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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES / THE SENATE

**ALBURY-WODONGA DEVELOPMENT CORPORATION (ABOLITION)  
BILL 2014**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance,  
Senator the Hon Mathias Cormann)



# ALBURY-WODONGA DEVELOPMENT CORPORATION (ABOLITION) BILL 2014

## **OUTLINE**

On 13 May 2014 the Government announced, as part of its Smaller Government measures, that it would abolish the Albury-Wodonga Development Corporation (AWDC) and transfer its remaining property management functions, and its remaining assets and liabilities, to the Commonwealth by 1 July 2015. The Government's Smaller Government measures involve the abolition or merger of Government bodies where possible, to eliminate duplication, remove waste, streamline Government services and reduce the cost of government administration for taxpayers.

The purpose of the Albury-Wodonga Development Corporation (Abolition) Bill 2014 (the Bill) is to give effect to the Government's commitment to abolish the AWDC. The Bill repeals the *Albury-Wodonga Development Act 1973* (AWD Act). The Bill also contains arrangements to ensure the orderly transfer of the existing assets and liabilities of the AWDC to the Commonwealth to hold and manage.

### **Financial impact statement**

This reform will achieve efficiencies through the transfer of the AWDC's functions into the Department of Finance (the Department) which will reduce duplication of government effort in property management and improve coordination. While the Bill will achieve savings to government, the financial impact on both the Commonwealth and the community is low.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### *Overview of the Bill*

This Bill repeals the AWD Act, abolishes the AWDC and transfers its remaining property management functions, and its remaining assets and liabilities, to the Commonwealth.

### *Human rights implications*

This Bill does not engage any of the applicable rights or freedoms.

### *Conclusion*

This Bill is compatible with human rights as it does not raise any human rights issues.

**The Minister for Finance, Senator the Hon Mathias Cormann**

## **ALBURY WODONGA DEVELOPMENT CORPORATION (ABOLITION) BILL 2014**

### **NOTES ON CLAUSES**

**Section 1** provides that the name of the Bill, if enacted, is the *Albury-Wodonga Development Corporation (Abolition) Act 2014*.

**Section 2** outlines the commencement of different parts of the Bill.

Sections 1 to 3 of the Bill, the machinery provisions of the Bill, will take effect on Royal Assent.

Schedule 1, Parts 1 and 2, which repeal the AWD Act and make some consequential amendments to some other Commonwealth Acts, commence on a date to be fixed by Proclamation or, if no such date is fixed, six months from Royal Assent or 1 July 2015, whichever date falls later. This is consistent with the Government's commitment to abolish the AWDC and transfer its remaining property management functions and its assets and liabilities to the Commonwealth by 1 July 2015. This provision provides for a transitional period, between the date of Royal Assent and the date of the abolition of the AWDC, to ensure that sufficient time is allowed to prepare for the orderly transfer of assets and liabilities to the Commonwealth. It also gives the Government some flexibility in determining the appropriate time to abolish the AWDC under the Bill.

Schedule 1, Part 3, which contains the transitional provisions associated with transferring the assets and liabilities of the AWDC to the Commonwealth, commences the day after Royal Assent. This Part commences the day after Royal Assent to allow appropriate transitional arrangements, such as any Ministerial delegations (item 23) and any transitional rules (item 25), to be put into place before the repeal of the AWD Act and the abolition of the AWDC. However, under these provisions the transfer of assets and liabilities will not occur until the 'commencement time', which is when the AWD Act is repealed and the AWDC is abolished under Schedule 1, Part 1 (see the definition of 'commencement time' in item 8). The effect of these provisions is that the assets and liabilities of the AWDC will be transferred to the Commonwealth immediately upon its abolition (which will be on a date to be fixed by Proclamation or, if no such date is fixed, six months from Royal Assent or 1 July 2015, whichever date falls later).

**Section 3** provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the Schedule concerned and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1 - Amendments

### Summary

Schedule 1 repeals the AWD Act (Part 1), makes consequential amendments (Part 2) and sets out transitional provisions relating to the transfer of assets and liabilities from the AWDC to the Commonwealth (Part 3).

#### *Part 1 - Repeals*

**Item 1** repeals the whole of the AWD Act. The AWDC is a body corporate created under statute and repealing the AWD Act abolishes the AWDC. As a result of this repeal, all regulations and legislative instruments made under the AWD Act are also repealed.

#### *Part 2 - Amendments*

**Item 2** amends Division 1 of Part II of Schedule 2 to the *Freedom of Information Act 1982* (FOI Act) by repealing the item which currently exempts the AWDC, in relation to documents in respect of its commercial activities, from the operation of the FOI Act. This provision will no longer be necessary once the AWDC is abolished.

**Item 3** amends Part 3 of Schedule 2 to the *Remuneration and Allowances Act 1990* by repealing the item dealing with the Chair of the AWDC. With the abolition of the AWDC, it will not be necessary to provide for the remuneration and allowances of the Chair of the AWDC.

**Items 4, 5 and 7** make some consequential amendments to the *Urban and Regional Development (Financial Assistance) Act 1974* (the Financial Assistance Act). The Financial Assistance Act provides that the Commonwealth may provide financial assistance, for purposes connected with urban and regional development, by way of a loan or otherwise, to a State, in respect of expenditure by that State or by an 'approved body'. Currently the AWDC is an 'approved body' for the purposes of the Financial Assistance Act. Consequently, these amendments will remove the existing references in this Act to the AWDC which will become redundant upon its abolition.

**Item 5**, accordingly, inserts new subsection 3A(1) into the Financial Assistance Act which provides that the Minister may, in writing, approve a body for the purposes of this Act. As is the case presently, the Minister may, under the Financial Assistance Act, approve a body for its purposes, if the body is a State authority or a local governing body or a body corporate constituted for purposes other than the acquisition of gain by its individual members. New subsection 3A(2) is inserted into the Financial Assistance Act to assist readers. It simply highlights that an approval made under subsection 3A(1) does not fall under the definition of 'legislative instrument' under section 5 of the *Legislative Instruments Act 2003*. It is in no way purporting to exempt the section from the *Legislative Instruments Act 2003*.

**Item 6** is a transitional provision arising from the consequential amendments to the Financial Assistance Act made by items 4, 5 and 7. It will preserve any existing approvals made by the Minister under paragraph (b) of the definition of 'approved

body' in section 3 of the Financial Assistance Act, which are in force immediately before the commencement of this Part. This transitional provision is required because, as discussed above, a new provision (section 3A) dealing with 'approved bodies' will be inserted into the Financial Assistance Act by item 5.

### *Part 3 – Transitional provisions*

#### *Division 1 - Introduction*

**Item 8** defines several terms used throughout this Part that are relevant to the interpretation of its provisions.

In particular, 'assets' and 'liabilities' are defined broadly to ensure that all assets and liabilities, actual, contingent or prospective of the AWDC are covered.

'Land' is also defined broadly to mean any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

The definition of 'instrument', which is not intended to be an exhaustive definition, includes a contract, deed, undertaking, arrangement, agreement, notice, authority, order, instruction and an instrument made under an Act or under a legislative instrument.

'Commencement time', which is when the assets and liabilities of the AWDC will be transferred to the Commonwealth (see items 9(2) and 10(2)), is defined to mean the commencement of Part 1 of this Schedule, which will be the time the AWD Act is repealed (either on a date to be fixed by Proclamation or, if no such date is fixed, six months from Royal Assent or 1 July 2015, whichever date falls later). The effect of this is that the assets and liabilities of the AWDC will be transferred to the Commonwealth immediately upon its abolition.

#### *Division 2 – Transfer of assets and liabilities*

**Division 2** (items 9-17) provides for the transfer of the assets and liabilities of the AWDC to the Commonwealth by statutory novation.

**Item 9** provides that at the time the AWDC is abolished, any of its assets cease to be assets of the AWDC and become assets of the Commonwealth and there is no need for any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the assets.

**Item 10** provides that at the time the AWDC is abolished, any of its liabilities cease to be liabilities of the AWDC and become liabilities of the Commonwealth and there is no need for any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the liabilities.

**Item 11** provides a process for registration of the vesting of land (including any interest in land) that transfers to the Commonwealth under this Division.

**Item 12** provides a process for registration of the vesting of an asset other than land, in the event that any such asset (the vesting of which is suitable for registration) transfers to the Commonwealth under this Division.

Under both **items 11** and **12**, subitem (2) is included to assist readers. It simply highlights that a certificate made under subitem 11(1) or subitem 12(1) does not fall under the definition of ‘legislative instrument’ under section 5 of the *Legislative Instruments Act 2003*. It is in no way purporting to exempt these items from the *Legislative Instruments Act 2003*.

### *Division 3 – Transfer of other matters*

**Division 3** (items 13-17) provides for the transfer of matters, other than assets and liabilities, from the AWDC to the Commonwealth.

**Item 13** provides that once the AWDC is abolished, anything done by or in relation to the AWDC has effect as if it had been done by, or in relation to, the Commonwealth.

**Item 14** provides that once the AWDC is abolished the Commonwealth is substituted for the AWDC as a party to any proceedings that were pending in any court or tribunal to which the AWDC was a party. This provision is designed to ensure that any existing litigation is not affected.

**Item 15** provides that any records or documents that were in the AWDC’s possession immediately before it is abolished are transferred to the Department once the AWDC is abolished.

**Item 16** is designed to ensure that any remaining complaints or investigations with respect to the AWDC, being dealt with under a Commonwealth law and which have not been disposed of at the time it is abolished, may be dealt with by the relevant Commonwealth entity to their completion, notwithstanding the abolition of the AWDC. ‘Commonwealth entity’ is defined to mean an individual or body exercising powers or performing functions under a law of the Commonwealth (see the definition in item 8). For example, this provision means that any remaining complaints or investigations under the *Ombudsman Act 1976* with respect to the AWDC may be dealt with by the Ombudsman to their completion, notwithstanding the abolition of the AWDC.

**Item 17** provides that the AWDC is replaced by the Commonwealth for certain instruments, when those instruments were in force immediately before the AWDC is abolished and the instrument makes a reference to the AWDC. For example, the Commonwealth is substituted as a party on all existing contracts, in which the AWDC is a party and were still in force immediately before the AWDC is abolished.

**Subitem 17(2)**, though, provides that the Commonwealth is not substituted for the AWDC with respect to some specified instruments and some categories of instruments for which it is not appropriate to substitute the Commonwealth for the AWDC. For example, it is not appropriate to substitute the Commonwealth for the AWDC under item 17(1) with respect to land registration titles under a State register, as the registration of these titles will be transferred administratively from the AWDC



to the Commonwealth in accordance with the process set out in item 11 (see item 17(2)(c)). Accordingly, instruments which are exempted from the operation of item 17(1) under item 17(2) include an Act or regulations, an instrument made under Part 3, an instrument that is part of, or associated with, a register referred to in item 12 or 13, the Winding-up Agreement (within the meaning of the AWD Act, as in force immediately before the AWDC is abolished), an instrument made under the Winding-up Agreement or under the AWD Act or an instrument specified in an instrument under subitem 17(3). Subitems 17(2)(f) and 17(3) allow the Minister to specify, by legislative instrument, that an instrument is an exempt instrument. This provides the responsible Minister with the ability to exempt additional instruments from the substitution of the Commonwealth for the AWDC where considered necessary.

#### *Division 4 – Corporation's staff*

**Division 4** (item 18) relates to the staff of the AWDC.

**Item 18** provides that nothing in this Part results in the appointment, engagement or employment of an AWDC member, the CEO or an AWDC officer, employee or consultant to the Commonwealth. That is, under this Bill, the AWDC Members, CEO, officers, employees and consultants do not transfer to the Commonwealth.

#### *Division 5 – Corporation's final annual report*

**Division 5** (item 19) contains provisions which relate to the AWDC's final annual report. Under sections 39 and 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the AWDC is required to prepare annual performance statements and an annual report. (The AWDC, being a body corporate that is established by a law of the Commonwealth is a 'Commonwealth entity' for the purposes of the PGPA Act: see section 10 of the PGPA Act.) This Division is designed to ensure that a final report on the operations of the AWDC is prepared by the Department after the abolition of the AWDC and the transfer of its assets and liabilities to the Commonwealth.

**Item 19** provides that the Secretary of the Department must prepare and give to the Minister a final report on the operations of the AWDC. This final report will cover one of the following time periods depending on the date of the abolition of the AWDC:

- if, at the time of its abolition, no annual report under section 46 of the PGPA Act has been produced for the previous reporting period – the period of time between the start of this previous reporting period and the date of its abolition; or
- otherwise – the period of time between the start of the reporting period in which the AWDC is abolished and the date of its abolition.

This ensures that the AWDC's reporting obligations to the Minister and to the Parliament are still met for the time period involved. This item is designed to allow for flexibility for final reporting dependent upon the date of the abolition of the AWDC. 'Reporting period' is defined as meaning a reporting period, within the

meaning of the PGPA Act, for the AWDC. The final report must meet the requirements set out in sections 39 and 43 of the PGPA Act.

In preparing the final report, the Secretary may include the report in the Department's annual report for the financial year in which the last day of the final reporting period occurs.

If the Secretary does not include the report in the Department's annual report, then the Secretary must give the relevant report to the Minister within 3 months after the end of the final reporting period. On receipt of the report, the Minister must table it in each House of the Parliament as soon as practicable. The Secretary must also publish the report on the Department's website as soon as practicable after the report is tabled in the House of Representatives. In special circumstances, the Minister may grant the Secretary an extension of time to provide the report to the Minister.

#### *Division 6 – Transitional functions and powers*

**Division 6** (item 20) contains provisions dealing with the transitional functions and powers of the Commonwealth arising from the abolition of the AWDC and the transfer of its remaining assets.

**Item 20** is intended to avoid any doubt that the Commonwealth has all the necessary functions and powers to prepare and dispose of land transferred from the AWDC, as part of the timely wind-up of the joint Commonwealth/State scheme and consequential to the transfer of these assets to the Commonwealth. These functions and powers may include the Commonwealth entering into contracts and arrangements, constructing buildings and works, and carrying on services, whether directly or indirectly.

**Subitem 20(2)**, however, provides that this item is not intended to limit what the Commonwealth may otherwise do with, or in relation to the assets transferred from the AWDC.

**Subitem 20(3)** provides in this item, 'joint Commonwealth/State scheme' has the same meaning as in the AWD Act (as in force immediately before its repeal).

#### *Division 7 – Other matters*

**Division 7** (item 21-25) contains miscellaneous provisions.

**Item 21** provides that State and Territory taxes, such as stamp duty, do not apply to the transfer of the assets and liabilities from the AWDC to the Commonwealth. This item is a standard provision contained in Commonwealth laws effecting the transfer of assets and liabilities.

**Item 22** provides that a document that appears to be a certificate made or issued under this Part is taken to be such a certificate and is taken to have been properly given, unless the contrary is established. This means that any certificate made or issued

under this Part (for example a certificate made under item 11 or 12) is taken to be authentic and accepted as proof of its contents until proved otherwise.

**Item 23** provides that the Minister may, by writing, delegate all or any of his or her powers and functions under this Part to either the Secretary of the Department, a member of the Senior Executive Service (SES) of the Department, or an acting SES employee of the Department. Subitem 23(2) provides that in exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

**Item 24** provides for compensation to be paid by the Commonwealth to a person from whom property is acquired on other than just terms within the meaning of section 51(xxxi) of the Constitution. If the Commonwealth and the person in question cannot agree on the amount of any such compensation to be paid, the Federal Court of Australia may determine a reasonable amount of compensation for the acquisition of the property.

**Item 25** provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.

This item is a standard provision contained in transitional schemes such as these and will allow for additional transitional rules to assist in giving effect to this Bill, including dealing with transitional matters that were not foreseen when the Bill was being drafted.