

## Chapter 2

### Purpose and provisions of the bill

2.1 The purpose of the bill is to enable Australia to join the AfDB Group. To become a member, Australia must make payments as required under the *Agreement Establishing the African Development Bank* and the *Agreement Establishing the African Development Fund*. The bill would authorise the Australian Government to purchase membership shares in the AfDB and to make payments to meet membership and continuing subscriptions to the ADF.<sup>1</sup>

2.2 The bill comprises eight clauses. Clause 1 specifies the Act's short title—*African Development Bank Act 2013*; clause 2 specifies that the Act would commence on the day after the Act receives the Royal Assent; and clause 3 defines key terms in the legislation.

#### ***Authority to make payments to the African Development Bank***

2.3 Clause 4 of the bill authorises the minister to purchase a fixed number of membership-related shares in the Bank. Specifically, it provides for the minister, on behalf of Australia, to make an arrangement for Australia to become a member of the AfDB and to subscribe to:

- a) 5,912 paid-up shares of the authorised capital stock of the Bank at a price not more than 10,000 special drawing rights per share; and
- b) 92,616 callable shares of the authorised capital stock of the Bank at a price not more than 10,000 special drawing rights a share.

2.4 The International Monetary Fund (IMF) created special drawing rights (SDRs) as an international reserve asset, which can be exchanged for freely useable currencies.<sup>2</sup> The value of SDRs is based on 'a basket of four key international currencies'—euro, Japanese yen, pound sterling and US dollar. SDRs also serve as the unit of account of the IMF and some other international organisations.<sup>3</sup>

2.5 While the bill, if enacted, would establish the legislative authority for the purchase of the 98,528 shares to become a member of the Bank, the Explanatory Memorandum makes clear that the minister 'may subscribe to, and pay for, only the specified number of shares'. It notes further that 'if, in the future, Australia wanted to subscribe to more shares, then the Act would be amended to authorise this'.<sup>4</sup>

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1 *African Development Bank Bill 2013, Explanatory Memorandum*, (Explanatory Memorandum), General outline and financial impact, p. 3.

2 IMF website, 'Special Drawing Rights (SDRs)', [www.imf.org/external/np/exr/facts/sdr.htm](http://www.imf.org/external/np/exr/facts/sdr.htm) (accessed 20 June 2013).

3 IMF website, 'Special Drawing Rights (SDRs)', [www.imf.org/external/np/exr/facts/sdr.htm](http://www.imf.org/external/np/exr/facts/sdr.htm) (accessed 20 June 2013).

4 Explanatory Memorandum, paragraph 1.11.

2.6 In respect of the callable shares, the Explanatory Memorandum notes that:

...callable shares would only occur if the Bank could not otherwise meet its financial obligations and so explicitly requested payment for some or all of these shares from all Bank members.<sup>5</sup>

2.7 Payment for the Bank shares, including payments connected with securities issued for the payments of these funds, is to be drawn from Consolidated Revenue Funds.

***Authority to make payments to the African Development Fund***

2.8 To become a member of the AfDB, Australia, as a non-regional state, must first accede to membership of the ADF.<sup>6</sup>

2.9 Under clause 5, the minister, on behalf of Australia, may make an arrangement for Australia to subscribe to the Fund in connection with the initial subscription to become a member of, and any subsequent subscription to, the Fund.<sup>7</sup> The Explanatory Memorandum notes that payments for subscriptions to the Fund would come from money appropriated under other legislation, such as an annual appropriation.<sup>8</sup>

***Authority to issue securities***

2.10 Clause 6 of the bill authorises the minister to issue securities by Australia to make payments for Australia's initial subscription to shares in the Bank and to subscriptions to the Fund.

***Executive power***

2.11 The bill stipulates in clause 7 that the legislation would not limit the executive power of the Commonwealth.

***Making rules***

2.12 The legislation under clause 8 provides for the minister to make rules by legislative instrument prescribing matters:

- a) required or permitted by the Act to be prescribed by the rules; or
- b) necessary or convenient to be prescribed for carrying out or giving effect to the Act.<sup>9</sup>

5 Explanatory Memorandum, paragraph 1.10.

6 *Agreement Establishing the African Development Bank as amended*, (Khartoum, 4 August 1963), Article 3; African Development Bank Group, *AfDB in Brief*, May 2013, p. 9, <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/AfDB%20in%20Brief.pdf> (accessed 20 June 2013).

7 Explanatory Memorandum, paragraph 1.12.

8 Explanatory Memorandum, paragraph 1.12.

9 The bill, clause 8.

2.13 In this regard, the Explanatory Memorandum indicates that it was not envisaged that any such rules would 'be required to give effect to the Act'. It explains:

At the time of writing, however, it was Office of Parliamentary Counsel policy to ensure that all new legislation contains a clause to cover the scenario where the Government wants to make rules to further define certain parts of a new Act, including any amendments subsequently made to the Act.<sup>10</sup>

***Statement of compatibility with Human Rights***

2.14 The Explanatory Memorandum states that the bill 'does not raise any human rights issues'.<sup>11</sup> Consistent with this view, the Parliamentary Joint Committee on Human Rights found that the bill was 'unlikely to raise human rights concerns'.<sup>12</sup>

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10 Explanatory Memorandum, paragraph 1.15.

11 Explanatory Memorandum, paragraphs 2.8–2.10.

12 Parliamentary Joint Committee on Human Rights, *Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011, Bills introduced 27 May–6 June 2013*, Eighth Report of 2013, June 2013, p. 69.

