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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

APPROPRIATION (NATION BUILDING AND JOBS) BILL (NO. 2) 2008-2009

EXPLANATORY MEMORANDUM

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

Appropriation (Nation Building and Jobs) Bill (No. 2) 2008-2009

General Outline

1 This explanatory memorandum accompanies *Appropriation (Nation Building and Jobs) Bill (No. 2) 2008-2009* (the Bill).

2 The main purpose of the Bill is to propose appropriations from the Consolidated Revenue Fund (CRF) for services that are not the ordinary annual services of the Government in relation to Nation Building and Jobs Plan.

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 in relation to Nation Building and Jobs 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 (Nation Building and Jobs) Bill (No. 1) 2008-2009*.

4. This Explanatory Memorandum should be read in conjunction with the various portfolio statements. In particular:

- The Portfolio Supplementary Additional Estimates Statements (PSAES) contain details on the appropriations set out in Schedule 2 to the Bill. The PSAES are published and tabled in the Parliament together with the Bill.
- The 2008-2009 Portfolio Budget Statements (PB Statements) were published and tabled in relation to the *Appropriation Bill (No. 1) 2008-2009* and *Appropriation Bill (No. 2) 2008-2009*.
- The Portfolio Supplementary Estimates Statements (PSES) were published and tabled in relation to the *Appropriation (Economic Security Strategy) Bill (No. 1) 2008-2009* and *Appropriation (Economic Security Strategy) Bill (No. 2) 2008-2009*.
- The Portfolio Additional Estimates Statements (PAES) were published and tabled in the Parliament in relation to *Appropriation Bill (No. 3) 2008-2009* and *Appropriation Bill (No. 4) 2008-2009*.

Structure of appropriations in the Bill

5. The Bill provides for the appropriation of specified amounts for expenditure by Australian Government agencies on activities related to nation building and jobs.

6. Part 1 of the Bill deals with definitions, and the interpretative role of the 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 2 for State, ACT, NT and local government items (clause 7), administered items (clause 8), administered assets and liabilities items (clause 9), and other departmental items (clause 10).

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

9. Part 4 deals with credits to special accounts (clause 15) the conditions that apply to payments of State, ACT, NT and local government items (clause 16) and sets out the amount appropriated under the Act. In addition to the adjustment provisions in Part 3, clause 17 of the Bill recognises that the appropriations in the Bill may also be varied by the *Financial Management and Accountability Act 1997* (FMA Act).

Financial Impact

10. This Bill will appropriate the amounts specified in Schedule 2.

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 (Nation Building and Jobs) Bill (No. 2) 2008-2009*.

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’, ‘State, ACT, NT and local government item’ and ‘current year’ (being the financial year ending on 30 June 2009).

Clause 4—Portfolio Statements

4 Clause 4 declares that various portfolio 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 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 PB Statements, PSES, PAES and PSAES provide information, explanation and justification to enable Parliament to understand the purpose of each appropriation proposed in the Bill.

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 2 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 2 of the Bill. Importantly, the amounts in Schedule 2 may be adjusted under the provisions in Part 3 of the Bill. Specifically:

- States, 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.

8 The amounts in Schedule 2 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 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.

- 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—State, ACT, NT and local government items

9 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.

10 Clauses 7 and 16 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 financial year.

11 The Finance Minister manages payments from State, ACT, NT and local government 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 items

12 Subclause 8(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 an amount set out in Schedule 2 opposite an outcome for an agency under the heading "New Administered Expenses". New administered expenses are appropriated separately for outcomes, making it clear what the funding is

intended to achieve. Schedule 2 specifies how much can be expended on each outcome. They are proposed when an agency is to carry out new administered activities for a new outcome.

13 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, PSES, PAES or PSAES indicate a particular activity is in respect of a particular outcome, then the amount in the administered item is taken to contribute to achieve the 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).

14 New administered expenses are 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 12 for dealing with administered items that are not fully expensed or spent during the financial year.

15 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

16 Clause 9 provides amounts in Schedule 2 to acquire new administered assets, enhance existing administered assets and/or discharge administrative 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 also be applied for expenditure for the purpose of contributing to achieving any outcome specified for the Agency in the Appropriation Acts listed in clause 9(1)(a) to (h) inclusive.

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

18 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

19 Clause 10 appropriates departmental non-operating appropriations in the form of equity injections, loans or previous years' outputs, 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 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 can be used to restore appropriations used to deliver departmental outputs in a 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 future appropriation bills.

20 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 for the full costs of acquiring new assets some of which might not be incurred 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.

21 The Finance Minister manages the payment from other department 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

22 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 paid to those bodies to be used for the purposes of those bodies.

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

24 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.

25 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 legislation requires the Commonwealth to pay the full amount appropriated for the purposes of the body.

26 The full amount of the CAC Act body payments specified in Schedule 2 may be reduced in accordance with clause 14. Subclause 14(5) provides that subclause 11(2) does not prevent the CAC Act body payments in Schedule 2 being reduced.

27 Clause 11 is not operative at the time of tabling as no appropriations for payment to CAC Act bodies have been provided. However the provision is retained if required for future CAC Act body payments.

Part 3—Adjusting appropriation items

28 Part 3 of the Bill includes provisions to reduce the amounts specified in Schedule 2.

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

29 Clause 12 provides for amounts of State, ACT, NT and local government items and administered items 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.

30 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 to 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.

31 Subclause 12(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 12(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.

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

33 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 sunsetting.

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

34 Administered assets and liabilities items and other departmental items remain available until the appropriation is spent or reduced in accordance with clause 13. 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 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 (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.

35 Paragraph 13(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 13(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 13(5) 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.

36 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. However, if the Finance Minister does:

- the determination must not be greater than 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).

37 Subclause 13(6) provides that a determination made under subclause 13(2) is a legislative instrument.

38 Despite subsection 44(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 13(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 or more of these items because any such determination will reduce the amount of an appropriation authorised by Parliament. Subclause 13(6) also confirms subsection 54(2) of the LI Act, which provides that instruments made under Appropriation Acts are not subject to sunsetting.

Clause 14—Reducing CAC Act body payment items

39 Clause 14 provides a similar process for reducing CAC Act body payment items to the process for reducing departmental items. Subclause 14(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 14(6) provides that a request under subclause 14(1) is not a legislative instrument within the meaning of section 5 of the LI Act.

40 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 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 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).

41 Subclause 14(5) clarifies 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.

42 Subclause 14(7) clarifies that a determination made under subclause 14(2) is a legislative instrument.

43 Despite subsection 44(2) of the LI Act, which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 14(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 14(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 15—Crediting amounts to Special Accounts

44 Clause 15 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 another Act (section 21). The determination or Act that establishes the Special Account will specify the purposes of the special account.

Clause 16—Conditions etc. applying to State, ACT, NT and local government items

45 Clause 16 deals with Parliament's power under section 96 of the *Australian Constitution* to provide financial assistance to the States. Clause 16 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, the ACT and NT and local councils may be made: paragraph 16(2)(a); and
- the amounts and timing of those payments: paragraph 16(2)(b).

46 Subclause 16(4) provides that determinations made under subclause 16(2) are not legislative instruments, because these determinations are not altering the appropriations approved by Parliament. Determinations under subclause 16(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.

47 Although financial assistance is provided to the ACT, NT and local government authorities without reference to section 96, 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 16(5) also notes that clause 16 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 17—Appropriations of the Consolidated Revenue Fund

48 Clause 17 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—Payments to or for the States, ACT, NT and local government

49 In accordance with clause 16, 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

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

51 Schedule 2 includes for information purposes a figure for the annual Budget and Supplementary appropriations (the ‘Budget comparator’) and a figure for previous financial year (the ‘Actual Available Appropriation’ comparator). The Budget comparator printed in italics under each appropriation

amount indicates the amounts provided by the annual appropriation Acts on the occasion of the previous Budget plus the amounts provided since that Budget by the supplementary estimates appropriation Acts. The Actual Available Appropriation comparator printed in plain type under each appropriation amount provides a full year comparison with the proposed appropriations. Neither figure affects the amounts available at law.

52 More details about the appropriations in Schedule 2 are contained in the PSAES and the second reading speech.