

The Senate

Finance and Public Administration
Legislation Committee

Future Drought Fund Bill 2018 [Provisions]

Future Drought Fund (Consequential
Amendments) Bill 2018 [Provisions]

February 2019

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Recommendation

Recommendation 1

2.23 The committee recommends that the bills be passed.

Senator James Paterson

Chair

Chapter 1

Introduction

Referral

1.1 On 28 November 2018, the Future Drought Fund Bill 2018 and the Future Drought (Consequential Amendments) Bill 2018 (the bills) were introduced into the House of Representatives by the Minister for Agriculture and Water Resources, the Hon David Littleproud MP, and read for a second time.¹

1.2 On 6 December 2018, pursuant to the Senate Selection of Bills Committee Report, the provisions of the bills were referred to the Senate Finance and Public Administration Legislation Committee for inquiry and report by 8 February 2019.²

Purpose of the bills

1.3 The Future Drought Fund Bill 2018 gives effect to the Government's decision to establish the Future Drought Fund to fund initiatives that enhance future drought resilience, preparedness and response across Australia. The Fund consists of the Future Drought Fund Special Account and the investments of the Future Drought Fund.³

1.4 The Future Drought (Consequential Amendments) Bill 2018 makes consequential amendments to other pieces of legislation required to enable the effective operation of the Future Drought Fund established by the substantive bill at commencement. The consequential amendments made by the bill support the establishment of the Future Drought Fund in that they:

- extend the Future Fund Board's duties to manage the Future Drought Fund; and
- allow for amounts to be transferred between the Future Drought Fund and the Future Fund to allow for proper apportioning of common expenses incurred by the Future Fund Board in managing the Future Drought Fund, the other funding entities managed by the Future Fund Board.⁴

Conduct of the Inquiry

1.5 Details of the inquiry, including links to the bill and associated documents were placed on the committee website at: www.aph.gov.au/senate_fpa.

1.6 The committee directly contacted a number of relevant organisations and individuals to notify them of the inquiry and invited submissions by 18 January 2019. The committee continued to accept submissions after this date. Submissions received by the committee are listed at Appendix 1.

1 House of Representatives, *Hansard*, 28 November 2018, pp. 10–11.

2 *Journals of the Senate*, No 137–6 December 2018, pp. 4478–4479.

3 Future Drought Fund Bill 2018, Explanatory Memorandum, (EM), p. 4.

4 Future Drought Fund (Consequential Amendments) Bill, EM, p. 4.

1.7 The committee thanks those who made submissions.

Overview of the Future Drought Fund Bill

1.8 The Future Drought Fund is to be a long-term investment to build drought resilience, including preparedness and recovery in drought affected communities. It is aimed at providing support to research, development and innovation projects. It will also deliver infrastructure projects, promote the adoption of technology and support improved environmental and natural resource management to encourage sustainable agricultural practices.⁵

1.9 This bill establishes the Future Drought Fund which will provide an initial credit of \$3.9 billion from the Building Australia Fund (BAF) concurrently with the closure of the BAF. The Government intends to grow the Future Drought Fund until it reaches \$5 billion, while at the same time drawing down \$100 million per year from 1 July 2020 to the Agriculture Future Drought Resilience Special Account (AFDRSA) to invest in important drought resilience projects. This annual funding is additional to, and does not replace, the significant funding already available to assist farmers during an existing drought.⁶

1.10 The Future Drought Fund will be managed by the Future Fund Board of Guardians. The bill requires the Treasurer and the Minister for Finance and the Public Service (the Minister for Finance) to issue directions setting out the Government's expectations as to how the fund will be managed and invested by the Board, including setting a benchmark return for earnings.⁷

1.11 The Government will develop and publish the Drought Resilience Funding Plan to ensure that a coherent and consistent approach is undertaken when considering and providing funding for drought resilience projects. The funding plan will be informed through public consultation and will be reviewed every four years to ensure that emerging priorities are appropriately captured in ensuring the fund remains future focussed. In developing the plan, the Minister for Agriculture and Water Resources (Minister for Agriculture) will have regard to the Intergovernmental Agreement on National Drought Program Reform and any successive agreements, as well as any related government drought policies and strategies. The Minister for Agriculture will also seek advice from the Regional Investment Corporation Board on any grant or funding arrangement. This advice will inform how the new drought resilience funding is allocated in each budget cycle.⁸

5 The Hon David Littleproud MP, Minister for Agriculture and Water Resources, Second Reading Speech, House of Representatives, *Hansard*, 28 November 2018, pp. 10.

6 The Hon David Littleproud MP, Minister for Agriculture and Water Resources, Second Reading Speech, House of Representatives, *Hansard*, 28 November 2018, pp. 10.

7 The Hon David Littleproud MP, Minister for Agriculture and Water Resources, Second Reading Speech, House of Representatives, *Hansard*, 28 November 2018, pp. 10.

8 The Hon David Littleproud MP, Minister for Agriculture and Water Resources, Second Reading Speech, House of Representatives, *Hansard*, 28 November 2018, pp. 10–11.

Provisions of the bills

Future Drought Fund Bill 2018

1.12 The Future Drought Fund Bill is divided into six parts. The following sets out the broad terms of the proposed bill.

Preliminary matters

1.13 Part 1 of the bill deals with preliminary matters, including a simplified outline of the Act and definitions.⁹ The object of the Act is to enhance the public good by building drought resilience.¹⁰ 'Drought resilience' is defined in clause 5 of the bill to mean:

- (a) resilience to drought; or
- (b) preparedness for drought; or
- (c) responsiveness to drought; or
- (d) management of exposure to drought; or
- (e) adaption to the impact of drought; or
- (f) recovery from drought; or
- (g) long-term drought related sustainability of farms and communities that:
 - (i) have been affected by drought; or
 - (ii) are being affected by drought; or,
 - (iii) are at significant risk of being affected by drought.

Establishment of the Future Drought Fund

1.14 Part 2 of the bill establishes the Future Drought Fund comprising a Special Account and the investments of the Future Drought Fund.¹¹ The bill transfers the balance of the BAF to the Future Drought Fund Special Account. The investments of the BAF become investments of the Future Drought Fund.¹²

1.15 The bill empowers the responsible Minister, being either the Treasurer or the Minister for Finance, to determine that additional amounts may be credited to the Future Drought Fund Special Account. The determination of a responsible Minister is a legislative instrument not subject to disallowance under section 42 of the *Legislation Act 2013*, consistent with arrangements for other Funds invested by the Future Fund Board.¹³

9 Cl. 4 and 5.

10 Cl. 3.

11 Cl. 10 and 13; EM, p. 8, paragraph 16.

12 Cl. 11 and 12.

13 Cl.14; EM. p. 10, paragraph 33.

1.16 The bill provides that the main purpose of the Future Drought Fund Special Account is to transfer monies to the Agriculture Future Drought Resilience Special Account to meet amounts payable by the Commonwealth under an arrangement in accordance with clause 21, and making grants in accordance with clause 21.¹⁴ Subsidiary purposes of the fund are also specified.¹⁵ The Future Drought Fund Special Account can be debited in relation to costs and other obligations incurred by the Future Fund Board in managing the Future Drought Fund.¹⁶

Constitutional limits on grants

1.17 Part 3 of the bill sets out the types of drought resilience activities for which arrangements and grants may be made. The bill provides a broad legislative spending power exercisable subject to constitutional limits set out in clause 26. Commencing on or after 1 July 2010 the Minister for Agriculture may make arrangements with or grants of financial assistance to a person or body for certain specified matters.¹⁷

1.18 Clause 26 provides that the Minister for Agriculture may only exercise a power where one of the enumerated Constitutional powers is enlivened. Clause 26 acts as a limitation on the principal spending power provided under clauses 21 and 22. Clause 26 is not intended to narrow the scope of the enumerated Constitutional powers, but rather to clarify the powers relied upon to constitutional validity.¹⁸

Advice from Regional Investment Corporation

1.19 Before exercising the spending powers the Minister for Agriculture is required to seek the advice of the Regional Investment Corporation Board (RICB) and to have regard to that advice in making a decision.¹⁹ In providing advice to the Minister, the RICB must comply with a funding plan in force.²⁰

Drought resilience funding plan

1.20 Part 3, Division 4 of the bill requires the Minister for Agriculture to determine a four-year strategic funding plan to come into force before 1 July 2020. The plan is to set out a coherent and consistent approach to making arrangements for grants in relation to drought resilience or entering into agreements in relation to such grants. The bill provides a mechanism for the development of successive funding plans. In developing the plan, the Minister for Agriculture is to have regard to the

14 Cl. 15.

15 Cl. 16, 17 and 18.

16 Cl. 19.

17 Cl. 21–25.

18 Cl. 26; EM, pp. 14–16, paragraphs 70–74.

19 Cl. 28; EM, p. 16, paragraph 77–78.

20 Cl. 29 and 31; EM, p. 16, paragraph 79.

Intergovernmental Agreement on National Drought Program Reform and any related Australian Government drought policies.²¹

1.21 The funding plan is a legislative instrument for the purposes of the *Legislation Act 2003*, but not a disallowable instrument to enable a consistent approach to be adopted in the making of arrangements and grants.²² The power to make the instrument does include a power to repeal, rescind, revoke, amend or vary the instrument provided by subsection 33(3) of the *Acts Interpretation Act 1901*. However, clause 31(5) provides a mechanism that allows a new funding plan to replace an earlier plan.²³ The funding plan is subject to a consultative process.²⁴

Agriculture Future Fund Drought Resilience Special Account

1.22 Part 3, Division 5 of the bill establishes the Agriculture Future Drought Resilience Special Account.²⁵ The bill provides a mechanism whereby the Minister for Finance would transfer funds from the Future Drought Fund Special Account to the Agriculture Future Drought Resilience Special Account to be used to award grants or make payments under arrangements.²⁶

1.23 In consultation with the Minister for Agriculture, each financial year the Minister for Finance is required to direct that \$100 million be debited from the Future Drought Fund Special Account and credited to the Agriculture Future Drought Resilience Special Account on a specified day, or by instalments over the financial year. The Minister for Finance's direction is not a legislative instrument under subsection 8(1) of the *Legislation Act 2003*.²⁷

Investments of the Future Drought Fund

1.24 Part 4 of the bill sets out the process for the investment of the Future Drought Fund, the main object of the acquisition by the Future Fund Board being to enhance the Commonwealth's ability to provide grants or to enter into arrangements in relation to drought resilience, and the ancillary object of the discharge the Future Fund Board's financial functions.²⁸

1.25 The responsible Minister is required to provide the Future Fund with written directions by way of strategic guidance outlining the Government's expectations on how the Future Drought Fund will be invested and managed by the independent Future Fund Board. Directions by the responsible Minister are collectively called the

21 Cl. 31; EM. p. 18, paragraphs 91–94.

22 EM. p. 18, paragraph 95.

23 Cl. 31; EM, p. 18, paragraphs 95 and 97.

24 Cl. 32; EM, p.18, paragraphs 98 and 99.

25 Cl. 33; EM. p. 19, paragraphs 100–102.

26 Cl. 34; EM, p. 19, paragraph 103.

27 Cl. 34; EM. p. 19, paragraphs 104–107.

28 Cl. 38–40; EM, p. 20, paragraphs 114–119.

Future Drought Fund Investment Mandate, and are informed by expert advice.²⁹ The responsible Minister must issue at least one such direction and any new direction would be expected to take account of significant policy changes or material changes in the investment environment.³⁰

1.26 A direction to the Future Fund Board is a legislative instrument not subject to disallowance. The direction must be tabled before Parliament and registered on the Federal Register of Legislation. The direction is not subject to the sunset provisions in accordance with regulations made for the purpose of paragraph 54(2)(b) of the *Legislation Act 2003*.³¹

1.27 Section 58 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) does not apply to an investment of the Future Drought Fund. Section 58 of the PGPA Act limits the range of investments that the Treasurer or Minister for Finance may enter into on behalf of the Commonwealth, such as government bonds and bank deposits. Clause 39 of the bill provides for the investment of the Future Drought Fund in a wider range of investments.³²

Other matters

1.28 Part 5 of the bill deals with reporting obligations, and Part 6 of the bill deals with the power of the Minister for Finance, the Treasurer and the Minister for Agriculture to delegate any or all of the Minister's or Treasurer's functions to a departmental Secretary or an Senior Executive Service (SES) employee in their respective departments, or to a person who is an official of a Commonwealth entity other than the Secretary or an SES employee. Clause 64 operates to achieve the closure of the BAF on the commencement of the bill. Clause 65 provides for a review of the operation of the bill within 10 years of its commencement.³³

Future Drought Fund (Consequential Amendments) Bill 2018

1.29 The Future Fund (Consequential Amendments) Bill 2018 (Consequential Amendments bill) makes amendments to other legislation required to give effective operation to the Future Drought Fund at commencement.³⁴

1.30 The amendments proposed by the Consequential Amendments bill support the establishment of the Future Drought Fund by:

29 Cl. 41; EM, pp. 21–23, paragraphs 121–132.

30 Cl.41; EM. p. 22, paragraph 122.

31 Sub cl. 41(7); EM, p. 22, paragraph 129.

32 Sub cl. 40(6); EM, p. 21, paragraph 120.

33 EM, pp 28–31.

34 The bill amends the *DisabilityCare Australia Fund Act 2013*; the *Future Fund Act 2006*; the *Medical Research Future Fund Act 2015*; the *Nation-building Funds Act 2008*; the *Regional Investment Corporation Act 2018*; the *COAG Reform Fund Act 2008*; and the *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018*.

-
- (a) extending the Future Fund Board's duties to manage the Future Drought Fund; and
 - (b) allowing for amounts to be transferred between the Future Drought Fund and the Future Fund to allow for proper apportioning of common expenses incurred in managing the Future Drought Fund and a range of other future funds managed by the Future Funds Board.

1.31 The Consequential Amendments bill also closes the BAF by repealing sections of the *Nation-building Funds Act 2008*.³⁵

Financial Implications

1.32 The Explanatory Memorandum notes that it is expected that the initial credit of the balance of funds from the BAF to the Future Drought Fund will not have a direct impact on underlying cash and fiscal balances, as the funds represent the transfer of a financial asset between funds.³⁶

Human Rights

1.33 The Explanatory Memorandum notes that the bill engages Article 11(1) of the International Covenant on Economic and Culultural Rights (ICESCR) in that the bill promotes the right to an adequate standard of living, including food, water and housing.³⁷

1.34 The Parliamentary Joint Committee on Human Rights has reported that the Future Drought Fund Bill did not raise human rights concerns.³⁸

Consideration by the Scrutiny of Bills Committee

1.35 The bill was reviewed by the Senate Standing Committee on the Scrutiny of Bills (Scrutiny of Bills Committee).³⁹

1.36 The Scrutiny of Bills Committee identified five areas of concern with the proposed bill:

- Broad discretionary powers;⁴⁰
- Merits review;⁴¹
- Significant matters in non-disallowable legislative instruments;⁴²

35 EM, p. 4.

36 EM, p. 5.

37 EM, p. 6.

38 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report, Report 13 of 2018*, 4 December 2018, p. 10.

39 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, pp. 12–19.

40 Future Drought Fund Bill, cl. 21–22.

41 Future Drought Fund Bill, cl. 21.

- Broad delegation of administrative powers;⁴³ and,
- The absence of a requirement to table or publish a review of the operation of the bill after its enactment.⁴⁴

Broad discretionary powers

1.37 Clause 21 of the bill seeks to allow the Minister for Agriculture to make arrangements with, and grants of financial assistance to, a person or body for a number of specified purposes related to achieving drought resilience.

1.38 The Scrutiny of Bills Committee considered the bill should be subject to some level of parliamentary scrutiny, stating:

The committee's view is that, where it is proposed to allow the expenditure of a potentially substantial amount of Commonwealth money, the expenditure should be subject to at least some level of parliamentary scrutiny. In this regard, the committee is concerned that the bill contains no guidance on its face as to the terms and conditions that would attach to the financial assistance granted in accordance with clause 21, beyond requiring that any such terms and conditions are to be set out in a written agreement between the Commonwealth and the relevant grant recipient.⁴⁵

1.39 The Scrutiny of Bills Committee also noted that the explanatory memorandum does not explain why it is considered necessary and appropriate to confer on the minister a broad power to provide financial assistance with regard to drought resilience, without specifying any terms and conditions to which the provision of assistance would be subject.⁴⁶

1.40 The Scrutiny of Bills Committee also noted that clause 26 of the Bill provides that the Minister for Agriculture may grant financial assistance to a state or territory for resource management activities. The Scrutiny of Bills Committee observed that section 96 of the Constitution confers power on the Parliament to make grants to the states and territories and to determine the terms and conditions of the grant.⁴⁷ The Scrutiny of Bills Committee considered that, where the Parliament delegates the power, there should be some level of parliamentary scrutiny.⁴⁸

42 Future Drought Fund Bill, cl. 31 and 41.

43 Future Drought Fund Bill, para 63(1)(c).

44 Future Drought Fund Bill, cl. 65.

45 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 12.

46 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 12.

47 Section 96 of the Constitution provides that: '...the Parliament may make a grant of financial assistance to any State on such terms and conditions as the Parliament thinks fit'.

48 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 12–13.

1.41 The Scrutiny of Bills Committee has requested the Minister for Agriculture to respond to the following questions:

The committee requests the minister's advice as to why it is considered necessary and appropriate to confer on the Minister for Agriculture a broad power to make grants of financial assistance, in the absence of any guidance on the face of the bill as to how this power is to be exercised.

1.39 The committee also requests the minister's advice as to the appropriateness of amending the bill to include (at least high-level) guidance as to the terms and conditions on which financial assistance may be granted.⁴⁹

Merits Review

1.42 Insofar as clause 21 seeks to allow the Minister for Agriculture to make an arrangement with, or make of a grant of financial assistance to, a person or body for prescribed purposes relating to drought resilience, the Scrutiny of Bills Committee notes that the making of arrangements or the provision of a grant involves a discretionary decision on the part of the Minister for Agriculture.⁵⁰

1.43 The Scrutiny of Bills Committee noted that decisions under clause 21 may be suitable for an independent merits review, as the decisions have the capacity to affect the interests of the persons or entities in receipt of the financial assistance. The Scrutiny of Bills Committee further observed that the bill provides no particular application process to be followed in seeking a grant or to enter into an arrangement.⁵¹

1.44 The Scrutiny of Bills Committee has requested advice from the Minister for Agriculture as to the application processes for financial assistance, and whether decisions in relation to the provision of a grant or the entry into an arrangement would be subject to a merits review, or to explain why such decisions should not be subject to a merits review.⁵² At the time of writing, this advice has not been provided.

Significant matters in non-disallowable legislative instruments.

1.45 Clause 31 of the bill requires the Minister for Agriculture to determine a funding plan to ensure a coherent and consistent approach in relation to the making of grants and the entering into of arrangement for the provision of financial assistance.

49 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 13, paragraphs 1.38 and 1.39.

50 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, pp. 13–14.

51 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 14.

52 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 14, paragraph 1.43.

Subclause 31(7) provides that a funding plan is to be a legislative instrument, but it would not be disallowable.⁵³

1.46 Clause 41 would permit the Treasurer or the Minister for Finance to give the Future Fund Board written directions about the performance of its investment function in relation to the Future Drought Fund. The directions by the responsible Ministers comprise the Fund's 'investment mandate'. Because the directions forming the 'investment mandate' are given by a responsible Minister to a Commonwealth entity, the directions are not subject to disallowance or sunseting, because the directions are to be subject to an exemption under the Legislation (Exemptions and Other Matters) Regulation 2013.⁵⁴

1.47 The Scrutiny of Bills Committee stated its consistent view that significant matters relating to a legislative scheme, such as how grants and agreements under a scheme are to be administered, should be included in the primary legislation, or at least in legislative instruments subject to disallowance and sunseting, unless there is a sound justification for using non-disallowable delegated legislation.⁵⁵

1.48 The Scrutiny of Bills Committee does not consider it necessary or appropriate for significant elements of the DRFP proposed by the bill to delegated legislation—the delegated legislation being the plan itself and the directions comprising the investment mandate. The Scrutiny of Bills Committee has sought detailed advice from the Minister for Agriculture on the issues concerning the scope of the delegated legislation and the issue of disallowance.⁵⁶

Broad delegation of administrative power

1.49 Proposed paragraph 63(1)(c) provides that the Minister for Agriculture may, in writing, delegate any or of the Minister's powers to person who is an official of a Commonwealth entity who is not the Secretary of the Department of Agriculture and Water Resources or a SES employee of the Department of Agriculture and Water Resources. It would appear the power of delegation proposed by paragraph 63(1)(c) would extend to any Australian Public Service employee.⁵⁷

1.50 The Scrutiny of Bills Committee stated that it has consistently drawn attention to legislation that allows the delegation of administrative powers to a relatively large class of persons with little or no specificity as to their qualifications or attributes. The

53 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, pp 14–15.

54 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 15.

55 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 15.

56 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 15, paragraphs 1.51–1.52.

57 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 17.

preferred approach is that there be a limit on either the scope of the power that might be delegated, or the categories of persons to whom powers are to be delegated.⁵⁸

1.51 The Scrutiny of Bills Committee stated:

While noting this explanation, the committee does not consider administrative flexibility (that is, ensuring that grants can be administered by particular Commonwealth officials) to be sufficient justification for enabling the delegation of the minister's powers to any official of a Commonwealth entity. The committee also notes that the bill does not appear to set any limits on the level to which powers may be delegated, or require that delegates possess expertise appropriate to the delegated powers.⁵⁹

1.52 The Scrutiny of Bills Committee further observed that the proposed paragraph 63(1)(c) does not set any limits on the level to which powers may be delegated, or require that delegates possess expertise appropriate to the delegated powers.⁶⁰

1.53 The Scrutiny of Bills Committee has sought more detailed advice from the Minister for Agriculture on proposed paragraph 63(1)(c) of the bill.⁶¹

The absence of a requirement to table or publish the review report

1.54 Clause 65 of the bill seeks to require the responsible ministers to cause a review of the operation of the Act to be undertaken before the tenth anniversary of its commencement. The bill does not require any documents associated with the review, such as the terms of reference of a final report, to be tabled in the Parliament. Nor does the bill appear to require documents associated with the review to be made available online.

1.55 The Scrutiny of Bills Committee observed that the tabling of documents in Parliament alerts parliamentarians to the existence of documents and is an important means of providing opportunities for debate where documents are not made public or are only published online. The availability of documents online promotes transparency and accountability.⁶²

58 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 17.

59 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 17.

60 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 17.

61 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 17, paragraph 1.56.

62 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 18.

1.56 The Scrutiny of Bills Committee has requested the Minister for Agriculture's advice as to why it is not proposed to require documents associated with the review of the Act to be tabled in Parliament and available online.⁶³

63 Senate Standing Committee on the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 19, paragraph 1.62.

Chapter 2

Key issues

2.1 This chapter of the report discusses three key issues raised during the inquiry:

- Support for the Future Drought Fund policy;
- Consultation for the development of the Future Drought Fund Plan; and
- Funding decisions.

Support for the Future Drought Fund policy

2.2 The joint departmental submission recognised that other sectors of the economy also suffer significantly during droughts, which can in turn have flow-on impacts on communities. However, the joint departmental submission stated that the Future Drought Fund was primarily aimed at drought preparedness rather than drought assistance:

The Drought Fund will not provide 'in-drought' support and will not replace existing sources of drought funding. Instead, it will complement other drought assistance measures.

The establishment of the [Future] Drought Fund is one of the key responsibilities for the Commonwealth under the National Drought Agreement, which sets out a joint approach between the Commonwealth and state and territory governments to drought preparedness, response and recovery with a focus on accountability and transparency.¹

2.3 Submissions generally supported the Future Drought Fund policy. In a joint submission, Landcare Australia and the National Landcare Network (Landcare) also supported the initiative. Landcare noted that the characteristics of drought and its socio-economic impacts, particularly in regional and rural communities are well accepted. Landcare stated the provision of on-going annual funding for drought resilience projects recognised that periodic drought is a characteristic of Australia's climate, rather than an exceptional event, and drought resilience is a continuum of improvement.²

2.4 The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) also supported the implementation and goal of the Future Drought Fund, but contended that the policy should be extended to include access to grants for small to medium enterprises (SMEs). ASBFEO stated that SMEs form part of the critical

1 Joint departmental submission (The Department of Finance and the Department of Agriculture and Water Resources in consultation with: the Department of the Prime Minister and Cabinet, the Treasury, the Department of Infrastructure, Regional Development and Cities and the Department of Industry, Innovation and Science), *Submission 3*, p. 5.

2 Landcare Australia and the National Landcare Network (Landcare), *Submission 5*, p. 2.

infrastructure of drought affected communities providing credit and services to farmers. As such, SMEs face significant pressures during times of drought to extend credit to their customers, creating cash flow pressures for SMEs. ASBFEO also noted the unintended consequences of charitable donations to drought affected areas:

Donations of goods such as clothes, nappies and baby formula take trade away from the local small businesses. Essentially, small businesses bear the financial burden on all fronts.

The flow on effect of drought extends throughout the community and small businesses, who without the ability to trade, will be forced to close. Access to the [Future Drought] Fund would help sustain small businesses during drought periods to ensure their survival to be around to service their communities post drought.³

2.5 The joint departmental submission explained that the Future Drought Fund is a long-term investment intended to provide a sustainable source of funding for drought resilience projects such as infrastructure projects and initiatives to promote the adoption of new technology and help improve environmental and natural resource management on farms.

2.6 The joint departmental submission observed that agriculture is typically the sector most deeply affected by drought. It noted that successive reviews of drought policy and programs in agriculture have recommended that government drought policy and programs should prioritise measures to encourage and assist farmers to better plan and prepare for drought, rather than waiting until farmers are in crisis before offering assistance.⁴

2.7 The joint departmental submission contended:

A drought resilient agriculture sector has flow-on benefits for farm productivity, profitability and self-reliance and should also lead to a reduction in the number of farmers suffering hardship during future droughts. Healthy farming landscapes with innovative farming techniques and strong rural communities contribute to a drought resilient and sustainable Australia.⁵

Consultation on the development of the Future Drought Fund Plan

2.8 The Minister for Agriculture is responsible for the development of the Drought Resilience Funding Plan (the funding plan) as the basis for determining the allocation of funding grants in a coherent and consistent manner. The plan is subject to an overarching obligation that Future Drought Fund spending must enhance the public good by building drought resilience.⁶

3 Australian Small Business and Family Enterprise Ombudsman, *Submission 1*, p. 1.

4 Joint departmental submission, *Submission 3*, p. 4.

5 Joint departmental submission, *Submission 3*, p. 5.

6 Joint departmental submission, *Submission 3*, p. 6; Bill, cl. 31

2.9 The bill provides that the plan is intended to be at a high level, and must deal with the arrangements to be made with, or grants provided to a particular person or project. In developing the plan, the Minister for Agriculture is to have regard to the Intergovernmental Agreement of the National Drought Program and any related Australian Government drought policies. The Minister for Agriculture is also required to consult with stakeholders in the development of the plan prior to its publication on the Department of Agriculture and Water Resource's website.⁷

2.10 The National Farmers' Federation (NFF) considered the plan to be an integral part of a national drought strategy. The NFF observed that drought policy in Australia to date has lacked a detailed strategic plan that identifies drought resilience measures, directs and coordinates the implementation of drought response measures, and reviews the effectiveness of programs over time.

2.11 However, the NFF recommended that the legislation be amended to require the Minister for Agriculture to establish a permanent Future Drought Fund Consultative Committee (FDFCC) to design the plan. The FDFCC would be made up of respected experts in drought resilience measures, climate risk and experienced agriculture industry and rural and regional community representatives.⁸

2.12 Landcare similarly considered that the development of the plan should have reference to the experience and expertise of key agriculture and rural organisations. Landcare noted that the bill has a strong focus on funding arrangements but had given limited attention to planning and evaluation arrangements to ensure funding decisions are effective in improving drought resilience.

2.13 Landcare suggested that a Drought Resilience Working Group (Working Group) be established to undertake the longer term planning to improve drought resilience. Landcare further noted that the collective experience of key rural-focussed organisations should be used to inform the first draft of the plan, rather than delaying opportunities for input until the formal consultative process. Landcare stated:

[O]rganisations, such as the National Landcare Network/Landcare Australia are embedded within, and represent, the communities and land managers impacted by drought. Landcare groups, networks, co-ordinators and volunteer members have been at the forefront of dealing with drought since its inception, and working to build capacity to manage and recover more quickly from drought events. We, like other key rural-focussed organisations...are well placed to capture and provide extensive and timely guidance on strategic priorities for improving drought resilience.⁹

2.14 The Australian Landscape Science Institute (TALS) has recommended the establishment of a Drought Resilience Council (DRC) as a 'whole of landscape advisory body to the Department of the Prime Minister and Cabinet, the Department

7 Explanatory Memorandum (EM), p. 18; Bill, cl 31.

8 National Farmers' Federation (NFF), *Submission 4*, p. 6.

9 Landcare, *Submission 5*, p. 2.

of Agriculture and Water Resources and the Department of the Environment and Energy. The DRC would provide advice on the development of the plan.¹⁰

Funding decisions

2.15 The bill provides that before making an arrangement or grant, or entering into an agreement which would result in the expenditure of monies from the Future Drought Fund, the Minister for Agriculture is required to seek the independent expert technical advice of the Regional Investment Corporation Board (RICB) as to the merits of a proposal. In providing that advice, the RICB is to have regard to the plan.¹¹

2.16 The joint departmental submission advised that the RICB, established under the *Regional Investment Corporation Act 2018*, is a skills-based independent Board. The joint departmental submission stated that the RICB has the knowledge and experience to oversee significant government investments in farm business and water infrastructure. RICB members have a range of qualifications, skills and experience in relevant areas of expertise including issues concerning rural industries and communities. The joint departmental submission further advised that while the Minister for Agriculture must seek the advice of the RICB, the Minister is also able to seek advice from other sources when making decisions on drought resilience funding from the Future Drought Fund.¹²

2.17 NFF recommended that the Minister for Agriculture be required to seek advice on funding decisions not only from the RICB, but also from the NFF's proposed FDFCC, as discussed above.¹³ The NFF also considered that the criteria for determining eligible arrangements and grants should be directly tied to the proposed definition of 'drought resilience' as set out in clause 5 of the bill:

The NFF would emphasise the importance of ensuring Future Drought Fund funds are directed to arrangements and grants that directly support the objective of increasing drought resilience.

While the indicative list of potentially eligible measures in the Explanatory Memoranda highlights the scope of potential measures, NFF supports the definition of drought resilience as an important qualification in determining the relevance of measures to achieving the Future Drought Fund's objectives.¹⁴

2.18 Landcare stated that it was unclear why the RICB, which is responsible for governance of an entity currently focussed on building and managing loan portfolios, is the only source of advice to the Minister on the annual allocation of drought resilience funding. Landcare has recommended that the scope of the advisory

10 The Australian Landscape Science Institute, *Submission 6*, pp. 2 and 5.

11 Bill, cl. 28–29; EM, pp. 16–17.

12 Joint departmental submission, *Submission 3*, p. 8.

13 NFF, *Submission 4*, p. 6.

14 NFF, *Submission 4*, pp. 8–9.

organisations be expanded to include those with significant expertise in drought related issues. Landcare stated:

Expanding the organisations to enhance the diversity of expertise and experience when reviewing proposed annual funding allocations will ensure that the funding is well targeted and making material progress towards drought resilience. This may be undertaken through the proposed Working Group or a similar entity, but should encompass organisations of similar capability, reach and experience.¹⁵

2.19 The joint departmental submission advised that priorities for funding decisions will be consistent with the rules relating to the Commonwealth in the *Public Governance, Performance and Accountability Act 2013*. The details of funding provided will be announced on the Department of Agriculture and Water Resource's website and published in the department's annual report, ensuring transparency of the outcomes.

2.20 The joint departmental submission stated:

Guidelines will be developed by the Agriculture Department for grant activities and will include detailed criteria and merit review processes where appropriate. The development and approval process of all guidelines will be consistent with the requirements of the Commonwealth Grants Rules and Guidelines 2017. Grants provided under the Drought Fund will also be subject to the Commonwealth grants policy framework, which is already well established through the Commonwealth Grants Rules and Guidelines 2017. These guidelines provide for best practice and apply to all grants administration conducted on behalf of the Commonwealth.¹⁶

Committee view

2.21 The committee endorses the policy objective in the development of on-going funding arrangements for the specific purpose of building drought resilience through targeted grants and arrangements. The committee noted that the Future Drought Fund and the Future Drought Fund Plan are consistent with the goals and objectives of the Intergovernmental Agreement and the National Drought Program.

2.22 The committee noted that submissions supported the policy objectives of the bill. The committee further noted that several submissions suggested an alternative approach to the consultative processes for the development of the Future Drought Fund Plan by the establishment of a permanent statutory expert advisory body to provide overarching advice on funding decisions. However, the committee considers the consultative arrangements established by the bill are appropriate as they provide greater flexibility to the government in the longer term to seek the advice of a wide range of interested stakeholders.

15 Landcare, *Submission 5*, p. 3.

16 Joint departmental submission, *Submission 3*, p. 7.

Recommendation 1

2.23 The committee recommends that the bills be passed.

**Senator James Paterson
Chair**

Additional Comments by Labor Senators

1.1 Labor supports the objects of the Future Drought Fund. Managing and mitigating the effects of drought will only become more urgent as climate change increases the length, severity, and frequency of droughts in Australia.

1.2 We need long term strategies to help primary producers ready themselves for drought and operate through drier spells. Building drought resilience is not only necessary to safeguard Australia's economic prosperity – it is also necessary to support the farming communities who form such an important part of Australia's national identity.

1.3 However, Labor Senators continue to have reservations about the mechanism the government has chosen to establish the Future Drought Fund. In particular, the decision to resource the Future Drought Fund with money taken from the Building Australia Fund risks depriving other important national priorities of the funding they need.

1.4 Labor will continue to examine the legislation and talk to stakeholders to identify whether amendments are necessary to help it more effectively achieve the worthy objects of the Future Drought Fund.

Senator Jenny McAllister
Deputy Chair

Senator Kimberley Kitching

Appendix 1

Submissions

Submissions

- 1 Australian Small Business and Family Enterprise Ombudsman
- 2 Catholic Women's League Australia Inc.
- 3 Department of Finance
- 4 National Farmers' Federation
- 5 Landcare Australia
- 6 The Australian Landscape Science Institute Limited

