

Chapter 1

Overview of the bill

Referral of inquiry

1.1 On 22 June 2017, the Senate referred the provisions of the Regional Investment Corporation Bill 2017 (the bill) to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 14 August 2017.

1.2 The bill would establish a Regional Investment Corporation (RIC) as a corporate Commonwealth entity, subject to the *Public Governance, Performance and Accountability Act 2013*, with a board to ensure the efficient performance of the corporation's functions.

Conduct of the inquiry

1.3 The committee advertised the inquiry on its webpage, and called for submissions by 13 July 2017. The committee also wrote to a range of organisations likely to have an interest in the matters covered by the bill, drawing their attention to the inquiry and inviting them to make written submissions.

1.4 The committee received five submissions, as listed in Appendix 1. The submissions were published on the committee's inquiry webpage.

Acknowledgement

1.5 The committee thanks the organisations and individuals that made submissions to the inquiry. This work has informed the committee's deliberations.

Structure of report

1.6 This report consists of three chapters. This chapter provides background information on rural sector financing as well as an overview of the bill. Chapter 2 considers the key measures of the bill, and explores the concerns that were raised in evidence in relation to the bill's provisions. Chapter 3 provides the committee's view and recommendation.

Background – rural financing

1.7 From 1925 to 1988, the Rural Credits Department (RCD) of the Reserve Bank of Australia (RBA) provided seasonal credit for up to one year to statutory marketing authorities and rural cooperative associations to facilitate the marketing, processing and manufacture of primary produce. This extended to research grants and fellowships for projects associated with the promotion of primary production.¹

1 The Bills Digest provides further details and an historic overview of banking in the rural sector. P Pyburne, *Regional Investment Corporation Bill 2017*, Bills Digest, 13, 2017–18, Parliamentary Library, Canberra, 2017.

1.8 At the time of the RCD's creation, the size of the rural sector meant that its demand for seasonal finance was very large, relative to the capacity of private financial markets. By the 1980s, however, the commercial banking system had become the primary source of rural credit.²

1.9 Between 1960 and 1974, the Commonwealth Development Bank (CDB) provided finance related to primary production and industry undertakings. However, by 1981, the Committee of Inquiry into the Australian Financial System (the Campbell Committee) formed the view that private markets had matured sufficiently to 'cope comfortably with rural financing needs'.³ It recommended the phasing out of the RCD of the Reserve Bank, with the process completed in January 1988. However, disquiet about some banking practices raised by farmers and consumers was highlighted in the 1991 House of Representatives Standing Committee on Finance and Public Administration inquiry into Australia's banking system and the impact of deregulation.⁴

1.10 In 2010 and 2011, two Senate Economics References Committee inquiries noted evidence in support of a development bank but took the view that increased competition within the existing commercial banks was the preferred option.⁵ The Economics committee recognised that one option to assist farmers and other small businesses was to resurrect an organisation like the CDB, or the Primary Industry Bank as:

...competition from the development bank might lead the commercial banks to compete more aggressively in the small business market. Others noted that a development bank could also fill the gap during recessions through keeping credit flowing to businesses, farmers and for mortgages, should the commercial banks be forced to restrict lending.⁶

1.11 The apparent disconnect between the practices of commercial banks and the financial needs of farmers has remained an ongoing concern as reflected in a number

2 Reserve Bank of Australia, (*Submission 93*) to the Senate Economics Legislation Committee, Inquiry into the Reserve Bank Amendment (Australian Reconstruction and Development Board) Bill 2013, February 2014, p. 8.

3 Committee of Inquiry (J Campbell, Chairman), *Australian Financial System: Final Report of the Committee of Inquiry*, 1981, p. 33.

4 House Standing Committee on Finance and Public Administration, *A pocketful of change: Inquiry into banking and deregulation*, November 1991, p. 267, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=reports/1991/1991_pp290report.htm (accessed 18 July 2017).

5 Senate Economics References Committee, *Access of Small Business to Finance*, June 2010, pp 60 and 68 and Senate Economics References Committee, *Competition within the Australian banking sector*, 6 May 2011, p. 191.

6 Senate Economics References Committee, *Competition within the Australian banking sector*, 6 May 2011, p. 191.

of parliamentary inquiries and a 2013 private senators' bill.⁷ These inquiries represent various efforts, made over many years, to provide financial support to individuals and businesses in rural and regional Australia, as a means of enhancing productivity and supporting recovery from natural disaster.

1.12 Since April 2013, successive federal governments have provided concessional loans schemes to assist farm businesses to improve their debt servicing and recover from the effects of drought.⁸ The 2014 Agricultural Competitiveness Green Paper noted the Government's concern about rural debt levels and farm servicing difficulties. It highlighted that the Farm Finance Concessional Loan Scheme provided a mechanism to support farmers and rural businesses. Under the scheme, eligible farmers could apply to refinance up to half of their existing commercial borrowings in the form of a loan with a reduced interest, or concessional rate for a maximum of five years.⁹

1.13 However, one of the concerns repeatedly raised in relation to the farm finance scheme and the drought concessional loans schemes was that of timeliness.¹⁰ The programmes are administered by the states and territories, in an arrangement which has been recognised as being slow and inconsistent in terms of the delivery of loans.¹¹ Evidence to the Senate Economics Legislation Committee during a 2015 inquiry also indicated that some states didn't have effective machinery for delivery.¹² At the same time, the individual agreements in place with respective states have created considerable variation in the loan schemes across the country.¹³

1.14 Following decades of complaints that the rural sector has been disadvantaged in dealings with banks on the one hand, and more recent evidence about the concessional loans schemes as too slow and inconsistent on the other, the government

7 The Bills Digest provides an overview of some of these inquiries and the 2013 private senators' bill. P Pyburne, *Regional Investment Corporation Bill 2017*, Bills Digest, 13, 2017–18, Parliamentary Library, Canberra, 2017.

8 Anna Vidot, 'Less than half the Commonwealth's concessional loans funds have found way to farmers, Agriculture Department figures show', *ABC Rural*, 22 June 2015, <http://www.abc.net.au/news/rural/2015-06-01/farmers-say-concessional-loans-schemes-missing-the-mark/6512464> (accessed 25 July 2017).

9 Australian Government, *Agricultural Competitiveness Green Paper*, October 2014, p. 36.

10 Evidence to Senate Economics Legislation Committee, Inquiry into Reserve Bank Amendment (Australian Reconstruction and Development Board) Bill 2013, March 2015, p. 43.

11 Gabrielle Chan, 'Barnaby Joyce promises \$4.5bn national body to streamline concessional loans', *The Guardian*, 22 June 2016, <https://www.theguardian.com/australia-news/2016/jun/22/barnaby-joyce-promises-45bn-national-body-to-streamline-concessional-loans> (accessed 18 July 2017).

12 Senate Economics Legislation Committee, Inquiry into Reserve Bank Amendment (Australian Reconstruction and Development Board) Bill 2013, March 2015, p. 43.

13 Mr Nico Padovan, Department of Agriculture cited in Senate Economics Legislation Committee, Inquiry into Reserve Bank Amendment (Australian Reconstruction and Development Board) Bill 2013, March 2015, p. 44.

committed to addressing some of these concerns. In May 2015, the Minister for Agriculture and Water Resources, the Hon Barnaby Joyce MP, argued that a national body to administer the Commonwealth's concessional loans programme was necessary.

1.15 On 22 June 2016, during the election campaign, Minister Joyce, announced that the government was committed to 'streamlining Commonwealth financing and concessional loan processing to enable new dams to be financed quickly and ensure drought loans are speedily approved to help farmers in need'.¹⁴ Minister Joyce stated:

No longer will the Commonwealth have to barter with state governments to process drought and dairy concessional loans to help farmers...By cutting out the middlemen and avoiding the need to pay administration funding to the states, the new Regional Investment Corporation should be able to deliver cheaper finance options to farmers.¹⁵

1.16 Minister Joyce also explained that an RIC would be established as a single delivery agency for:

- the Commonwealth's farm business concessional loans programme;
- the National Water Infrastructure Loan Facility; and
- any future programmes.¹⁶

1.17 The Regional Investment Corporation Bill 2017 (the bill) gives effect to the Government's commitment, as well as subsequent Government decisions on preferred governance arrangements for the RIC.¹⁷

1.18 On 16 May 2017, Minister Joyce announced that Orange, located in regional NSW, would be the new base for the RIC.¹⁸

1.19 It is expected that the RIC will be fully operational by July 2018.

14 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, 'Coalition to Establish \$4.5 billion Regional Investment Corporation', *Press Release*, 22 June 2016, http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/4645846/upload_binary/4645846.pdf;fileType=application%2Fpdf#search=%22media/pressrel/4645846%22 (accessed 17 July 2017).

15 Kath Sullivan, 'Barnaby Joyce announces new rural loans body', *The Weekly Times*, 22 June 2016, <http://www.weeklytimesnow.com.au/news/politics/barnaby-joyce-announces-new-rural-loans-body/news-story/5b8951e83b0fc9b51fb83c8d3fa327d0> (accessed 18 July 2017).

16 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Second Reading Speech, 14 June 2017, *House of Representatives Hansard*, p. 10.

17 Department of Agriculture and Water Resources, *Submission 2*, p. 2.

18 Colin Bettles, 'Barnaby's bank: \$4b Regional Investment Corporation housed in Orange', *Central Western Daily*, 16 May 2017, <http://www.centralwesterndaily.com.au/story/4664758/barnabys-bank-4b-regional-investment-corporation-housed-in-orange-video/?src=rss> (accessed 22 June 2017).

Purpose of bill

1.20 The bill establishes the RIC. The RIC will deliver up to \$2 billion in Commonwealth farm business concessional loans and the \$2 billion National Water Infrastructure Loan Facility.

1.21 The Explanatory Memorandum (EM) states the following in relation to the RIC:

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.¹⁹

1.22 The three main functions of the RIC are set out in clause 8 of the bill. The RIC will be responsible to:

- administer farm business loans—under subclause 8(1)(a) of the bill;
- administer, on behalf of the Commonwealth, grants of financial assistance to states and territories in relation to water infrastructure projects—under subclause 8(1)(b) and 8(1)(c) of the bill; and
- administer programmes prescribed by the rules—under subclause 8(1)(g) of the bill, with the rules set out in clause 54 of the bill.

1.23 Other key elements of the bill include:

- Identifying two responsible ministers who will appoint the board and issue the RIC with an Operating Mandate (the Agriculture and Water Resources Minister who administers the *Primary Industries Research and Development Act 1989* and the Minister for Finance who administers the *Public Governance, Performance and Accountability Act 2013*).
- Providing a power for rules to be made by the two responsible ministers prescribing future programmes to be delivered by the RIC.
- Providing for the Operating Mandate to direct the RIC 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 the responsible ministers to also direct on classes of farm business loans, individual water infrastructure projects and the location

¹⁹ Regional Investment Corporation Bill 2017, *Explanatory Memorandum*, p. 1.

of the RIC, but preventing them from directing in relation to individual farm business loans.

- Requiring the RIC board to appoint a Chief Executive Officer (CEO), responsible for the day-to-day administration of the entity and entering into loan agreements on behalf of the Corporation.
- Allowing the RIC to employ staff to assist in performing its functions.
- Requiring a review of the operation of the Act before 1 July 2024.²⁰

Provisions of the bill

1.24 Part 2 concerns the RIC including establishment and function, Operating Mandate and other directions, role of the responsible ministers, and compliance.

1.25 The RIC will be established as a corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). As such, the provisions of the PGPA Act will apply to the RIC.

1.26 Part 3 provides for the establishment and function of the board. It details the board's membership, appointment, remuneration, termination, meetings and conduct.

1.27 Part 4 focuses on the role of the CEO, staff and consultants including the appointment and function of the CEO.

Statement of compatibility with human rights

1.28 The EM contains a statement of compatibility with human rights.²¹ It notes that the bill does not raise any human rights issues.

Consideration by Senate Scrutiny of Bills Committee

1.29 The committee recognises the important work undertaken by other Parliamentary committees responsible for considering draft legislation.

1.30 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee) considered the bill in its seventh *Alert Digest* of 2017, and raised a number of issues. The Minister for Agriculture and Water Resources responded to the Scrutiny Committee's comments in a letter dated 14 July 2017. The following section provides an overview of the Scrutiny Committee's concerns and Minister Joyce's response.

Parliamentary scrutiny – section 96 grants to the states and territories

1.31 The power to make grants of financial assistance to the states and territories and to determine the terms and conditions attaching to them is conferred on the Parliament by section 96 of the Constitution. Section 96 provides that 'the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit'.

20 Regional Investment Corporation Bill 2017, *Explanatory Memorandum*, p. 1.

21 Regional Investment Corporation Bill 2017, *Explanatory Memorandum*, p. 3.

1.32 The EM suggests that the RIC will undertake the administration of these financial assistance programmes on behalf of the Commonwealth because the 'decision on whether to provide the financial assistance remains with the government, not the Corporation'.²² The Scrutiny Committee raised concerns with these arrangements:

Where the Parliament delegates this power to the executive, the committee considers that it is appropriate that the exercise of this power be subject to at least some level of parliamentary scrutiny, particularly noting the terms of section 96 of the Constitution and the role of Senators in representing the people of their State or Territory.²³

1.33 Noting this, as well as the terms and conditions of financial assistance which may be of significance to water infrastructure policy generally, the Scrutiny Committee suggested a number of amendments to the bill, including high-level guidance on the types of terms and conditions that the states will be required to comply with to receive financial assistance for water infrastructure projects. It also recommended a legislative requirement that any directions made by the responsible ministers under subclause 12(3) are tabled in Parliament.²⁴

1.34 However, in his response to the Scrutiny Committee, Minister Joyce explained that the Parliament would have an 'appropriate degree of visibility' in relation to grants of financial assistance for water infrastructure projects. He noted that this visibility would be achieved via the Operating Mandate, issued to the Corporation by the responsible ministers under clause 11 of the bill, and through the reporting requirements for corporate Commonwealth entities under the PGPA Act. The Minister further noted that:

The Operating Mandate provides the key vehicle for the government to set out its expectations for the Corporation. It is expected to include high-level programme requirements associated with financial assistance under the National Water Infrastructure Loan Facility, including eligibility criteria and key loan specifications. Parliament will have visibility of these matters as the Operating Mandate is a legislative instrument (refer to subclause 11(1) of the Bill) and will be subject to tabling requirements of the *Legislation Act 2003*.

Subclause 12(3) of the Bill provides for the responsible Ministers to direct the Corporation to enter into an agreement, on behalf of the Commonwealth, for the grant of financial assistance to a State or Territory for a water infrastructure project. The direction may specify terms and conditions to be included in the agreement. These directions will not be legislative instruments...however, the Corporation will be required to

22 Regional Investment Corporation Bill 2017, *Explanatory Memorandum*, pp 6–7.

23 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017*, 21 June 2017, p. 36.

24 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017*, 21 June 2017, p. 36.

publish details on any directions it receives from responsible Ministers in its annual reports, including those made under subclause 12(3) of the Bill.

This requirement arises because of section 46 of the PGPA Act, under which corporate Commonwealth entities must prepare, and present to Parliament, annual reports that comply with any requirements prescribed by the rules. Paragraph 17BE(d) of *the Public Governance, Performance and Accountability Rule 2014* (the PGPA Rule) requires details on any directions received by the entity to be published in its annual reports.²⁵

1.35 Finally, Minister Joyce noted that section 16F of the PGPA Rule also requires annual reports to detail the performance of the entity, which, for the Corporation, will include reporting on the administration of grants for financial assistance to the states and territories for water infrastructure projects.²⁶

Exemption from disallowance and sunseting

1.36 The Scrutiny Committee also raised concerns in relation to clauses 11 and 12 of the bill which would allow the responsible ministers to give directions, by legislative instrument, to the RIC. Clause 11 relates to directions making up the RIC's Operating Mandate and clause 12 relates to 'other directions'.

1.37 The EM states that the Operating Mandate is specified in the Act to be a legislative instrument. The Scrutiny Committee noted, however, that as the Operating Mandate is made up of directions given by a minister to a corporate Commonwealth entity, it will be a non-disallowable instrument, and will not be subject to sunseting; as it falls within relevant exemptions in the *Legislation (Exemptions and Other Matters) Regulation 2015*.

1.38 With regard to the 'other directions' to the RIC, the EM states that these directions are not legislative instruments, and therefore will not be subject to disallowance, sunseting or a requirement to table them in Parliament, 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...is not a legislative instrument'.²⁷

1.39 However, the Scrutiny Committee raised concern that some of the matters to be determined in these non-disallowable directions are 'relatively significant' and may include directions relating to eligibility criteria for loans or financial assistance;²⁸ a class of farm business loans;²⁹ terms and conditions attaching to the agreements with

25 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, pp 2–3.

26 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 3.

27 Regional Investment Corporation Bill 2017, *Explanatory Memorandum*, p. 10.

28 Paragraph 11(2)(c).

29 Subclause 12(1).

the state and territories in relation to water infrastructure projects;³⁰ as well as where the RIC is to be located.³¹

1.40 The Scrutiny Committee noted that the EM does not provide an explanation as to why it is necessary for all these directions to be exempt from disallowance and sunseting. It also questioned why it is appropriate that there is no requirement to table 'other directions' in the Parliament. It argued that 'significant concepts relating to a legislative scheme should be defined in primary legislation (or at least in legislative instruments subject to parliamentary disallowance, sunseting and tabling) unless a sound justification for using non-disallowable delegated legislation is provided'.³²

1.41 In his response to the Scrutiny Committee, the Minister explained that the approach taken to the tabling, disallowance and sunseting of the directions given by the responsible ministers under clauses 11 and 12 of the bill 'reflects the character of the directions, the level of executive control considered appropriate, and the need for directions to remain in force until revoked'.³³

1.42 The Minister emphasised the point that the approach taken is consistent with the *Legislation (Exemptions and Other Matters) Regulation 2015* as explained in the EM. The Regulation exempts directions from ministers to corporate Commonwealth entities from being legislative instruments. It also exempts legislative instruments that are directions from a minister to a person or body from disallowance and sunseting.³⁴ The Minister further explained that:

Section 6 of the Regulation exempts classes of instruments from being legislative instruments. This exemption includes a direction given by a minister to a corporate Commonwealth entity within the meaning of the PGPA Act (refer to item 3 of the table in section 6 of the Regulation). The explanatory statement to the Regulation states that the exemption is appropriate because these types of instruments are administrative in character, as they do not determine the law or alter the content of the law; rather, they determine how the law does or does not apply in particular cases or circumstances.³⁵

1.43 In relation to 'other directions' given to the Corporation under clause 12 of the bill, Minister Joyce clarified that they will be administrative in nature and will not

30 Subclause 12(3).

31 Subclause 12(5).

32 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017*, 21 June 2017, p. 38. The Australia Institute also raised similar concerns and argued that the functions of the RIC would be heavily controlled by the Operating Mandate of which key elements are yet to be determined by the ministers. The Australia Institute, *Submission 3*, p. 3.

33 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 3.

34 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 3.

35 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 4.

determine or alter the law. As a case in point, directions made under subclause 12(3) of the bill will relate only to a particular state or territory, in relation to a particular water infrastructure project. As a result, the Minister noted that the approach taken for 'other directions' in the bill is different from the approach to the Operating Mandate.³⁶ The Minister continued:

Section 6 of the Regulation exempts classes of instruments from being legislative instruments. Item 3 of the table in that section is applicable in this case. Due to this express exemption, the provisions of the Legislation Act, including in relation to disallowance and sunseting, will not apply to the 'other directions' in clause 12 of the Bill.

However, as noted above, under paragraph 17BE(d) of the PGPA Rule, the Corporation will be required to publish details on any directions it receives from responsible Ministers in its annual reports. This requirement ensures there will be appropriate transparency on ministerial directions to the Corporation.³⁷

Broad delegation of administrative powers

1.44 The third primary matter raised by the Scrutiny Committee was that of the powers or functions of the RIC, board and CEO. Under clauses 49 to 51 of the bill, all or any of the powers or functions of the RIC, board or CEO can be delegated or subdelegated to any member of the staff of the corporation.

1.45 The Scrutiny Committee held the view that some of these powers and functions are significant, including, the power to sign an agreement on behalf of the Commonwealth, with a state or territory, for the grant of financial assistance in relation to water infrastructure, and the power to sign loan agreements to be administered by the RIC.³⁸

1.46 The EM states that these provisions were included to provide flexibility to the operation of the Corporation. However, the Scrutiny Committee raised concerns that:

...there is no guidance on the face of the bill as to the relevant skills or experience that would be required to undertake delegated functions. Nor is there any limitation on the level to which significant powers or functions could be delegated. The committee has generally not accepted a desire for administrative flexibility as a sufficient justification for allowing a broad delegation of administrative powers to officials at any level.³⁹

36 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 4.

37 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 4.

38 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017*, 21 June 2017, p. 39.

39 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017*, 21 June 2017, p. 39.

1.47 In his reply to the Scrutiny Committee, the Minister acknowledged the general principle that delegations of power should only be as wide as necessary. However, he noted that this does not prohibit a wide delegation of power, if such a delegation is necessary and appropriate in the circumstances.⁴⁰

1.48 The Minister explained that the approach proposed by the bill is 'appropriate for a corporate Commonwealth entity that will be overseen by an independent Board, which is ultimately responsible for the proper, efficient and effective performance of the Corporation's functions'. The Minister emphasised that clauses 49, 50 and 51 were not unlimited in their scope:

- Clause 49 enables the RIC to delegate any or all of its powers and functions to a board member or the CEO;
- Clause 50 enables the board to delegate any or all of its powers and functions to a board member or the CEO; and
- Clause 51 enables the CEO to delegate, or subdelegate, any or all of his or her powers and functions to a member of staff of the Corporation.

1.49 Minister Joyce emphasised the point that accordingly, any delegation, or sub-delegation, of power cannot occur beyond staff of the Corporation. He noted other relevant safeguards proposed in the bill in relation to the powers of delegation including the requirement that a delegate exercising the power to enter into agreements with states and territories for grants of financial assistance for water infrastructure projects must take all reasonable steps to comply with written directions from the responsible ministers.⁴¹ In addition, the Minister stated:

Finally, the Corporation, the Board and the CEO are not required to delegate their powers and functions, and any such delegation may be limited to particular powers and functions or to particular persons. It is appropriate that the Corporation, the Board and the CEO are able to exercise their discretion in this decision, having regard to the relevant power or function, and an assessment of the skills, training and expertise needed for any particular decision.⁴²

No requirement to table the review in Parliament

1.50 Clause 53 of the bill requires that the Minister for Agriculture and Water Resources arrange for a review of the operation of the Act. The review must be completed on or before 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. The EM explains that such a review is required as it is likely that the role of the

40 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 5.

41 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 5.

42 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 5.

RIC will change 'in line with the time-limited nature of the activities it currently has authority to administer'. It is this provision that will 'enable the operation of the legislation to be reviewed'.

1.51 Subclause 53(3) of the bill provides that a written report of the review must be given to the Minister for Agriculture and Water Resources. The Scrutiny Committee argued that there was no requirement for such a report to be made public or to be tabled in the Parliament. It suggested an amendment to clause 53 of the bill to include a legislative requirement that any report of the review be tabled in the Parliament within 15 days after it is received by the Minister for Agriculture and Water Resources, and that it be published on the internet within 30 days after it is received by the Minister for Agriculture and Water Resources.⁴³

1.52 The Department of Agriculture and Water Resources (DAWR) clarified that, in terms of the focus of the review, it must consider the scope of the activities of the Corporation after 30 June 2026, and the appropriate governance arrangements for the RIC after that date.⁴⁴

1.53 Furthermore, in response to concerns about publication of the review, Minister Joyce explained that the intention of the review, and the corresponding written report, was to inform the government in its consideration of future arrangements for the RIC. For this reason, the Minister noted that it is appropriate that the government decide if and when it releases the report as well as the method of its release.⁴⁵

43 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017*, 21 June 2017, p. 40. Similar concerns were raised by the National Farmers' Federation. It also suggested an amendment to section 53 to require that the review be undertaken by an independent panel of experts who consult with stakeholders. It further recommended that section 53 require that the review undertake an assessment of the effectiveness and efficiency of the operation of the RIC. National Farmers' Federation, *Submission 5*, p. 4.

44 Department of Agriculture and Water Resources, *Submission 2*, p. 5.

45 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 6.