



Pooled Development Funds Act 1992

No. 100 of 1992

An Act about pooled development funds, and for related purposes

[Assented to 30 June 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Pooled Development Funds Act 1992*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Object

3.(1) This Act sets up a scheme under which companies and their shareholders can qualify for certain income tax concessions.

(2) The object is to encourage the provision of patient equity capital to small or medium-sized Australian companies whose primary activities are not excluded activities. 5

Interpretation

4.(1) In this Act, unless the contrary intention appears:

“appointed member” means a member referred to in paragraph 57(1)(a) or (c); 10

“approved investment plan”, in relation to a PDF, has the meaning given by subsection 17(2);

“bank” means a bank as defined in subsection 5(1) of the *Banking Act 1959* or a bank constituted by a law of a State or internal Territory;

“Board” means the PDF Registration Board established by section 5; 15

“Chairperson” means the Chairperson of the Board;

“company” means a company that is incorporated, or taken to be incorporated, under the Corporations Law of a State or internal Territory and that has a share capital;

“de facto spouse”, in relation to a person, means an individual of the opposite sex to that person who is living with that person as his or her spouse on a genuine domestic basis although not legally married to that person; 20

“director”, in relation to a body corporate, means a person who is a director of the body for the purposes of the Corporations Law; 25

“eligible business” means a business that does not consist, or consist primarily, of an excluded activity;

“eligible corporation” means a body corporate that is, for the purposes of paragraph 51(20) of the Constitution, a trading corporation, or a financial corporation, formed within the limits of the Commonwealth; 30

“excluded activity” means a prescribed activity;

“executive officer”, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body, who is concerned, or takes part, in the management of the body;

“give information to the Board” has the meaning given by subsection (5); 35

“hold”, in relation to shares, has the meaning given by subsection (4);

“investment manager”, in relation to a company, means:

(a) an eligible corporation that is engaged to supply investment management services to the company; or 40

(b) an eligible corporation that is a member of a partnership that is so engaged; or

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- (c) an officer of an eligible corporation that is so engaged or is such a member; or
 - (d) a person (other than an eligible corporation) who is a member or employee of such a partnership; or
 - 5 (e) a person (other than an eligible corporation) who is engaged to supply (otherwise than as an officer of the company) investment management services to the company; or
 - (f) an employee of a natural person of a kind referred to in paragraph (e); or
 - 10 (g) an officer of a body corporate (other than an eligible corporation) that is a person of a kind referred to in paragraph (d) or (e);
- “life office”** means:
- (a) a company, as defined in subsection 4(1) of the *Life Insurance Act 1945*, that is registered under that Act; or
 - 15 (b) a public authority:
 - (i) that is constituted by a law of a State or internal Territory; and
 - (ii) that carries on life insurance business as defined in subsection 4(1) of the *Life Insurance Act 1945*;
- 20 **“member”**, except in relation to a partnership, means a member of the Board;
- “object of this Act”** means the object set out in subsection 3(2);
- “officer”**, in relation to a body corporate, means a director, secretary, executive officer or employee of the company;
- 25 **“paid”** includes credited as paid;
- “PDF”** (pooled development fund) means a company in relation to which a registration declaration is in force;
- “PDF articles requirements”** has the meaning given by subsection (3);
- “PDF investment”** means an investment made in accordance with
- 30 Division 1 of Part 4;
- “permitted short-term borrowing”** means a borrowing of money that is made:
- (a) because of temporary cash flow problems; and
 - (b) solely for temporary purposes (other than the purpose of
 - 35 repaying other money borrowed for temporary purposes);
- “person affected”**, in relation to a reviewable decision, means the company, PDF or person referred to in the relevant paragraph of the definition of “reviewable decision”;
- “produce a document to the Board”** has the meaning given by subsection
- 40 (5);
- “registration application”** means an application under section 11;
- “registration declaration”** means a declaration under section 14 that a company is registered as a PDF;
- “relevant officer”**, in relation to a company, means:

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- (a) a director of the company; or
 - (b) the principal executive officer (within the meaning of the Corporations Law of a State or internal Territory) of the company; or
 - (c) any other person who, as an officer of the company, supplies investment management services to the company; 5
- “reviewable decision”** means a decision:
- (a) under section 14 to refuse to make a registration declaration in relation to a company; or
 - (b) under section 17 to refuse to approve a variation of a PDF’s approved investment plan; or 10
 - (c) under paragraph 20(1)(b), subsection 20(2), 23(1) or 24(2), or section 27, to refuse to give an approval, or under subsection 26(3) to refuse to make a declaration, in relation to an investment proposed to be made by a PDF; or 15
 - (d) under paragraph 29(2)(b) to refuse to give an approval to a PDF entering into a transaction; or
 - (e) under subsection 31(1) to refuse to give an approval in relation to a person’s shareholding in a PDF; or
 - (f) under subsection 32(1) to refuse to make, in relation to a payment day (within the meaning of that subsection) of a PDF, a determination for the purposes of paragraph (a) of the definition of “investment period” or “required percentage” in that subsection; or 20
 - (g) under subsection 33(2), 34(1), 35(1) or 36(1) to give a person a direction; or 25
 - (h) under section 47 to revoke a registration declaration in relation to a company;
- “shareholders’ funds”**, in relation to a company, means the total of:
- (a) the amount of the paid-up share capital of the company; and 30
 - (b) any amount held in any share premium account of the company; and
 - (c) any amount held in any capital redemption reserve of the company; and
 - (d) any amount held in any other capital reserve of the company; and 35
 - (e) any amount held in any revenue reserve of the company; and
 - (f) the amount of any undistributed profits of the company;
- “unregulated investment”** means an investment of a prescribed kind.
- (2) The effect that a provision of this Act has because of a paragraph of the definition of “investment manager” in subsection (1) is additional to, and does not prejudice, the effect that:
- (a) the provision has because of any other paragraph of that definition; or 40

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(b) any other provision of this Act has because of the first-mentioned paragraph.

(3) For the purposes of this Act, a company's articles of association satisfy the PDF articles requirements if, and only if, they:

- 5 (a) prohibit the division of the company's shares into classes; and
(b) prohibit the issue or allotment of a share in the company, or a unit (as defined in section 9 of the Corporations Law) of such a share, unless the share is an ordinary share; and
10 (c) prohibit the issue or allotment of a share in the company, or a unit (as so defined) of such a share, if the rights attached to the share would be different from the rights attached to other shares in the company that are still on issue; and
(d) do not authorise the company to reduce its share capital; and
15 (e) do not contain a buy-back authorisation (as defined in section 206BB of the Corporations Law of a State or internal Territory).

(4) For the purposes of this Act, a person who subscribes for or buys shares is taken to hold the shares from the time of the subscription or purchase until the person no longer has in the shares an interest of any kind (whether legal or equitable).

20 (5) For the purposes of this Act, a person gives information, or produces a document, to the Board if the person gives the information, or produces the document, to:

- (a) the Board; or
(b) a member of the Board; or
25 (c) a member of the staff referred to in section 68; or
(d) a consultant engaged under section 69.

PART 2—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE PDF REGISTRATION BOARD

Establishment

30 5. A PDF Registration Board is established.

Functions

6. The functions of the Board are:

- (a) those conferred on it by the other provisions of this Act; and
35 (b) to evaluate, and to advise the Minister about, the operation of this Act and of the Commonwealth's income tax laws as they operate in relation to PDFs; and
(c) to publicise:
(i) the advantages that flow from a company being a PDF;
and
40 (ii) the requirements for becoming and remaining a PDF.

Powers

7. The Board has power to do whatever is necessary or convenient to be done for or in connection with performing its functions.

Directions by Minister

8.(1) The Board must perform its functions and exercise its powers in accordance with such general directions (if any) as the Minister gives to it in writing. 5

(2) Subsection (1) does not empower the Minister:

(a) to direct that a registration declaration be made or revoked in relation to a particular company; or 10

(b) to direct that the Board perform any of its other functions, or exercise any of its other powers, in a particular way in a particular case.

(3) The Minister must cause:

(a) a copy of a direction given under subsection (1); and 15

(b) a written statement of the reasons for giving the direction;

to be laid before each House of the Parliament within 15 sitting days of that House after the direction is given.

Minister may require provision of advice

9.(1) The Minister may, by writing given to the Board, require the Board to advise the Minister about a matter connected with the operation of this Act or of the Commonwealth's income tax laws as they operate in relation to PDFs. 20

(2) The Board must comply with a requirement.

PART 3—BECOMING A PDF 25

How a company becomes a PDF

10.(1) A company becomes a PDF when a registration declaration made in relation to the company comes into force.

(2) A registration declaration:

(a) comes into force: 30

(i) on the day when it is made; or

(ii) if it is expressed to take effect on a later day—on that later day; and

(b) remains in force until it is revoked under Part 6.

Application for registration declaration 35

11.(1) A company may apply to the Board for a registration declaration to be made in relation to the company.

(2) An application must be in writing and must include the following information:

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- 5 (a) the name, address, occupation, qualifications and experience of each relevant officer of the applicant;
- (b) for each person or partnership (if any) whom or that the applicant has engaged, or proposes to engage, to supply investment management services to the applicant:
- 10 (i) the name and address of the person or partnership; and
(ii) in the case of a natural person—the person’s occupation, qualifications and experience; and
(iii) the name, address, occupation, qualifications and experience of each natural person who is supplying, or will supply, such services to the applicant:
- 15 (A) if the first-mentioned person is a natural person—as an employee of the first-mentioned person; or
(B) if the first-mentioned person is a body corporate—as an officer of the body; or
(C) in the case of a partnership—as a member or employee of the partnership or as an officer of a body corporate that is such a member;
- 20 (c) the respective amounts of the applicant’s authorised, issued and paid-up share capital;
- (d) the capital-raising plan that the applicant proposes to implement if it becomes a PDF;
- 25 (e) the investment plan that the applicant proposes to implement if it becomes a PDF;
- (f) the address of the applicant’s registered office;
- (g) the name and address of, and number of shares in the applicant held by:
- 30 (i) if there are not more than 10 shareholders in the applicant—each of those shareholders; or
(ii) if there are more than 10 shareholders in the applicant—each of the 10 of those shareholders who hold the greatest number of shares in the applicant;
- 35 (h) any other information that a determination in force under subsection (5) requires the application to include.
- (3) An application may also include any other information that the applicant thinks is relevant.
- (4) An application must be accompanied by a copy of the applicant’s memorandum and articles of association.
- 40 (5) The Board may, for the purposes of paragraph (2)(h), determine, by writing signed by the Chairperson pursuant to a resolution of the Board, that specified information is to be included in registration applications.

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(6) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Further information may be requested

12. If the Board needs further information to decide a registration application, it may ask the applicant to provide the information. 5

Period within which registration application to be decided

13.(1) Subject to this section, the Board must decide a registration application within 60 days after receiving it.

(2) If the Board thinks that it will take longer to decide the application, the Board may extend, by up to 60 days, the period for deciding it. 10

(3) An extension must be made by written notice given to the applicant within 60 days after the Board receives the application.

(4) If the Board makes an extension, the Board must decide the application within the extended period. 15

(5) If the Board has not decided the application by the end of the day by which the Board is required to decide it, the Board is taken to have decided, at the end of that day, to refuse the application.

Deciding a registration application

14.(1) The Board must grant a registration application, and declare the applicant to be registered as a PDF, if the Board is satisfied that: 20

(a) the applicant has complied, in relation to the application, with this Part and with any requests made by the Board under section 12; and

(b) the applicant is an eligible corporation; and 25

(c) the applicant's investment plan (being the investment plan set out in the registration application or that plan as since varied in negotiations with the Board) is appropriate, having regard to:

(i) the object of this Act; and 30

(ii) the requirements of this Act relating to the making and holding of investments by a PDF; and

(d) the capital-raising plan set out in the registration application is appropriate, having regard to the requirements of this Act relating to the raising of capital by a PDF; and 35

(e) the applicant can and will implement those plans and comply with this Act; and

(f) granting the application will help achieve the object of this Act; and

(g) the applicant's capital structure is consistent with the 40

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- requirements of this Act relating to a PDF's capital structure;
and
- (h) the applicant's articles of association satisfy the PDF articles requirements; and
- 5 (i) section 31 will be complied with in relation to the applicant; and
- (j) the applicant holds no investments, other than unregulated investments; and
- (k) the applicant has not previously carried on business; and
- 10 (l) the applicant has not previously derived assessable income within the meaning of the *Income Tax Assessment Act 1936*, otherwise than from holding or disposing of an unregulated investment; and
- (m) the applicant has not previously paid a dividend to any of its shareholders; and
- 15 (n) if the applicant has previously raised capital:
- (i) the capital was raised for one or more of the following purposes:
- 20 (A) unless the applicant was incorporated on or after 1 July 1992—the applicant providing development capital to Australian businesses;
- (B) meeting the applicant's costs of becoming a PDF;
- (C) meeting the applicant's administrative expenses; and
- 25 (ii) whatever the applicant has done by way of raising capital is consistent with the requirements of this Act relating to a PDF raising capital.
- (2) For the purposes of paragraph (1)(k), the applicant is not taken to have carried on business merely because the applicant has:
- 30 (a) raised capital by issuing ordinary shares; or
- (b) made, held, or disposed of, unregulated investments.
- (3) In deciding whether it is satisfied as mentioned in subsection (1), the Board must have regard to the information provided to it by the applicant and may have regard to any other relevant information
- 35 that is available to the Board.
- (4) If the Board is not satisfied as mentioned in subsection (1), it must refuse the application.

Applicant to be notified of decision

- 40 **15.(1)** The Board must give the applicant written notice of its decision on a registration application as soon as practicable after the decision is made.

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(2) If the decision is to refuse the application, the notice must also include a statement of the Board's reasons for the decision.

(3) Subsection (2) does not apply in relation to a decision that is taken to have been made because of subsection 13(5).

(4) A failure to comply with subsection (1) or (2) in relation to a decision does not affect the validity of the decision. 5

Board to publish notice of registration declaration in the *Gazette*

16.(1) As soon as practicable after making a registration declaration, the Board must cause to be published in the *Gazette* a notice that states the name of the company and advises that the company became, or will become, as the case requires, a PDF on a specified day. 10

(2) A failure to comply with subsection (1) in relation to a registration declaration does not affect the validity of the declaration.

A PDF's approved investment plan

17.(1) A resolution declaring a company to be registered as a PDF must specify a document that sets out the investment plan in relation to which the Board is satisfied as mentioned in paragraph 14(1)(c). 15

(2) For the purposes of this Act, a PDF's approved investment plan is:

- (a) the investment plan set out in the document that the PDF's registration declaration specifies under subsection (1); or 20
- (b) if that plan has been varied under this section on one or more occasions, that plan as so varied.

(3) A PDF may, by writing, request the Board to approve a specified variation of the PDF's approved investment plan. 25

(4) A variation of a plan may take the form of revoking the plan and replacing it with another plan.

(5) A request must state why the PDF wants the variation.

(6) If the Board is satisfied that a requested variation is appropriate, having regard to: 30

- (a) the object of this Act; and
- (b) the requirements of this Act relating to the making and holding of investments by PDFs;

the Board must grant the request and approve the variation.

(7) If the Board approves a variation of a PDF's approved investment plan, that plan is varied accordingly on the giving of the approval. 35

(8) If the Board is not satisfied as mentioned in subsection (6) in relation to a request, the Board must refuse the request.

(9) The Board must give a PDF that has made a request written notice of its decision on the request as soon as practicable after the decision is made.

5 (10) If the Board's decision is to refuse a request, the notice must also include a statement of the Board's reasons for its decision.

(11) A failure to comply with subsection (9) or (10) in relation to a decision does not affect the validity of the decision.

Conditions of registration declaration

10 18. A PDF's registration declaration is subject to the following conditions:

(a) a condition that the following be complied with by, and in relation to, the PDF:

(i) this Act;

15 (ii) any direction given, or requirement made, by the Board under this Act;

(iii) any condition to which an approval given, or determination made, by the Board under this Act is subject;

(b) a condition that the PDF's articles of association:

20 (i) satisfy the PDF articles requirements; and

(ii) be complied with in so far as they prohibit as mentioned in paragraph 4(3)(a), (b) or (c);

(c) a condition that the PDF not reduce its share capital or buy shares in itself.

25 **PART 4—REGULATION OF PDFs**

Division 1—Making investments

Investments to be in accordance with this Division

19. A PDF must not make an investment, other than an unregulated investment, except in accordance with this Division.

30 **Kinds of investments permitted**

20.(1) The investment must be made by subscribing for or buying:

(a) ordinary shares in a company (in this Division called the "investee company"); or

35 (b) some other kind of shares in a company (in this Division also called the "investee company") that the Board approves the PDF investing in.

(2) Unless the Board otherwise approves, the shares must not be pre-owned shares.

(3) The Board may give an approval for the purposes of subsection

40 (2) only if it is satisfied:

(a) that it is in the investee company's best interests for the person

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- who holds the shares to which the investment relates to cease to hold shares in the investee company; and
- (b) that that person proposes to dispose of all shares in the investee company that the person holds; and
 - (c) that the value of the investee company will be increased by the PDF acquiring the shares to which the investment relates; and 5
 - (d) that either:
 - (i) the PDF already holds other shares in the investee company, some or all of which are not pre-owned shares; or 10
 - (ii) the PDF will, in connection with acquiring the shares, acquire other shares in the investee company, some or all of which are not pre-owned shares.
- (4) A reference in this Part to all amounts paid on shares held by a PDF is, in so far as the shares are pre-owned shares, a reference to: 15
- (a) the amount that the PDF paid for the shares; and
 - (b) the amounts (if any) paid on the shares since the PDF acquired them.
- (5) In this section:
“pre-owned shares” means shares that were issued or allotted to a person other than the PDF, but does not include any such shares that: 20
- (a) were issued:
 - (i) to an underwriter or sub-underwriter of the share issue; or
 - (ii) to a person for the purpose of being offered for sale; and 25
 - (b) were still held by the underwriter, sub-underwriter or person immediately before being acquired by the PDF.
- Intended use by investee company of money invested by PDF**
- 21.(1) The PDF must believe, on reasonable grounds, that the shares to which the investment relates are being, or were, as the case requires, issued or allotted for the sole or principal purpose of raising money for use in doing one or more of the following: 30
- (a) establishing an eligible business carried on, or to be carried on, by the investee company, whether alone or together with any other person or persons; 35
 - (b) substantially expanding:
 - (i) the production capacity; or
 - (ii) the capacity to supply services; of an established eligible business so carried on;
 - (c) substantially expanding existing markets, or developing substantial new markets, for goods or services supplied in the course of an established eligible business so carried on. 40

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(2) If the investment is authorised by a resolution of the PDF's directors, the PDF is taken to believe as mentioned in subsection (1) if, and only if, each director who voted in favour of the resolution so believed when the resolution was passed.

5 (3) If the investment is not authorised by a resolution of the PDF's directors, the PDF is taken to believe as mentioned in subsection (1) if, and only if:

10 (a) at least one of the following subparagraphs applies to each person who is a director of the PDF at the time when the investment is made:

(i) the person believes as mentioned in subsection (1) at that time;

(ii) the person believes at that time, on reasonable grounds, that a competent and reliable person:

15 (A) is responsible for ensuring that investments by the PDF (other than unregulated investments) are made in accordance with this Division; and

(B) is fulfilling that responsibility; and

20 (b) each person (whether or not an officer of the PDF) who is at that time responsible for so ensuring believes at that time, on reasonable grounds, as mentioned in subsection (1).

(4) This section does not apply to an investment that relates to pre-owned shares within the meaning of section 20.

Investee company must not be a PDF

25 22. The investee company must not be a PDF.

Primary activity of investee company must not be an excluded activity

23.(1) Unless the Board otherwise approves, the investee company's primary activity must not be an excluded activity.

30 (2) The Board may give an approval for the purposes of subsection (1) only if:

(a) the Board is satisfied that the investee company intends to change its primary activity to an activity that is not an excluded activity; or

35 (b) the PDF already holds other shares in the investee company and the Board is satisfied that it is desirable that the investment be made in order to protect the PDF's existing investment in the investee company.

Limit on size of investee company

40 24.(1) If the PDF does not already hold other shares in the investee company, the total value of the investee company's assets, as determined in accordance with this section, must not exceed \$30 million.

(2) If the PDF already holds other shares in the investee company, the total value of the investee company's assets, as determined in

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accordance with this section, must not exceed \$30 million unless the Board otherwise approves.

(3) The Board may give an approval for the purposes of subsection (2) only if it is satisfied that it is desirable that the investment be made (in spite of the value of the investee company's assets) in order to protect the PDF's existing investment in the investee company. 5

(4) Subject to subsections (5) and (6), for the purposes of this section, the total value of the investee company's assets is the total value of its assets (both current and non-current) as shown in the last audited accounts prepared in relation to the company for the purposes of Division 4 of Part 3.6 of the Corporations Law of a State or internal Territory before the investment is made. 10

(5) If:

(a) no audited accounts of the kind referred to in subsection (4) have been so prepared within the period of 12 months ending when the investment is made; or 15

(b) the last such audited accounts so prepared relate to a period that ended more than 12 months before the investment is made;

then:

(c) the PDF must not make the investment unless it first obtains an audited statement showing the total value of the investee company's assets as at a time not more than 12 months before the investment is made; and 20

(d) for the purposes of this section, the total value of the investee company's assets is the total value as shown in that statement. 25

(6) If the PDF has reason to believe that the last audited accounts of the kind referred to in subsection (4) do not accurately reflect the total value of the investee company's assets, then:

(a) subject to subsection (7), the PDF may, before making the investment, obtain an audited statement showing the total value of the investee company's assets as at a time: 30

(i) after those last audited accounts were prepared; and

(ii) not more than 12 months before the investment is made; and

(b) if the PDF obtains such a statement, then, for the purposes of this section, the total value of the investee company's assets is the total value as shown in that statement. 35

(7) The PDF must not make the investment without first obtaining a statement as mentioned in subsection (6) if an officer or investment manager of the PDF: 40

(a) performs duties in connection with the making of the investment; and

(b) has reason to believe that, since the last audited accounts of

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the kind referred to in subsection (4) were prepared, the total value of the investee company's assets has, or may have, increased to an amount that exceeds \$30 million.

5 (8) A reference in subsection (5) or (6) to an audited statement is a reference to a statement audited by a person or firm:

(a) who or that is appointed as the investee company's auditor in accordance with the Corporations Law of a State or internal Territory; or

(b) who or that is eligible to consent to being so appointed.

10 **PDF not to commit more than 20% of its committed capital to investee company**

25. The investment must be such that, immediately after it is made, the total of:

15 (a) all amounts paid on the shares in the investee company held by the PDF; and

(b) all amounts remaining unpaid on those shares;

does not exceed 20% of the total of:

(c) the shareholders' funds of the PDF; and

(d) all amounts remaining unpaid on the issued shares in the PDF.

20 **PDF not to commit more than 5% of its committed capital to start-up companies**

26.(1) If the investee company is a start-up company, the investment must be such that, immediately after it is made, the total of:

25 (a) all amounts paid on the shares in the investee company held by the PDF; and

(b) all amounts paid on the shares in other start-up companies held by the PDF; and

(c) all amounts remaining unpaid on the shares referred to in paragraphs (a) and (b);

30 does not exceed 5% of the total of:

(d) the shareholders' funds of the PDF; and

(e) all amounts remaining unpaid on the issued shares in the PDF.

(2) For the purposes of this section, a company is a start-up company unless it carries on an eligible business that is:

35 (a) a substantial established business; or

(b) a business in relation to which a declaration is in force under subsection (3).

(3) If the Board is satisfied that a particular business carried on by a company:

40 (a) is a substantial business; and

(b) is an established business;

the Board may so declare.

Amount invested in investee company to be at least 10% of its paid-up capital

27. Unless the Board otherwise approves, the investment must be such that, immediately after it is made, the total of all amounts paid on the shares in the investee company held by the PDF is at least 10% of the total of all amounts paid on the issued shares in the investee company. 5

Provisions relating to approvals by Board

28.(1) An approval for the purposes of an approval provision: 10

(a) must be given before the investment is made; and

(b) may be given subject to one or more of the following:

(i) a condition in accordance with which the investment must be made;

(ii) a condition that must be complied with at or before the time when the investment is made. 15

(2) If an approval for the purposes of an approval provision is given as mentioned in paragraph (1)(b), the investment must not be made unless the condition or conditions are complied with.

(3) In this section: 20

“approval provision” means:

(a) paragraph 20(1)(b); or

(b) subsection 20(2); or

(c) subsection 23(1); or

(d) subsection 24(2); or 25

(e) section 27.

Division 2—Other provisions regulating the capital structure and activities of PDFs

PDF to carry on a business of making and holding PDF investments

29.(1) A PDF must carry on a business of making and holding PDF investments. 30

(2) A PDF must not enter into a transaction except:

(a) in the course of, or for the purposes of, carrying on a business of making and holding PDF investments; or

(b) with the Board’s approval. 35

(3) Subsection (2) neither allows a PDF to do, nor empowers the Board to approve a PDF doing, something that the PDF is prohibited from doing under another provision of this Part.

(4) Subject to subsection (2), nothing in subsection (1) prevents a PDF from realising a particular investment.

(5) Nothing in this section prohibits a PDF from doing something in the course of, or for the purposes of:

- 5 (a) providing management assistance to a company in which the PDF holds a PDF investment; or
- (b) complying with a direction under subsection 33(2), 34(1) or 35(1); or
- (c) making, holding, or disposing of, an unregulated investment.

10 **Restrictions on raising money etc.**

30.(1) A PDF must not:

- (a) borrow money; or
- (b) accept a deposit of money; or
- (c) issue a debenture; or
- 15 (d) issue a convertible note; or
- (e) issue or make available a prescribed interest or a unit of a prescribed interest.

(2) An expression has in subsection (1) the same meaning as in the Corporations Law of a State or internal Territory.

- 20 (3) Nothing in subsection (1) prohibits a PDF from making a permitted short-term borrowing.

Limit on shareholding in a PDF

25 31.(1) Unless the Board otherwise approves, a person (not being a bank or life office), together with associates (not being banks or life offices) of the person, must not hold more than 20% of the issued shares in a PDF.

(2) In this section:

“associate”, in relation to a person, means:

- 30 (a) a parent or remoter lineal ancestor, a child or remoter issue, or a brother or sister, of the person (including a person who is such a relation by adoption); or
- (b) the spouse or a de facto spouse of the person; or
- (c) if the person is a company:
 - (i) an officer of the company; or
 - 35 (ii) an officer of a company that is related to the first-mentioned company; or
 - (iii) a person who holds a substantial ownership interest in the company; or
- (d) an officer of a company of which the person is an officer; or
- 40 (e) a person who is, because of this subsection, an associate of any other person who is an associate of the person (including a

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person who is an associate of the person by another application or other applications of this paragraph).

(3) For the purposes of subparagraph (c)(ii) of the definition of “associate” in subsection (2), the question whether companies are related to each other is to be determined in the same manner as the question whether bodies corporate (within the meaning of the Corporations Law) are related to each other is determined under the Corporations Law. 5

(4) For the purposes of subparagraph (c)(iii) of the definition of “associate” in subsection (2), a person holds a substantial ownership interest in a company if the total of all amounts paid on the shares in the company in which the person holds interests equals or exceeds 15% of the total of all amounts paid on all shares in the company. 10

(5) For the purposes of subsection (4):

(a) a person holds an interest in a share if the person has any legal or equitable interest in the share; and 15

(b) without limiting the generality of paragraph (a), a person holds an interest in a share if the person, although not the registered holder of the share, is entitled to exercise, or control the exercise of, a right attached to the share, otherwise than because the person has been appointed as a proxy or representative to vote at a meeting of members of a company or of a class of its members. 20

Timetable for investing funds raised by PDF

32.(1) In this section: 25

“**investment period**”, in relation to a payment day of a PDF, means:

(a) if, at the end of the period that would apart from this paragraph be the investment period after that payment day of the PDF, there is in force a determination by the Board that a specified longer period is the investment period after that payment day of the PDF—the specified period; or 30

(b) if paragraph (a) does not apply and the regulations, as in force at the start of that day, prescribe a period (other than 5 years)—the prescribed period; or

(c) otherwise—5 years; 35

“**payment day**”, in relation to a PDF, means a day on which an amount becomes due and payable to the PDF in respect of:

(a) an issue or allotment of shares in the PDF; or

(b) a call made in respect of such shares;

“**required amount**”, in relation to a payment day of a PDF, means an amount equal to the required percentage of the amount, or of the total of the amounts, that became due and payable to the PDF on that day as mentioned in the definition of “payment day”; 40

“**required percentage**”, in relation to a payment day of a PDF, means:

(a) if:

(i) at the end of the investment period after that payment day of the PDF there is in force a determination by the Board that a specified percentage is the required percentage for that payment day of the PDF; and

(ii) the specified percentage is lower than the percentage that would, apart from this paragraph, be the required percentage for that payment day of the PDF;

the specified percentage; or

(b) if paragraph (a) does not apply and the regulations, as in force at the start of that day, prescribe a percentage (other than 50%)—the prescribed percentage; or

(c) otherwise—50%.

(2) Within the investment period after each payment day of a PDF, the PDF must invest, in accordance with Division 1, an amount or total equal to or greater than the required amount.

(3) In determining whether a PDF has complied with subsection (2) in relation to a particular day, so much of an amount invested as is taken into account in determining whether the PDF has complied with that subsection in relation to another day must be disregarded.

(4) However, if:

(a) the amount, or the total of the amounts, that may be taken into account in determining whether a PDF has complied with subsection (2) in relation to a particular payment day of the PDF exceeds the required amount in relation to that payment day of the PDF; and

(b) the first-mentioned amount is, or amounts forming part of the first-mentioned total are, invested during the investment period after another payment day of the PDF;

then, in determining whether the PDF has complied with subsection (2) in relation to the other day, so much of the first-mentioned amount, or of the total of the amounts referred to in paragraph (b), as the case may be, as does not exceed the excess referred to in paragraph (a) is taken not to have been taken into account in determining whether the PDF complied with subsection (2) in relation to the day referred to in paragraph (a).

Division 3—Board’s powers to give directions

PDF to comply with directions in relation to its approved investment plan

33.(1) If the Board considers that a PDF is not implementing its approved investment plan, the Board may, by notice in writing to the PDF, ask the PDF to explain why it is not implementing that plan.

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- (2) If:
- (a) a PDF fails to give any explanation within 30 days after being given a notice; or
 - (b) the Board considers that the PDF's explanation is not acceptable; the Board may, by notice in writing to the PDF, direct the PDF to take such action relating to the making, holding or disposal of investments (being action that is consistent with this Act) as the Board thinks appropriate, having regard to: 5
 - (c) the PDF's approved investment plan; and
 - (d) the PDF's explanation (if any); and 10
 - (e) the PDF's past investment activities and present investments; and
 - (f) the object of this Act; and
 - (g) any other relevant matter.
- (3) A direction must specify a reasonable period within which it must be complied with. 15
- (4) A PDF must, within the specified period, comply with a direction given to it.

PDF to comply with directions if investee company's primary activity is an excluded activity 20

- 34.(1) If the Board is satisfied that:
- (a) a PDF holds shares in a company; and
 - (b) the primary activity of the company is an excluded activity; the Board may, by notice in writing to the PDF, direct the PDF to take such action in relation to disposal of the shares as the Board thinks appropriate, having regard to: 25
 - (c) the PDF's approved investment plan; and
 - (d) the PDF's past investment activities and present investments; and
 - (e) the object of this Act; and 30
 - (f) any other relevant matter.
- (2) A direction must specify a reasonable period within which it must be complied with.
- (3) A PDF must, within the specified period, comply with a direction given to it. 35

PDF to comply with other directions

- 35.(1) If the Board is satisfied that a PDF has contravened a direction provision, or a previous direction under this section, section 33 or section 34, the Board may, by notice in writing to the PDF, direct the PDF to take such action in relation to the contravention as the Board thinks appropriate, having regard to any relevant matter. 40

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(2) A direction must specify a reasonable period within which it must be complied with.

(3) A PDF must, within the specified period, comply with a direction given to it.

- 5 (4) In this section:
“**direction provision**” means:
(a) section 19; or
(b) subsection 29(1); or
(c) subsection 29(2); or
10 (d) subsection 30(1); or
(e) section 32.

Shareholders to comply with directions about shareholdings in PDFs

15 **36.(1)** If the Board is satisfied that a person holds shares in a PDF in contravention of section 31, the Board may, by notice in writing to the person, direct the person to dispose of a specified number of those shares.

(2) A direction must specify a reasonable period within which it must be complied with.

20 (3) A person must, within the specified period, comply with a direction given to the person.

Board to advise of reasons for giving directions

37.(1) The Board must include in a direction notice a statement of its reasons for giving the direction.

25 (2) A failure to comply with subsection (1) in relation to a notice does not affect the validity of the notice.

(3) In this section:
“**direction notice**” means a notice under subsection 33(2), 34(1), 35(1) or 36(1) giving a person a direction.

Division 4—Consequences of contravention of this Part

30 **Acts in contravention of Part not invalid**

38. A contravention of this Part does not, of itself, invalidate an act or transaction.

PART 5—MONITORING COMPLIANCE

Board to monitor compliance

35 **39.(1)** The Board must, as and when required by section 40, consider whether a PDF has been complying with this Act.

(2) The Board may, at such other times as it considers appropriate, consider whether a PDF has been complying with this Act.

Board to consider compliance on receipt of annual return

40.(1) As soon as practicable after the Board receives a return under section 41 from a PDF, the Board must consider whether the PDF has been complying with this Act since:

- (a) if the Board has received from the PDF an earlier return, or earlier returns, under that section—the Board received the earlier return, or the last of the earlier returns, as the case requires; or 5
- (b) otherwise—the day on which the PDF became a PDF.

(2) In considering whether the PDF has been so complying, the Board must have regard to the information included in the first-mentioned return and to any other relevant information that is available to the Board. 10

Annual return by PDF

41.(1) A PDF must, within 4 months after the end of each financial year, give the Board a written return that includes the following information: 15

- (a) the name, address, occupation, qualifications and experience of each relevant officer of the PDF;
- (b) for each person or partnership (if any) whom or that the PDF has engaged to supply (otherwise than as an officer of the PDF) investment management services to the PDF: 20
 - (i) the name and address of the person or partnership; and
 - (ii) in the case of a natural person—the person's occupation, qualifications and experience; and
 - (iii) the name, address, occupation, qualifications and experience of each natural person who is supplying such services to the PDF: 25
 - (A) if the first-mentioned person is a natural person—as an employee of the first-mentioned person; or
 - (B) if the first-mentioned person is a body corporate—as an officer of the body; or 30
 - (C) in the case of a partnership—as a member or employee of the partnership or as an officer of a body corporate that is such a member;
- (c) full particulars of the investments (other than unregulated investments) held by the PDF at the end of the financial year; 35
- (d) full particulars of the making and disposal of investments (other than unregulated investments) by the PDF during the financial year;
- (e) the PDF's approved investment plan; 40
- (f) full particulars of the capital raised by the PDF during the financial year;

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- (g) the respective amounts of the PDF's authorised, issued and paid-up share capital;
- (h) the address of the registered office of the PDF;
- 5 (i) the name and address of, and number of shares in the PDF held by:
- (i) if there are not more than 10 shareholders in the PDF—each of those shareholders; or
- 10 (ii) if there are more than 10 shareholders in the PDF—each of the 10 of those shareholders who hold the greatest number of shares in the PDF;
- (j) any other information that a determination in force under subsection (3) requires the return to include.

(2) Information about a matter that a return must include because of paragraph (1)(a), (b), (e), (g), (h) or (i) is information about that matter as at the time when the return is given to the Board.

(3) The Board may, for the purposes of paragraph (1)(j), determine, by writing signed by the Chairperson pursuant to a resolution of the Board, that specified information is to be included in returns.

(4) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(5) If a PDF became a PDF during a financial year, a return need not include any information about its operations before it became a PDF.

PDF to notify Board of events affecting information previously given

25 **42.(1)** As soon as practicable, and in any event within 30 days, after becoming aware of an event referred to in subsection (2), a PDF must give the Board a written notice setting out particulars of the event and, in the case of an event referred to in paragraph (2)(a), (d) or (g), the additional particulars referred to in subsection (3).

30 (2) These are the events:

- (a) a person becoming a relevant officer of the PDF;
- (b) a change in the name or address of a relevant officer of the PDF;
- (c) a person ceasing to be a relevant officer of the PDF;
- 35 (d) the PDF engaging a person or partnership to supply (otherwise than as an officer of the PDF) investment management services to the PDF;
- (e) a change in the name or address of a person or partnership so engaged;
- 40 (f) the end of such an engagement;
- (g) a natural person beginning to supply such services to the PDF:

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- (i) as an employee of a natural person who is so engaged;
or
 - (ii) as an officer of a body corporate that is so engaged; or
 - (iii) as a member or employee of a partnership that is so engaged, or as an officer of a body corporate that is such a member; 5
- (h) a change in the name or address of a natural person who supplies such services as mentioned in paragraph (g);
 - (i) a natural person ceasing to supply such services as so mentioned;
 - (j) a change in the PDF's authorised, issued or paid-up share capital; 10
 - (k) a change in the address of the PDF's registered office;
 - (l) a change in the PDF's articles of association so that they no longer satisfy the PDF articles requirements;
 - (m) any other information that the PDF gave to the Board in connection with its registration application, or otherwise under this Act, ceasing to be correct, or being discovered to be incorrect; 15
 - (n) a significant change affecting a matter to which such information relates. 20
- (3) These are the additional particulars:
- (a) in the case of an event referred to in paragraph (2)(a) or (g)—the person's name, address, occupation, qualifications and experience;
 - (b) in the case of an event referred to in paragraph (2)(d): 25
 - (i) the name and address of the person or partnership; and
 - (ii) in the case of a natural person—the person's occupation, qualifications and experience.
- Board may require certain persons to provide information or produce documents** 30
- 43.(1)** The Board may, for the purposes of this Act, require a PDF, or a present or former officer or investment manager of a PDF:
- (a) to provide the Board with information relating to the PDF or to any of the PDF's past or present investments; or
 - (b) to produce to the Board documents that so relate. 35
- (2) A requirement must be made by notice in writing given to the person of whom it is made.
- (3) A requirement must specify a reasonable period within which it must be complied with.
- (4) A person must, within the specified period, comply with a requirement made of the person. 40

Board may request persons to provide information or produce documents

5 **44.** The Board may, for the purposes of this Act, request a person to provide the Board with information, or to produce to the Board a document, relating to a PDF or to past or present investments of a PDF.

PART 6—REVOCATION OF REGISTRATION DECLARATIONS

Automatic revocation if PDF is not an eligible corporation

45. A PDF's registration declaration is revoked, by force of this section, if at any time the PDF is not an eligible corporation.

10 **Revocation on application by PDF**

46.(1) A PDF may apply in writing to the Board to have its registration declaration revoked.

(2) The PDF must notify each of its shareholders, in writing, that it has made the application.

15 **(3)** The Board must revoke the registration declaration as soon as practicable after receiving the application.

Revocation at discretion of Board

47.(1) Subject to this section, the Board may revoke a PDF's registration declaration if:

20 (a) the Board is satisfied that a revocation provision has been contravened by, or in relation to, the PDF; or

(b) the Board is no longer satisfied that the PDF's articles of association satisfy the PDF articles requirements; or

25 (c) the Board is satisfied that a provision of the PDF's articles of association that prohibits as mentioned in paragraph 4(3)(a), (b) or (c) has been contravened; or

(d) the Board is satisfied that the PDF has reduced its share capital or bought shares in itself.

30 **(2)** As soon as practicable after revoking a company's registration declaration, the Board must give the company a notice that advises of the revocation and sets out the Board's reasons for deciding to revoke the declaration.

(3) The Board must not revoke a registration declaration unless the Board:

35 (a) by notice in writing given to the PDF, allows the PDF at least 14 days after the notice is given in which to make written submissions to the Board about the matters specified in the notice that, in the opinion of the Board, may constitute grounds for revoking the declaration; and

40 (b) considers any such submissions.

- (4) In this section:
“revocation provision” means:
- (a) section 19; or
 - (b) subsection 29(1) or (2); or
 - (c) subsection 30(1); or 5
 - (d) subsection 31(1); or
 - (e) subsection 32(2); or
 - (f) subsection 33(4); or
 - (g) subsection 34(3); or
 - (h) subsection 35(3); or 10
 - (i) subsection 43(4); or
 - (j) subsection 52(1), (2) or (3).

Board to publish notice of revocations in the *Gazette*

48.(1) As soon as practicable after the Board becomes aware that a company’s registration declaration has been revoked by force of section 45, the Board must cause to be published in the *Gazette* a notice that states the company’s name and advises that the company is no longer a PDF. 15

(2) As soon as practicable after the Board revokes a company’s registration declaration under section 46 or 47, the Board must cause to be published in the *Gazette* a notice that states the company’s name and advises that the company is no longer a PDF because its registration declaration was revoked on a specified day. 20

(3) A failure to comply with subsection (1) or (2) in relation to the revocation of a registration declaration does not affect the validity of the revocation. 25

Company to notify its shareholders if it ceases to be a PDF

49. As soon as practicable after a company becomes aware that it has ceased to be a PDF, the company must notify each of its shareholders, in writing, of that fact. 30

PART 7—OFFENCES RELATING TO PDFs

Criminal consequences of contravening certain provisions

- 50.(1) If a PDF contravenes a provision specified in the table:
- (a) the PDF is not guilty of an offence; but
 - (b) each officer or investment manager of the PDF who is involved in the contravention is guilty of an offence punishable, on conviction, by a penalty not exceeding the one set out in the table in relation to that provision. 35

TABLE	
Provision	Penalty
Section 19	\$50,000
Subsection 29(1)	\$50,000
Subsection 29(2)	\$50,000
Subsection 30(1)	\$20,000
Subsection 32(2)	\$10,000
Subsection 33(4)	\$10,000
Subsection 34(3)	\$5,000
Subsection 35(3)	\$5,000
Subsection 41(1)	\$5,000
Subsection 42(1)	\$5,000
Subsection 43(4)	\$5,000
Subsection 46(2)	\$10,000

(2) If a company that is an eligible corporation contravenes section 49:

- (a) the company is not guilty of an offence; but
- 5 (b) each officer of the company who is involved in the contravention is guilty of an offence punishable, on conviction, by a fine not exceeding \$10,000.

(3) For the purposes of subsections (1) and (2), a person is involved in a contravention if, and only if, the person:

- 10 (a) has knowingly or recklessly aided, abetted, counselled or procured the contravention; or
- (b) has knowingly or recklessly induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- 15 (d) has knowingly or recklessly conspired with others to effect the contravention.

(4) The effect that a provision has for the purposes of this section is additional to, and does not prejudice, the effect that the provision otherwise has (for example, for the purposes of section 47).

20 **Other offences**

51.(1) A person who, without reasonable excuse, contravenes subsection 36(3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

25 (2) A person, not being a PDF, who, without reasonable excuse, contravenes subsection 43(4) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

False or misleading statements and documents

52.(1) A person must not, in or in connection with a registration application, knowingly or recklessly:

- (a) make to the Board a statement that is false or misleading in a material particular; or 5
- (b) produce to the Board a document containing information that is false or misleading in a material particular without:
 - (i) indicating to the Board that the document is false or misleading and the respect in which it is false or misleading; and 10
 - (ii) providing correct information to the Board if the person has, or can reasonably obtain, the correct information.

Penalty: Imprisonment for 2 years.

(2) A person must not, in a return under section 41 or a notice under section 42, knowingly or recklessly make a statement that is false or misleading in a material particular. 15

Penalty: Imprisonment for 1 year.

(3) A person must not, in response to a requirement under section 43 or a request under section 44, knowingly or recklessly:

- (a) make to the Board a statement that is false or misleading in a material particular; or 20
- (b) produce to the Board a document containing information that is false or misleading in a material particular without:
 - (i) indicating to the Board that the document is false or misleading and the respect in which it is false or misleading; and 25
 - (ii) providing correct information to the Board if the person has, or can reasonably obtain, the correct information.

Penalty: Imprisonment for 1 year.

PART 8—REVIEW OF DECISIONS 30

Notification of certain decisions

53.(1) This section applies to a reviewable decision of a kind referred to in paragraph (c), (d), (e) or (f) of the definition of “reviewable decision” in subsection 4(1).

(2) As soon as practicable after making the decision, the Board must give the person affected by the decision a written notice advising the person of the decision and of the Board’s reasons for making it. 35

(3) A failure to comply with subsection (2) in relation to a reviewable decision does not affect the validity of the decision.

Notification of right to seek internal review

5 **54.(1)** A notice that is given to the person affected by a reviewable decision and advises that person of the decision must include a statement to the effect that the person may, under section 55, request the Board to reconsider the decision.

(2) For the purposes of subsection (1), a notice under subsection 33(2), 34(1), 35(1) or 36(1) giving a person a direction is taken to be a notice advising the person of the decision to give the direction.

10 (3) A failure to comply with subsection (1) in relation to a reviewable decision does not affect the validity of the decision.

Internal review of decisions

55.(1) The person affected by a reviewable decision may, if dissatisfied with the decision, by notice in writing given to the Board, request the Board to reconsider the decision.

15 (2) The request must not be made more than 21 days, or such longer period as the Board approves, after the person receives from the Board a notice advising of the decision.

20 (3) For the purposes of subsection (2), if the decision is to give a direction under subsection 33(2), 34(1), 35(1) or 36(1), the notice by which the direction is given is taken to be a notice advising of the decision.

(4) The request must set out the person's reasons for making it.

25 (5) On receipt of the request, the Board must reconsider the decision and may confirm or revoke it, or vary it in such manner as the Board thinks fit.

(6) If the Board does not confirm, vary or revoke the decision before the end of the period of 60 days after the day on which the Board receives the request, the Board is taken, at the end of that period, to have confirmed the decision.

30 (7) As soon as practicable after the Board confirms, varies or revokes the decision, the Board must give the person a written notice that:

(a) advises of the confirmation, variation or revocation of the decision; and

35 (b) except in a case to which subsection (6) applies—advises of the Board's reasons for confirming, varying or revoking the decision; and

40 (c) in the case of a confirmation or variation of the decision—advises the person that the person may apply to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of the decision as confirmed or varied.

(8) A failure to comply with subsection (7) in relation to the confirmation, variation or revocation of the decision does not affect the validity of the confirmation, variation or revocation.

(9) For the purposes of subsections (5), (6), (7) and (8) and section 56, if the Board revokes a decision and replaces it with another decision, the Board is taken to vary the first-mentioned decision and not to revoke it, and the other decision is taken to be the first-mentioned decision as varied. 5

Review of decisions by Administrative Appeals Tribunal

56.(1) Application may be made to the Administrative Appeals Tribunal for review of a reviewable decision of the Board that has been confirmed or varied under section 55. 10

(2) An application may only be made by the person affected by the decision.

PART 9—ADMINISTRATIVE PROVISIONS RELATING TO THE BOARD 15

Division 1—Provisions relating to members

Membership of Board

57.(1) The Board consists of the following members:

- (a) a Chairperson; 20
- (b) an officer of the Department nominated, in writing, by the Secretary to the Department;
- (c) 4 other members.

(2) The Chairperson and the members referred to in paragraph (1)(c) are to be appointed on a part-time basis by the Minister by written instrument. 25

(3) A person may only be appointed as the Chairperson, or as a member referred to in paragraph (1)(c), if the person appears to the Minister to be qualified for appointment because of the person's knowledge of, or experience in, industry, commerce, finance, economics, marketing, management or a field of technology. 30

(4) The performance of a function, or the exercise of a power, by the Board is not affected by a vacancy or vacancies in its membership.

(5) The appointment or nomination of a member is not invalid merely because of a defect or irregularity in connection with the appointment or nomination. 35

Term of office

58.(1) An appointed member holds office for such period, not exceeding 3 years, as is specified in the instrument appointing the member. 40

(2) A member nominated under paragraph 57(1)(b) holds office until the Secretary to the Department otherwise directs in writing.

Remuneration and allowances—appointed members

5 **59.(1)** An appointed member is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, the appointed member is to be paid such remuneration as is prescribed.

(2) An appointed member is to be paid such allowances as are prescribed.

10 **(3)** This section has effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

60.(1) The Minister may grant the Chairperson leave to be absent from a meeting or meetings of the Board.

15 **(2)** The Chairperson may grant any other member leave to be absent from a meeting or meetings of the Board.

Disclosure of interests

20 **61.(1)** A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

25 **(2)** The disclosure is to be recorded in the minutes of the meeting and the member must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

30 **(3)** For the purpose of the making by the Board of such a determination in relation to the member who has made the disclosure, any member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not:

- 35 (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

Resignation—appointed members

62. An appointed member may resign by writing signed and sent to the Minister.

Termination of appointment—appointed members

63.(1) The Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of an appointed member if the member: 5

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b) is absent, except on leave granted under section 60, from 3 consecutive meetings of the Board; or 10
- (c) contravenes section 61 without reasonable excuse. 15

Other terms and conditions—appointed members

64. The appointed members hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing. 15

Acting members

65.(1) The Minister may appoint a member to act as Chairperson:

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to that office; or 20
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of that office.

(2) The Minister may appoint a person to act in the office of an appointed member (other than the office of Chairperson): 25

- (a) during a vacancy in the office of that member, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when that member is absent from duty or from Australia or is, for any reason, unable to perform the duties of that office. 30

(3) The Minister must not appoint a person to act in an office unless, having regard to subsection 57(3), the person appears to the Minister to be qualified for appointment to the office.

(4) A person acting under subsection (1) or (2) during a vacancy is not to continue to act for more than 12 months. 35

(5) The Secretary to the Department may appoint an officer of the Department to act in the office of the member referred to in paragraph 57(1)(b) during any period, or during all periods, when that member is absent from duty or from Australia or is, for any reason, unable to perform the duties of that office. 40

Division 2—Provisions relating to meetings

Convening of meetings

66.(1) The Board is to hold such meetings as are necessary for the efficient performance of its functions.

5 (2) The Chairperson:

(a) may, at any time, convene a meeting of the Board; and

(b) must convene a meeting of the Board if directed to do so by the Minister.

Procedure at meetings

10 67.(1) The Chairperson is to preside at all meetings of the Board at which he or she is present.

(2) If the Chairperson is not present at a meeting, the members present are to elect one of their number to preside.

(3) At a meeting:

15 (a) 3 members form a quorum; and

(b) all questions are to be decided by a majority of votes of the members present and voting; and

(c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

20 (4) The Board must keep minutes of proceedings at its meetings.

(5) Subject to this section, the Board may regulate the conduct of proceedings at its meetings as it thinks fit.

Division 3—Staff and consultants

Staff

25 68. Persons appointed or employed under the *Public Service Act 1922* are to constitute the staff necessary to assist the Board.

Consultants

30 69.(1) The Chairperson may, on behalf of the Commonwealth and with the approval of the Minister, engage persons with suitable qualifications as consultants to the Board.

(2) The terms and conditions of engagement of a consultant are such as the Board determines from time to time.

PART 10—MISCELLANEOUS

Board to provide information about PDFs on request

35 70.(1) A person may, by writing, request the Board:

(a) to provide the person with a list of all PDFs; or

(b) to advise the person whether a specified company is a PDF.

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(2) The Board must comply with a request as soon as practicable after receiving it.

Secrecy

71.(1) A person to whom this section applies must not, either directly or indirectly: 5

(a) make a record of protected information or a copy of a protected document; or

(b) communicate to a person any protected information concerning another person; or

(c) produce to a person a protected document that includes information concerning another person; 10

unless the record or copy is made, the information is communicated, or the document is produced, as the case may be:

(d) under or for the purposes of this Act; or

(e) in the performance of the person's functions or duties, as a person to whom this section applies, under or in relation to this Act. 15

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not prohibit a person to whom this section applies from communicating protected information, or producing a protected document, to: 20

(a) the Commissioner of Taxation; or

(b) a court or tribunal in connection with proceedings under this Act or a tax law.

(3) If protected information is communicated, or a protected document is produced, under paragraph (2)(a) to the Commissioner of Taxation, the information, or the information contained in the document, is taken, for the purposes of section 16 of the *Income Tax Assessment Act 1936*, to be information acquired by the Commissioner as mentioned in the definition of "officer" in subsection (1) of that section. 25 30

(4) A person to whom this section applies is not required:

(a) to communicate any protected information to a court or tribunal; or

(b) to produce a protected document in a court or tribunal; 35

except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act or of a tax law.

(5) In this section:

"court or tribunal" includes any tribunal, authority or person having power to require the production of documents or the answering of questions; 40

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“person to whom this section applies” means a person who is or has been:

- (a) a member of the Board; or
- (b) a member of the staff referred to in section 68; or
- 5 (c) a consultant engaged under section 69;

“produce” includes permit access to;

“protected document” means:

- (a) a document supplied to the Board in confidence; or
- (b) a document:
 - 10 (i) that contains information the disclosure of which may reasonably be expected to affect a person adversely in respect of the lawful business, commercial or financial affairs of the person; and
 - 15 (ii) that is obtained or made by a person to whom this section applies in the course of, or because of, the person’s functions or duties as such a person;

“protected information” means:

- (a) information supplied to the Board in confidence; or
- (b) information:
 - 20 (i) the disclosure of which may reasonably be expected to affect a person adversely in respect of the lawful business, commercial or financial affairs of the person; and
 - 25 (ii) that is obtained by a person to whom this section applies in the course of, or because of, the person’s functions or duties as such a person;

“tax law” means an Act of which the Commissioner of Taxation has the general administration.

Delegation by Board to a member

30 **72.(1)** The Board may, by resolution, delegate to a member all or any of the Board’s functions and powers under this Act, other than the Board’s powers to make and revoke registration declarations.

(2) A delegate is to perform or exercise a delegated function or power by writing signed by the delegate.

35 **(3)** A delegation of a function or power under subsection (1) may be varied or revoked by resolution of the Board (whether or not constituted by the persons who constituted the Board at the time when the function or power was delegated).

Delegation by Board to a committee of members

40 **73.(1)** The Board may, by resolution, delegate to a committee of 2 or more of its members all or any of the Board’s functions and powers under this Act, other than the Board’s powers to make and revoke registration declarations.

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(2) A function or power so delegated is to be performed or exercised by writing signed by a member of the committee pursuant to a resolution of the committee.

(3) A delegation of a function or power under subsection (1) may be varied or revoked by resolution of the Board (whether or not constituted by the persons who constituted the Board at the time when the function or power was delegated). 5

Acts done by Board

74.(1) Except so far as the contrary intention appears in this Act, a function or power of the Board is to be performed or exercised by writing signed by a member pursuant to a resolution of the Board. 10

(2) Subsection (1) does not apply to making or revoking a registration declaration.

(3) A certificate that:

(a) purports to be signed by a member, or by a person authorised by the Board to sign certificates for the purposes of this subsection; and 15

(b) states that the Board has done any act or thing (for example, passed a particular resolution) or formed any opinion;

is, upon mere production, receivable as *prima facie* evidence that the Board has done the act or thing or formed the opinion. 20

(4) A certificate that:

(a) purports to be signed by a member; and

(b) states that a specified person is authorised by the Board to sign certificates for the purposes of subsection (3); 25

is, upon mere production, receivable as *prima facie* evidence that the person is so authorised.

(5) An act or thing done by the Board does not cease to have effect merely because of a change in the Board's membership.

Annual report 30

75.(1) The Board must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report of its operations during that year.

(2) The Board must include in the report:

(a) a list of all PDFs in existence as at the end of the financial year; and 35

(b) a list of all companies that became PDFs during the financial year; and

(c) a list of all companies that ceased to be PDFs during the financial year; and 40

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(d) particulars of any directions given by the Minister under section 8 during the financial year.

5 (3) The Minister is to cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

Regulations

76. The Governor-General may make regulations prescribing matters:

- 10 (a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 26 May 1992
Senate on 1 June 1992]*