers in the definition of a public work that may or may not be specified in the regulations as being a public work.

**Item 6: Application**

- xi. The purpose of this clause is to require that any work currently under scrutiny by the Committee still requires its approval, even if the amendments to the Act would otherwise cause that work to no longer be covered by the Act, e.g. a project of \$8 million in value.

**Part 2: Technical Amendments**

**Items 7-46:**

- xii. These clauses update of the language used to reflect the modern approach of using non-gender specific terminology.

**Items 47-48:**

- xiii. Replaces the reference to “the Minister for Housing and Construction” with a reference to “the Minister”, as the Minister for Housing and Construction no longer exists. “The Minister” now

refers to the portfolio responsibility for the Act, currently the Minister for Finance and Administration.

**Item 50:**

- xiv. This clause updates the language to reflect the modern approach of using non-gender specific terminology. The clause also replaces the reference to “the Minister for Housing and Construction” with a reference to “the Minister”, as the Minister for Housing and Construction no longer exists. “The Minister” now refers to the portfolio responsibility for the Act, currently the Minister for Finance and Administration.

**Items 51-68**

- xv. These clauses update of the language used to reflect the modern approach of using non-gender specific terminology.