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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**REGIONAL INVESTMENT CORPORATION BILL 2017**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Deputy Prime Minister and Minister for Agriculture and  
Water Resources, the Hon. Barnaby Joyce MP)

# REGIONAL INVESTMENT CORPORATION BILL 2017

## GENERAL OUTLINE

The Regional Investment Corporation Bill 2017 (the Bill) establishes the Regional Investment Corporation (the Corporation). It delivers on the 2016 election commitment announced by the Deputy Prime Minister, the Hon. Barnaby Joyce MP.

The Corporation will deliver up to \$4 billion in concessional loans under the government's farm business concessional loans programme and the National Water Infrastructure Loan Facility. It will also have capacity to administer other programs in future.

These are critical initiatives, encouraging growth, investment and resilience in Australia's rural and regional communities.

The Corporation will streamline administration of farm business loans, delivering national consistency and ensuring loans are prudently and speedily assessed to help farmers in need. It will provide independent advice to government on projects for consideration under the National Water Infrastructure Loan Facility, and then deliver approved grants of financial assistance (loans) to the states and territories to fast-track the construction of priority water infrastructure projects. Under the Corporation, loans administration expertise will be consolidated in the Agriculture and Water Resources portfolio.

The major elements of the Bill include:

- Establishing the Corporation as a corporate Commonwealth entity, with a skills-based Board to ensure the proper and efficient performance of the Corporation's functions.
- Describing the functions of the Corporation, including administering farm business loans and, on behalf of the Commonwealth, administering grants of financial assistance to the states and territories for water infrastructure projects.
- Identifying two responsible Ministers who will appoint the Board and issue the Corporation with an Operating Mandate.
- Providing a power for rules to be made by the two responsible Ministers prescribing future programs to be delivered by the Corporation.
- Providing for the Operating Mandate to direct the Corporation about the performance of its functions, including on the objectives it is to pursue, expectations in relation to the strategies and policies to be followed, eligibility criteria for loans or financial assistance, management of funding and other matters.
- Allowing responsible Ministers to also direct on classes of farm business loans, individual water infrastructure projects and the location of the Corporation, but preventing them from directing in relation to individual farm business loans.
- Requiring the Board to appoint a Chief Executive Officer, responsible for the day-to-day administration of the entity and entering into loan agreements on behalf of the Corporation.
- Allowing the Corporation to employ staff to assist in performing its functions.
- Requiring a review of the operation of the Act before 1 July 2024.

## **FINANCIAL IMPACT STATEMENT**

The farm business concessional loans programme and National Water Infrastructure Loan Facility are intended to be budget neutral over their life, with the establishment and operating costs of the Corporation to be recovered through the interest charged on loans to farm businesses and state and territory governments.

# STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

## **Regional Investment Corporation Bill 2017**

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**

The Regional Investment Corporation Bill 2017 (the Bill) will establish a Regional Investment Corporation (the Corporation). The Bill prescribes the functions of the Corporation, which includes administering farm business loans and administering financial assistance, on behalf of the Commonwealth, granted to states and territories in relation to water infrastructure projects. The Corporation will administer any future programs prescribed by rules.

The Bill requires the Corporation to perform its functions in accordance with directions given by responsible Ministers. The main directions are known as the Operating Mandate.

The Bill establishes a Board for the Corporation. Its main functions are to decide, within the scope of the Operating Mandate, the strategies and policies to be followed by the Corporation; and to ensure the proper, efficient and effective performance of the Corporation's functions. The Bill requires there to be a Chief Executive Officer of the Corporation that will be responsible for the day-to-day administration of the Corporation.

The Bill also deals with miscellaneous matters, including the recovery of costs, delegations, reviewing the operation of the Act and the power to make rules.

### **Human rights implications**

This Bill does not engage any of the applicable rights or freedoms outlined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Conclusion**

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

**The Hon. Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources**

# REGIONAL INVESTMENT CORPORATION BILL 2017

## NOTES ON CLAUSES

### Part 1—Introduction

#### Section 1: Short Title

This section specifies the short title of the Act is the *Regional Investment Corporation Act 2017*.

#### Section 2: Commencement

The table in subsection (1) sets out the dates in which the Bill's provisions will commence. Item 1 in the table means that sections 1 and 2, which deal with the formal aspects of the Bill and anything not covered by this table, will commence on the day in which the Bill receives Royal Assent.

Item 2 in the table means that sections 3 to 54, which contain the substantive provisions of the Bill, will commence on a single day to be fixed by Proclamation. However, if these provisions do not commence within six months beginning on the day this Bill receives Royal Assent, they will commence on the day after the end of that period.

Allowing the substantive provisions of the Bill to commence through Proclamation will provide the government with sufficient time to prepare for the Corporation's establishment.

#### Section 3: Simplified outline of this Act

This section provides a simplified outline of the Bill to aid readers. This outline is not intended to be comprehensive and readers should rely on the substantive provisions.

#### Section 4: Definitions

This section provides definitions of the key terms used in the Bill. Definitions of particular note include:

*'farm business loan'* – this definition explains the constitutional basis for the farm business loans that will be administered by the Corporation. It identifies the Commonwealth's heads of constitutional power being relied on by prescribing the circumstances of the farm business receiving the loan, or by prescribing the purpose of the loan.

Specifically, a farm business loan means a loan (proposed or made) to a farm business:

- a) engaged solely or mainly in producing commodities for constitutional trade or commerce. In conjunction with the definition of 'constitutional trade or commerce', this refers to the Parliament's power to legislate with respect to trade and commerce with other countries and amongst the States under paragraph 51(i) of the Constitution (the trade and commerce power) and the territories under section 122 of the Constitution; or

- b) for the purposes of encouraging or promoting constitutional trade or commerce. In conjunction with the definition of ‘constitutional trade or commerce’, this refers to the Parliament’s capacity to legislate with respect to trade and commerce with other countries and amongst the States under paragraph 51(i) of the Constitution (the trade and commerce power) and the territories under section 122 of the Constitution; or
- c) that is a constitutional corporation. This refers to the Parliament’s power to legislate with respect to foreign corporations, and trading and financial corporations formed within the limits of the Commonwealth, under paragraph 51(xx) of the Constitution (the corporations power); or
- d) to allow the business to satisfy the requirements of a contract with a constitutional corporation which relates to the corporation’s trading activities. This refers to the Parliament’s capacity to legislate with respect to foreign corporations, and trading and financial corporations formed within the limits of the Commonwealth, under paragraph 51(xx) of the Constitution (the corporations power); or
- e) in an affected area, within the meaning of the United Nations Convention to Combat Desertification, for the purpose of implementing Australia’s international obligations under that Convention. This refers to the Parliament’s power to legislate with respect to external affairs under paragraph 51 (xxix) of the Constitution (the external affairs power); or
- f) in a Territory. This refers to the Parliament’s power to legislate in relation to the territories under section 122 of the Constitution (the territories power).

‘*responsible Ministers*’ – this term is frequently used in the Bill and is defined as the Agriculture Minister and the Minister who administers the *Public Governance, Performance and Accountability Act 2013*. The Agriculture Minister is defined in the Bill as the Minister who administers the *Primary Industries Research and Development Act 1989* (currently the Minister for Agriculture and Water Resources). The Minister who administers the *Public Governance, Performance and Accountability Act 2013* is currently the Minister for Finance.

‘*rules*’ – this term is frequently used in the Bill and in this explanatory memorandum. This is defined as rules made under section 54.

### **Section 5: Crown to be bound**

This section provides that the Crown is bound in all its capacities by this Act. It also specifies the Act does not make the Crown liable to be prosecuted for an offence.

### **Section 6: Extension to external territories**

This section provides that the Bill extends to every external territory. This would mean, for example, the Corporation will perform its functions in Norfolk Island or Christmas Island.

## **Part 2—Regional Investment Corporation**

### **Division 1—Establishment and functions**

#### **Section 7: Establishment**

This section establishes the Corporation. It will be a corporate Commonwealth entity, subject to the *Public Governance, Performance and Accountability Act 2013*. It could also be known by another name specified in the rules. The Corporation will be a body corporate with a seal that can acquire and dispose of real and personal property, and can sue and be sued. This section reflects that the Corporation will operate independently of government in exercising its functions. It also reflects the intention it will use a corporate model of governance.

#### **Section 8: Functions of the Corporation**

##### ***Administering farm business loans***

One of the major roles of the Corporation is to administer the government's farm business concessional loans programme. Subsection 1(a) gives effect to that role, by providing the Corporation with the function of administering farm business loans.

As part of administering farm business loans, the Corporation will provide loans to farm businesses, subject to the applicant meeting certain criteria. The Corporation will undertake this function within requirements that may be included in the Corporation's Operating Mandate or that are determined by the Board.

The Corporation can consult with commercial lenders and other bodies representing loan applicants. It can determine terms and conditions for farm business loans in accordance with the strategies and policies determined by the Board, and take security for approved loans.

Subsection (1)(a)(v) allows the Corporation to charge for transaction costs incurred in relation to an approved loan. This is discussed further in relation to section 47. However, this is not intended to allow the Corporation to charge fees to cover its operating costs. These costs will be funded by the government via annual appropriations and offset via interest payments received from loan recipients (subsection (1)(d) has further detail on interest rate setting). The Corporation will also manage and review approved farm business loans.

The list of functions described in subsections 1(a)(i) to (vii) is not intended to be exhaustive. There may be other activities implicit in the broader function of administering farm business loans that are not listed.

##### ***Administering financial assistance for water infrastructure projects***

The Corporation will be the administrator of the government's National Water Infrastructure Loan Facility, which is currently delivered via the Department of Agriculture and Water Resources. The Facility provides concessional loans to states and territories for the construction of water infrastructure. Subsections 1(b) and 1(c) give the Corporation the functions associated with this role. It will undertake the functions on behalf of the Commonwealth, given that the decision on whether to provide the financial assistance remains with the government, not the Corporation.

The Corporation will administer grants of financial assistance under section 96 of the Constitution. The grants are subject to terms and conditions, including that they are to be repaid (i.e. they are a loan).

Subsection 1(b) provides for the transfer of administrative responsibility for any financial assistance granted ahead of the Corporation commencing its role (noting that states and territories are currently able to apply for a loan under the National Water Infrastructure Loan Facility).

Subsection 1(c) then gives the Corporation its ongoing role of administering financial assistance. As part of that role the Corporation will liaise, negotiate and cooperate with states and territories and other parties. It will advise the responsible Ministers on water infrastructure projects, for example, on matters such as feasibility, alignment of the project with government objectives for water infrastructure, as well as suitable terms and conditions for any financial assistance. On direction from the responsible Ministers, the Corporation will enter into agreements to grant financial assistance to states and territories for water infrastructure projects and will then review the grants periodically, including terms and conditions.

For clarity, the list in subsection 1(c) is not intended to be exhaustive. There may be other activities implicit in administering financial assistance that are not listed.

### ***Other functions***

The functions in subsection (1)(d) to 1(i) apply more generally. The Corporation will set and adjust interest rates for approved loans and financial assistance. It will provide advice to responsible Ministers on activities that are, or could be, undertaken by the Corporation. This advice can be provided on the Corporation's initiative, or at the request of a responsible Minister, and reflects the role the Corporation will have in advising government on the financing needs of farm businesses and opportunities to improve the effectiveness of its programmes.

The Corporation will provide advice and assistance to loan recipients (current and prospective). It will administer any new programs prescribed by the rules and undertake any other functions conferred by the Act, the rules or another Commonwealth law. Subsection 1(i) allows the Corporation to do anything incidental to, or conducive to, performing its functions. It must act in a proper, efficient and effective manner.

### ***Timing for certain functions to take effect***

It is expected the Corporation will be fully operational by July 2018. Subsections (3) and (4) reflect that expectation by allowing for the Corporation's functions to commence on 1 July 2018 or an earlier date if specified. These provisions ensure the Board has sufficient time to prepare for the commencement of the key functions of the Corporation, with an earlier start date if possible.

A direction under subsection (4) is a legislative instrument because it is of a legislative character (as it would be altering the existing law which states that the commencement date for the functions is 1 July 2018). Legislative instruments are required to be registered on the Federal Register of Legislation (subsection 15G(1) of the *Legislation Act 2003*) and tabled in



Parliament (subsection 38(1) of the *Legislation Act 2003*). The instrument will also be subject to disallowance under subsection 42(1) of the *Legislation Act 2003*.

### ***Additional programs***

On its establishment, the Corporation will initially administer farm business loans and financial assistance provided to states and territories in relation to water infrastructure projects. It may also deliver other programs in the future.

Subsection (5) provides for this to occur by allowing for rules to prescribe additional programs to be administered by the Corporation. Rules will be required to address the constitutional basis for the program. The rules may allow for the Corporation to charge for transaction costs incurred in relation to the program and may also specify annual report requirements relating to the program. The rules may also allow for the responsible Ministers to give the Corporation a written direction in relation to the program.

The addition of new programs to the functions of the Corporation is a significant decision. The nature of the legislative instrument through which the addition will occur ensures that the Parliament has an appropriate opportunity to consider the new functions before they are added. Any rules made are legislative instruments under subsection 8(1) of the *Legislation Act 2003*. The rules will be subject to disallowance under section 42(1) of the *Legislation Act 2003* and sunseting under subsection 50(1) in the *Legislation Act 2003*. The rules will also be required to be registered on the Federal Register of Legislation (subsection 15G(1) of the *Legislation Act 2003*) and tabled in Parliament (subsection 38(1) of the *Legislation Act 2003*).

### **Section 9: Powers of the Corporation**

This section gives the Corporation the power to do all things necessary or convenient to be done for, or in connection with the performance of its functions. For example, the Corporation would have the power to enter into any contract or lease.

### **Section 10: Corporation does not have privileges and immunities of the Crown**

This section makes it clear the Corporation does not have the privileges and immunities of the Crown. This is appropriate for a corporate Commonwealth entity.

## **Division 2—Operating Mandate and other directions**

### **Section 11: Operating Mandate**

This section provides for the responsible Ministers to give directions, by legislative instrument, to the Corporation about the performance of its functions. The directions under this section form the ‘Operating Mandate’, which provides the key vehicle for the government to set out its expectations for the Corporation.

Subsection (1) requires the responsible Ministers to issue an Operating Mandate. This will ensure there is a mandate in force at all times, providing clarity to the Corporation on the government’s expectations for the programs it administers.

Subsection (2) describes the types of matters that may form part of the mandate. It provides for the Operating Mandate to identify objectives the Corporation should pursue in administering farm business loans, financial assistance for water infrastructure projects and any programs prescribed in the rules. It may provide guidance on expectations on the

strategies and policies to be followed for the effective performance of the Corporation's functions. It may also include eligibility criteria for loans and financial assistance, as well as directions on other matters.

Subsection (2)(d) allows the Operating Mandate to also include directions on financial arrangements in relation to the Corporation, including how amounts received should be dealt with and the circumstances in which they are to be remitted to the Commonwealth. The Corporation will be funded through annual Appropriation Acts. Subsection (2)(d) is intended to allow the government to ensure, for example, that the Corporation reports separately on funding it receives for loans and funding for operating expenses. It will also allow for clarity around how payments of principal and interest on loans are to be remitted back to the Commonwealth.

Subsection (3) ensures the responsible Ministers do not give a direction in the Operating Mandate that relates to an individual loan – either a farm business loan or a particular loan under a program prescribed by the rules. This limit applies to all aspects of administering an individual loan, not just the decision about whether to approve it, and ensures that decisions on individual loans are made independently of the government. For clarity, responsible Ministers can give a direction to the Corporation relating to a particular grant of financial assistance for a water infrastructure project, as provided for in subsection 12(3).

The Operating Mandate has been specified in the Act to be a legislative instrument. This is because it will specify matters which are legislative in character. As a legislative instrument, the Operating Mandate is required to be registered on the Federal Register of Legislation (subsection 15G(1) of the *Legislation Act 2003*) and tabled in Parliament (subsection 38(1) of the *Legislation Act 2003*). This approach will also provide for transparency and accountability when the government issues directions via the Operating Mandate.

The Operating Mandate will, however, be a non-disallowable instrument as it is made up of directions given by a Minister to a corporate Commonwealth entity (see subsection 44(2)(b) of the *Legislation Act 2003* and item 2 of the table in section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). This approach also reflects that the mandate will be the mechanism in which the government sets its expectations for the Corporation.

The Operating Mandate will not be subject to sunseting as it falls within the exemption for directions given by a Minister to a corporate Commonwealth entity (see subsection 54(2)(b) of the *Legislation Act 2003* and item 3 of the table in section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). This approach also ensures a mandate is in force at all times.

## **Section 12: Responsible Ministers may give other directions to the Corporation**

The responsible Ministers may also give certain other directions to the Corporation.

### ***Farm business loans***

Subsection (1) allows for the responsible Ministers to give a direction, in writing, in relation to a class of farm business loans. This provision is intended to allow the responsible Ministers to respond, for example, to a particular industry event or regional circumstance, by giving a direction to the Corporation on its treatment of classes of loans. This direction power cannot be used to direct in relation to a particular farm business loan.

Subsection (2) requires the responsible Ministers to seek the advice of the Board prior to giving a direction under subsection (1). This ensures the Board has an opportunity to provide expert advice to the responsible Ministers prior to the direction being made, for example on how best to frame the direction to ensure its successful implementation.

The directions under subsection (1) are not being made by legislative instrument because they are subject to the exclusion in item 3 of the table in subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This provides that a direction given by a Minister to a corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) is not a legislative instrument.

### ***Water infrastructure projects***

Subsection (3) allows the responsible Ministers to give a direction, in writing, to the Corporation to enter into an agreement to grant financial assistance to a state or territory in relation to a particular water infrastructure project, including the terms and conditions of the assistance. Decisions on whether to provide financial assistance under the National Water Infrastructure Loan Facility will continue to be made by the government, rather than the Corporation. This provision provides the mechanism by which the government formally notifies the Corporation of its decision. Importantly, the Corporation cannot enter into an agreement to grant financial assistance in the absence of such a direction.

Subsection (4) requires the responsible Ministers to seek the advice of the Board prior to giving a direction under subsection (3). This requirement ensures the Board provides its expert advice on projects being considered for financial assistance under the National Water Infrastructure Loan Facility.

The directions under subsection (3) are not being made by legislative instrument because they are directions subject to the exclusion in item 3 of the table in subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This provides that a direction given by a Minister to a corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) is not a legislative instrument.

### ***Location of Corporation***

Subsection (5) allows the responsible Ministers to give a direction, in writing, about where the Corporation is to be located. This provision is included to ensure the government can give effect to its agenda on the decentralisation of government entities.

A direction under subsection (5) is not a legislative instrument because it is a direction subject to the exclusion in item 3 of the table in subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This provides that a direction given by a Minister to a corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) is not a legislative instrument.

## **Section 13: Compliance with directions**

Subsection (1) requires the Corporation to take all reasonable steps to comply with directions given under Division 2 of Part 2. If the Board becomes aware the Corporation has not complied with a direction, subsection (2) requires the Board to advise the responsible Ministers and explain the circumstances of the non-compliance. This must be done as soon as

practicable, and in writing. Subsection (3) allows the responsible Ministers to direct the Board in writing (if required) to explain the failure to comply with a direction under Division 2 of Part 2, and to take action within a specified timeframe to ensure the Corporation complies with the direction.

The Board must comply with a direction made by the responsible Ministers under subsection (3). This is a stronger approach than the provision at subsection (1) which requires the Board to “take all reasonable steps” to comply with the directions under Division 2 of Part 2. This reflects that the directions in subsection (3) relate to addressing a failure to comply with a direction under Division 2 of Part 2.

Subsection (5) specifies that subsections (1) and (4) do not apply to the extent that the direction relates to the Board’s obligations under the *Public Governance, Performance and Accountability Act 2013*. That Act provides the framework for the governance, accountability, performance and the use of resources across Commonwealth bodies.

Subsection (6) clarifies that a failure of the Corporation to comply with a direction given in Division 2 of Part 2 does not affect the validity of any transaction entered into by the Corporation. This provision provides certainty over the Corporation’s activities in the event of any non-compliance. For example, loans agreed would remain on-foot in the event of non-compliance.

A direction under subsection (3) is not a legislative instrument because it is a direction subject to the exclusion in item 3 of the table in subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This provides that a direction given by a Minister to a corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) is not a legislative instrument.

## **Part 3—Board of the Corporation**

### **Division 1—Establishment and functions of the Board**

#### **Section 14: Establishment of the Board**

This section establishes the Board of the Corporation.

#### **Section 15: Functions of the Board**

This section sets out the functions of the Board. They include:

- Deciding the strategies and policies to be followed by the Corporation, within the scope of the Operating Mandate provided by responsible Ministers.
- Ensuring the proper, efficient and effective performance of the Corporation’s functions.
- Signing agreements, on behalf of the Commonwealth, with a state or territory for the grant of financial assistance for a water infrastructure project. The Board can only sign such agreements following a direction from responsible Ministers under subsection 12(3).
- Appointing the Chief Executive Officer.

- Any other functions conferred on the Board by the Act or the rules, which would include additional functions the Board may need to administer additional programs.

The section also empowers the Board to do all things necessary in connection with its functions. Anything done in the name of, or on behalf of, the Corporation by the Board, or with the authority of the Board, is taken to have been done by the Corporation.

## **Division 2—Members of the Board**

### **Section 16: Membership**

The Board consists of a Chair and two other members. A three member Board is appropriate given the functions of the Corporation.

### **Section 17: Appointment of Board members**

Subsection (1) allows for the responsible Ministers to appoint Board members by written instrument. Board members will be appointed on a part-time basis. An instrument of appointment under subsection (1) would not be a legislative instrument by virtue of the existing exemption under item 8 in the table at subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This provides that an instrument of appointment is not a legislative instrument.

It is important that, as a group, the Board has the skills, knowledge and experience needed to oversee what are significant government investments in farm businesses and water infrastructure. Subsection (2) sets out the range of skills that the government considers necessary to have within the Board for it to effectively exercise its responsibilities. It provides that a person cannot be appointed as a Board member unless the responsible Ministers are satisfied they have appropriate qualifications, skills or experience in one or more of the following:

- agribusiness and the financial viability of businesses within the agricultural sector
- banking and finance
- water infrastructure planning and financing
- issues concerning rural industries and communities
- economics
- financial accounting or auditing
- government funding programs or bodies
- law.

Subsection (2) also provides for the composition of the Board to change with the addition of any new programs to be administered by the Corporation, as prescribed by the rules under subsection 8(5).

## **Section 18: Chair**

This section requires the responsible Ministers to appoint one of the Board members as the Chair. An instrument of appointment under this section would not be a legislative instrument by virtue of the existing exemption under item 8 in the table at subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This provides that an instrument of appointment is not a legislative instrument.

## **Section 19: Term of appointment**

Under this section, a Board member holds office for the period specified in their instrument of appointment. This period cannot exceed five years.

The 2003 Uhrig Review of Corporate Governance of Statutory Authorities and Office Holders supported finite board terms and suggested appointments generally be limited to three years. It is considered that appointments of up to five years are appropriate for this Board given it consists of just three members. This period will support the continuity of management and appropriate transfer of corporate knowledge amongst Board members.

## **Section 20: Acting appointment**

Subsections (1) and (2) empower the Agriculture Minister to appoint, by written instrument, a Board member to act as the Chair, or a person to act as a member of the Board. The circumstances where these acting appointments are permitted are:

- during a vacancy in the office of Chair or Board member; or
- during a period when the Chair or Board member is absent from duty or from Australia; or
- during a period where the Chair or the Board member is, for any reason, unable to perform the duties of the office.

These provisions have been included to assist in the continuing and effective functioning of the Board in the absence of the Chair or other Board member.

An instrument of appointment as an acting Board member would not be a legislative instrument, by virtue of the exception in item 8 of subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

## **Section 21: Remuneration**

This section deals with remuneration of Board members. Remuneration will be determined by the Remuneration Tribunal. If no determination has been provided, then the remuneration for Board members can be prescribed in rules.

This section also provides for allowances of Board members to be prescribed by rules. While the Remuneration Tribunal's determination would include annual allowances, the Tribunal is not required to make additional determinations on any other allowances. As such, this section allows for these to be prescribed in rules.

Subsection (3) specifies that this section has effect subject to the *Remuneration Tribunal Act 1973*, which establishes the Remuneration Tribunal and sets out the rules for the making of determinations by the Tribunal.

### **Section 22: Leave of absence**

This section provides that the Agriculture Minister may grant the Chair a leave of absence, subject to terms and conditions determined by the Agriculture Minister. It also provides that the Chair may grant a leave of absence to another Board member, subject to terms and conditions determined by the Chair. The Chair must notify the responsible Ministers if a Board member is granted a leave of absence that exceeds a period of three months. This provision will ensure that the responsible Ministers are aware if a Board member is taking a significant period of leave.

### **Section 23: Outside employment**

This section restricts Board members from engaging in any paid work that, in the opinion of the responsible Ministers, conflicts or could conflict with the proper performance of their duties. This is intended to ensure the expected duties and performance of Board members will not be impacted by any outside employment.

### **Section 24: Other terms and conditions**

This section allows for the responsible Ministers to determine the terms and conditions on which a Board member holds office for matters not provided for in the Act.

### **Section 25: Resignation**

Subsection (1) allows for a Board member to resign by giving the responsible Ministers a written resignation. Subsection (2) provides that the resignation takes effect on the day it is received by the responsible Ministers, unless another day is specified in the resignation.

### **Section 26: Termination of appointment**

This section sets out the grounds upon which the responsible Ministers may terminate the appointment of a Board member.

Subsection (1) provides for termination of the appointment on the grounds of:

- misbehaviour; or
- if the Board member is unable to perform their duties due to physical or mental incapacity; or
- if the responsible Ministers do not have confidence in the Board member.

Under subsection (2), responsible Ministers may also terminate the appointment of a Board member if:

- the member becomes bankrupt, applies for relief from bankruptcy, compounds with their creditors, or assigns part of their remuneration for the benefit of creditors; or
- the member does not attend three consecutive meetings of the Board and is not on a leave of absence during that time; or

- the member engages in paid work that, in the opinion of the responsible Ministers, conflicts or could conflict with the proper performance of their duties; or
- if the responsible Ministers are satisfied that the member’s performance has been unsatisfactory for a significant period of time.

The provisions at subsections (1) and (2) are intended to ensure Board members are financially responsible and are competently carrying out their duties.

### **Division 3—Meetings of the Board**

#### **Section 27: Convening meetings**

This section requires the Board to hold meetings as necessary for the efficient performance of its functions. It allows the Chair to convene a meeting at any time and also requires the Chair to convene at least four meetings per year, and also within 30 days of receiving a written request for a meeting from a Board member. These provisions have been included to support the appropriate functioning of the Board.

Section 33B of the *Acts Interpretation Act 1901* contains provisions about participation in meetings other than in person. Under that section, the Board may permit any or all members to participate in a meeting by telephone, closed-circuit television or any other means of communication and these members are taken to be present at the meeting and to form part of any quorum for the meeting. Where permission has been granted to participate in meetings by telephone, closed-circuit television or any other means of communication, a meeting may be held at two or more places at the same time.

#### **Section 28: Presiding at meetings**

This section requires the Chair to preside at all meetings they attend. In the absence of the Chair, the Chair must appoint one of the other Board members to preside over the meeting. There is no restriction on which Board members are eligible to preside at meetings in this instance. This provision ensures there is always a Chair presiding over a Board meeting.

#### **Section 29: Quorum**

This section provides that a quorum for a Board meeting is the majority of the Board members. For example, with a Board membership of three (including the Chair), a quorum is achieved with two members present.

#### **Section 30: Voting at meetings**

This section deals with voting at Board meetings. It specifies that questions at Board meetings are to be decided by a majority of the votes of the members present and voting. It also specifies that the person presiding at a meeting, which could be the Chair or another member under section 28, has a deliberative and, if necessary, a casting vote (that is the deciding vote when votes on each side are equal). This provision is included to ensure the effective functioning of the Board.

#### **Section 31: Conduct of meetings**

This section gives discretion to the Board to regulate the conduct of its meetings on terms it considers appropriate.



### **Section 32: Minutes**

This section requires the Board to keep a record of its meetings.

### **Section 33: Decisions without meetings**

This section allows for the Board to determine that decisions can be made without a meeting and also the method by which Board members are to indicate agreement with proposed decisions.

Subsection (1) provides that a decision is taken to have been made at a meeting of the Board if:

- without meeting, a majority of members entitled to vote on the proposed decision indicate their agreement; and
- that agreement is in accordance with the method determined by the Board (under subsection (2)); and
- all members were informed of the proposed decision, or reasonable efforts had been made to inform them of it.

Subsection (1) only applies if the Board has agreed it may make decisions of that kind without a meeting and has also agreed the method by which members can indicate agreement to a proposed decision. A member cannot vote on a proposed decision that they would not have been entitled to vote on if the decision was being considered at a meeting of the Board. The Board is required to keep a record of its decisions made in accordance with this section.

These provisions provide flexibility to the operation of the Board and are intended to assist in its effective functioning.

## **Part 4—Chief Executive Officer, staff and consultants**

### **Division 1—Chief Executive Officer**

#### **Section 34: Chief Executive Officer**

This section requires that there is a Chief Executive Officer (CEO) of the Corporation.

#### **Section 35: Functions of the CEO**

This section establishes the functions of the CEO. It provides that the CEO may sign, on behalf of the Corporation, a loan agreement to be administered by the Corporation. The CEO is also responsible for the day-to-day administration of the Corporation.

It is expected that loan agreements will need to be signed regularly, and that the CEO would be best-placed to carry out that function, rather than the Board. This approach is intended to assist in the effective and efficient functioning of the Corporation.

The section clarifies that the CEO is able to do all things necessary or convenient for the performance of their duties. They are required to act in accordance with the strategies and policies determined by the Board.

Subsections (4) and (5) enable the Board to give written directions to the CEO about the performance of their duties, and requires the CEO to comply with such directions. Subsection (6) provides that a direction by the Board under subsection (4) is not a legislative instrument. This provision is merely a declaration of the law rather than prescribing an exemption from the requirements of the *Legislation Act 2003*. This direction is administrative in character and is therefore not a legislative instrument, it applies only to the CEO and would be to assist them in the performance of their duties and is central to the operation of the Corporation.

### **Section 36: Appointment**

This section sets out the appointment arrangements for the CEO. Reflecting the independence of the Corporation, the CEO is to be appointed by the Board, by written instrument. The role will be full-time. The CEO will hold office for the period specified in the instrument of appointment, but not for more than five years. A member of the Board cannot be appointed as the CEO, and the Board must consult with the responsible Ministers before appointing the CEO. This requirement reflects the importance of the CEO's role in managing day-to-day administration of the Corporation.

An instrument of appointment under subsection (1) would not be a legislative instrument by virtue of the existing exemption under item 8 in the table at subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This provides that an instrument of appointment is not a legislative instrument.

### **Section 37: Acting appointment**

This section empowers the Board to appoint a person other than a Board member, by written instrument, to act as the CEO. This can occur during:

- a vacancy in the office of the CEO; or
- any or all periods when the CEO is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

This provision is intended to support the effective functioning of the Corporation by providing for an acting CEO to oversee its daily operations.

An instrument of appointment as an acting Board member would not be a legislative instrument, by virtue of the exception in item 8 of subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Sections 33AB and 33A of the *Acts Interpretation Act 1901* contain provisions dealing with acting appointments which are relevant to this section.

### **Section 38: Remuneration**

This section establishes remuneration arrangements for the CEO. Remuneration will be determined by the Remuneration Tribunal. If no determination is in operation, then the remuneration for the CEO can be prescribed in the rules. Allowances for the CEO may be prescribed by the rules. Subsection 3(2) of the *Remuneration Tribunal Act 1973* provides that remuneration includes annual allowances, such as an accommodation allowance. As the Remuneration Tribunal is not required to make additional determinations on any other allowances, this provision allows for additional allowances to be prescribed in rules.

This section has effect subject to the *Remuneration Tribunal Act 1973*, which establishes the Remuneration Tribunal and sets out the rules for the making of determinations by the Tribunal.

### **Section 39: Leave of absence**

This section provides that the CEO will have the recreation leave entitlements that are determined by the Remuneration Tribunal. It also provides for the Board to grant the CEO a leave of absence, except for recreational leave, on terms and conditions that the Board determines. These provisions reflect that the Remuneration Tribunal may determine recreation leave for full-time office holders, but cannot determine other types of leave, such as sick leave.

### **Section 40: Outside employment**

This section specifies that the CEO must not engage in paid work outside the duties of their office without the approval of the Board. This provision is intended to ensure the CEO does not engage in paid employment that conflicts or could conflict with the proper performance of their duties.

### **Section 41: Other terms and conditions**

This section allows the Board to determine any terms and conditions of the CEO's employment that are not covered in this Act.

### **Section 42: Resignation**

This section sets out the resignation process for the CEO. It provides that the CEO may resign from their appointment by writing to the Board, and for this resignation to take effect on the day it is received by the Board, unless another day is specified in the resignation.

### **Section 43: Termination of appointment**

This section sets out the grounds upon which the Board may terminate the appointment of the CEO.

Subsection (1) provides for the termination of the appointment of the CEO on the grounds of:

- misbehaviour; or
- if the CEO is unable to perform their duties due to physical or mental incapacity.

Subsection (2) provides for the termination of the appointment of the CEO if:

- the CEO becomes bankrupt, applies for relief from bankruptcy, compounds with their creditors, or assigns part of their remuneration for the benefit of creditors; or
- the CEO is absent (except on leave of absence) for 14 consecutive days or for 28 days in any 12 months; or
- the CEO engages, except with the Board's approval, in paid work outside of their CEO duties; or

- the CEO, without reasonable excuse, does not comply with the disclosure of interest provisions in the *Public Governance, Performance and Accountability Act 2013*; or
- the Board is of the opinion that the CEO’s performance has been unsatisfactory for a significant period of time.

The provisions at subsections (1) and (2) are intended to ensure the CEO is financially responsible and is competently carrying out their duties.

Subsection (3) requires the Board to notify the responsible Ministers if the Board terminates the appointment of the CEO. This requirement reflects the importance of the CEO’s role in managing the day-to-day administration of the Corporation.

## **Division 2—Staff and consultants**

### **Section 44: Staff**

This section empowers the Corporation to employ staff, as necessary, for the performance of its functions and exercise of its powers. It also allows the Corporation to do so under the terms and conditions determined by the Corporation, in writing. The Corporation is also able to enter into arrangements with the Commonwealth, a state, or a territory (or an authority of), or any other organisation or body, for the services of their officers or employees to be made available to the Corporation.

These provisions provide the Corporation with flexibility in its staff resourcing arrangements.

### **Section 45: Consultants**

This section empowers the Corporation to engage consultants to assist in the performance of its functions, and on the terms and conditions determined by the Corporation. It is included to avoid doubt and is not intended to affect the operation of section 9 that deals with the powers of the Corporation.

## **Part 5—Miscellaneous**

### **Section 46: Terms and conditions of loans**

This section requires any person who is a party to a loan provided by the Corporation to comply with the terms and conditions of that loan. This provision makes it clear to loan recipients that they must comply with the terms and conditions of the loan.

### **Section 47: Recovery of costs**

This section allows the Corporation to charge a loan recipient for all or any of the transaction costs incurred by the Corporation in relation to the loan. It specifies that a cost charged under subsection (1) is a debt due to the Corporation and is recoverable by the Corporation.

This provision has been included to allow the Corporation to charge loan recipients for the transaction costs that the Corporation incurs in administering the loan (for example, fees for title searches and mortgage registrations). It is not intended to support the Corporation charging fees to cover its operating costs (such as wages and utilities).

### **Section 48: Exemption from taxation**

This section makes it clear that the income of the Corporation is exempt from income tax under the *Income Tax Assessment Act 1997*. This is consistent with the general principle that entities within the general government sector are not subject to income tax. The Corporation is subject to notional fringe benefits tax and goods and services tax.

It also clarifies that the Corporation is not subject to tax under a law of a state or territory if the Commonwealth is not subject to the tax.

### **Section 49: Delegation by Corporation**

This section provides for the Corporation to delegate, in writing under its seal, all or any of its powers or functions to a Board member or CEO. This applies to functions under this Act or prescribed in rules. It requires the delegate to comply with any directions made by the Corporation when exercising powers or performing functions that have been delegated.

The decision-maker for delegating any of the Corporation's functions or powers would be the Board. This provision has been included to provide flexibility to the operation of the Corporation.

### **Section 50: Delegation by Board**

This section provides for the Board to delegate, in writing, all or any of its powers or functions to a Board member or CEO. This applies to functions under this Act or prescribed in the rules.

Subsection (2) requires the delegate to comply with any directions made by the Board when exercising powers or performing functions that have been delegated.

This provision has been included to provide flexibility to the operation of the Corporation.

### **Section 51: Delegation and subdelegation by CEO**

This section provides for the CEO to delegate, in writing, all or any of their powers or functions to a member of the Corporation's staff referred to in subsection 44(1). It also allows for the CEO to subdelegate, in writing, to a member of the Corporation's staff referred to in section 44(1) a power or function delegated to the CEO under subsections 49(1) or 50(1).

The delegate or subdelegate is required to comply with any directions made by the CEO when exercising powers or performing functions that have been delegated or subdelegated.

This section also makes it clear that sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a subdelegation in the same way they apply to a delegation.

Allowing the CEO to delegate or subdelegate their powers or functions to a staff member of the Corporation (who would then undertake the task concerned) facilitates the efficient and effective performance of the Corporation's functions. It is envisaged the CEO would carefully consider the skills and experience of the relevant staff member before making the delegation or subdelegation. It is also envisaged the CEO would be held accountable by the Board for monitoring and managing the activities of staff who perform activities that have been delegated or subdelegated by the CEO.

## **Section 52: Transfer of records to the Corporation**

This section facilitates a smooth transition from current administration of the National Water Infrastructure Loan Facility, by the Department of Agriculture and Water Resources, to administration by the Corporation. It provides for the department to transfer records or documents that may be relevant to the Corporation's functions and relates to:

- financial assistance that was provided to a state or territory for a water infrastructure project before the Corporation started administering such financial assistance; or
- possible water infrastructure projects.

## **Section 53: Review of operation of Act**

This section requires the Agriculture Minister to arrange for a review of the operation of the Act. The review is to be finalised on or before the 1 July 2024 and must consider the scope of the Corporation's activities after 30 June 2026 and the appropriate governance arrangements after that date. A written report is to be provided to the Agriculture Minister.

It is likely the role of the Corporation will change in line with the time-limited nature of the activities it currently has authority to administer. This provision will enable the operation of the legislation to be reviewed, with consideration given to the scope of the Corporation's activities and appropriate governance arrangements going forward.

## **Section 54: Rules**

Subsection (1) provides for the responsible Ministers to, by legislative instrument, make rules that prescribe matters required or permitted by the Act to be prescribed by rules, or necessary and convenient to be prescribed for carrying out or giving effect to this Act.

Subsection (2) provides limitations on the power to make rules. Specifically, rules could not:

- create an offence or civil penalty,
- provide powers of arrest, detention, entry, search or seizure,
- impose a tax,
- set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act, or
- directly amend the text of the Act.

Any rules made under section 54 are legislative instruments under subsection 8(1) of the *Legislation Act 2003*. The rules are required to be registered on the Federal Register of Legislation (subsection 15G(1) of the *Legislation Act 2003*) and tabled in Parliament (subsection 38(1) of the *Legislation Act 2003*).

The rules will be subject to disallowance under section 42(1) of the *Legislation Act 2003*. The rules would also be subject to sunseting under subsection 50(1) in the *Legislation Act 2003* to ensure they are kept up to date and only remain in force for as long as they are needed.