



Future Fund Act 2006

No. 12, 2006

An Act about the Future Fund, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

Part 1—Introduction	1
1 Short title	1
2 Commencement	2
3 Object	2
4 Simplified outline	3
5 Definitions	3
6 Financial assets	7
7 Crown to be bound	8
8 Extension to external Territories	8
9 Extra-territorial application	8
Part 2—The Future Fund	9
10 Simplified outline	9
11 Establishment of the Future Fund	9
12 Establishment of the Future Fund Special Account	9
13 Operation of the Future Fund	9
Part 3—Investment of the Future Fund	11
14 Simplified outline	11
15 Objects of investment of the Fund	11
16 Investment of the Fund	11
17 Management of investments of the Fund	12
18 Investment Mandate	12
19 Board to be consulted on Investment Mandate	14
20 Compliance with Investment Mandate	14
21 Board must not trigger the takeover provisions of the Corporations Act 2001	15
22 Board must not have a significant stake in a foreign listed company	16
23 Borrowing	17
24 Investment policies	17
25 Derivatives	18
26 Additional financial assets	19
27 Securities lending arrangements	19
28 Investment managers	19
29 Custody of securities	20
30 Exemption from taxation	20
31 Franking credits	21
32 Realisation of non-financial assets	21

Part 4—The Future Fund Board of Guardians	23
Division 1—Introduction	23
33 Simplified outline	23
Division 2—Establishment and functions of the Future Fund Board of Guardians	24
34 Establishment of the Future Fund Board of Guardians.....	24
35 Board's functions.....	24
36 Board's ordinary powers	24
37 Board is a body corporate.....	24
38 Membership.....	25
39 Application of the <i>Corporations Act 2001</i>	26
Division 3—Terms and conditions for Board members	27
40 Term of appointment and related matters for Board members	27
41 Remuneration and allowances of Board members.....	27
42 Leave of absence of Board members	27
43 Resignation of Board members	27
44 Termination of appointment of Board members.....	28
45 Other terms and conditions of Board members	28
46 Acting Board members.....	28
Division 4—Meetings	30
47 Holding of meetings	30
48 Who is to preside at a meeting.....	30
49 Quorum.....	30
50 Voting.....	31
51 Records of meetings	31
Division 5—Resolutions without meetings	32
52 Resolutions without meetings.....	32
53 Record of resolutions.....	32
Division 6—Reporting obligations	33
54 Nominated Minister may require Board to prepare reports or give information	33
55 Keeping the responsible Ministers informed etc.....	34
Division 7—Duties of Board members etc.	35
56 Care and diligence—civil obligation	35
57 Good faith—civil obligation.....	35
58 Use of position—civil obligation.....	36
59 Use of information—civil obligation.....	36
60 Good faith—criminal offence.....	37

61	Use of position—criminal offence.....	37
62	Use of information—criminal offence.....	37
63	Compliance with statutory duties	38
64	Interaction of sections 56 to 62 with other laws etc.....	38
65	Reliance on information or advice provided by others	39
66	Consequences of breach of duty—additional effect of the <i>Commonwealth Authorities and Companies Act 1997</i>	39
67	Insurance for certain liabilities of Board members	40
Division 8—Conflict of interests		42
68	Material personal interest—Board member’s duty to disclose	42
69	Board member may give other Board members standing notice about an interest	43
70	Interaction of sections 68 and 69 with other laws etc.	44
71	Restrictions on voting.....	44
72	Ministerial power to make declarations and class orders.....	45
Part 5—The Future Fund Management Agency		47
Division 1—Introduction		47
73	Simplified outline	47
Division 2—Establishment and functions of the Future Fund Management Agency		48
74	Establishment of the Future Fund Management Agency	48
75	Functions of the Agency	48
Division 3—Management and staff of the Future Fund Management Agency		49
76	Duties of the Chair.....	49
77	Staff of the Agency	49
78	Consultants and persons seconded to the Agency	49
79	Chair not subject to direction by the Board on certain matters	50
Division 4—Other provisions		51
80	Application of the <i>Financial Management and Accountability Act 1997</i>	51
81	Annual report.....	51
82	Consultants and advisers to the Board	52
Part 6—Miscellaneous		54
83	Nominated Minister	54
84	Miscellaneous receipts to be credited to the Fund Account.....	54
85	Regulations.....	54

Schedule 1—Credits of amounts, and transfers of financial assets, to the Future Fund	55
Part 1—Introduction	55
1 Simplified outline	55
Part 2—Credits of amounts to the Future Fund	56
2 Credit of \$18 billion to the Fund Account	56
3 Credit of additional amounts to the Fund Account— Ministerial determinations	56
4 Duration of subclause 3(1) determinations	57
5 Credit of amounts to the Fund Account—gifts	58
Part 3—Transfers of financial assets to the Future Fund	59
6 Transfers to the Fund—Commonwealth-owned financial assets	59
7 Transfers of financial assets to the Fund—gifts.....	61
8 Ministerial directions about transferred financial assets	61
9 Continuing effect of instruments relating to transferred financial assets	62
Schedule 2—Debits of amounts from the Future Fund	63
1 Simplified outline	63
2 Purposes of the Fund Account	63
3 Board must ensure that there is sufficient money to cover the main purposes of the Fund Account	64
Schedule 3—Target asset level declarations	66
1 Simplified outline	66
2 Designated actuary	66
3 Target asset level declarations	66
4 Reliance on projections when making target asset level declarations etc.	68



Future Fund Act 2006

No. 12, 2006

An Act about the Future Fund, and for related purposes

[Assented to 23 March 2006]

The Parliament of Australia enacts:

Part 1—Introduction

1 Short title

This Act may be cited as the *Future Fund Act 2006*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	23 March 2006
2. Sections 3 to 85	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	3 April 2006 (see F2006L00934)
3. Schedules 1, 2 and 3	At the same time as the provision(s) covered by table item 2.	3 April 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Object

- (1) The object of this Act is to strengthen the Commonwealth's long-term financial position by establishing the Future Fund.
- (2) The Future Fund will make provision for unfunded superannuation liabilities that will become payable during a period when an ageing

population is likely to place significant pressure on the Commonwealth's finances.

4 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up the Future Fund.
- The Future Fund Board of Guardians is responsible for deciding how to invest the Future Fund.
- Investments of the Future Fund will consist of financial assets.
- The Board is bound by an Investment Mandate given to it by the responsible Ministers.
- The Future Fund Management Agency is responsible for assisting and advising the Board.

5 Definitions

In this Act:

actuary means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia.

Agency means the Future Fund Management Agency established by section 74.

asset means:

- (a) any kind of real or personal property; or
- (b) any legal or equitable estate or interest in real or personal property; or
- (c) any legal or equitable right.

balance of the Fund means the sum of:

- (a) amounts standing to the credit of the Fund Account; and
- (b) the value of investments of the Fund.

Section 5

bank has the same meaning as in the *Financial Management and Accountability Act 1997*.

Board means the Future Fund Board of Guardians established by section 34.

Board member means a member of the Board, and includes the Chair.

business judgment means any decision to take or not take action in respect of a matter relevant to the operations of the Board.

Chair means the Chair of the Board.

Commonwealth authority has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

Commonwealth company has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

Commonwealth-owned financial asset means a financial asset held by the Commonwealth.

derivative means a derivative (within the meaning of Chapter 7 of the *Corporations Act 2001*) that is a financial asset.

designated actuary has the meaning given by clause 2 of Schedule 3.

dishonest means:

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the person to be dishonest according to the standards of ordinary people.

Finance Minister has the same meaning as in the *Financial Management and Accountability Act 1997*.

financial asset has the meaning given by section 6.

foreign listed company means a company:

- (a) any of the shares of which are listed for quotation in the official list of a stock exchange in a foreign country; and

- (b) none of the shares of which are listed for quotation in the official list of a stock exchange in Australia.

Fund means the Future Fund established by section 11.

Fund Account means the Future Fund Special Account established by section 12.

funded component of a superannuation benefit means the part (if any) of the superannuation benefit that, for actuarial purposes, is treated as the funded component. For this purpose, disregard Schedule 2.

GFS Australia means the publication of the Australian Bureau of Statistics known as Australian System of Government Finance Statistics: Concepts, Sources and Methods, as updated from time to time. This updating takes 2 forms:

- (a) from time to time, a new version of the publication is produced;
- (b) from time to time, material in the current version of the publication is updated by other publications of the Australian Bureau of Statistics.

GFS system has the same meaning as in GFS Australia.

investment means any mode of application of money or financial assets for the purpose of gaining a return (whether by way of income, capital gain or any other form of return).

investment function of the Board means:

- (a) a function or power conferred on the Board by section 16, 17, 23, 25, 27 or 28; or
- (b) a right or power conferred on the Board in its capacity as the holder of an investment of the Fund.

investment manager means a person or body (other than the Agency) who undertakes to do any or all of the following:

- (a) invest amounts on behalf of the Board;
- (b) manage the investment of funds on behalf of the Board;
- (c) acquire derivatives on behalf of the Board;
- (d) manage derivatives on behalf of the Board;

Section 5

- (e) enter into securities lending arrangements on behalf of the Board;
- (f) realise financial assets on behalf of the Board;
- (g) perform custodial functions in relation to the financial assets of the Board.

Investment Mandate has the meaning given by subsection 18(3).

investment of the Fund means a financial asset that, under a provision of this Act, is taken to be an investment of the Fund.

involved, in relation to a contravention, has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

nominated Minister has the meaning given by section 83.

person (except in Division 7 of Part 4) includes a partnership.

Note: See also paragraph 22(1)(a) of the *Acts Interpretation Act 1901*.

realise includes redeem or dispose of.

responsible Ministers means:

- (a) the Treasurer; and
- (b) the Finance Minister.

securities lending arrangement means an agreement of the kind known as a securities lending arrangement.

South Australian railways arrangement means an arrangement between the Commonwealth and South Australia dealing with employer superannuation liabilities arising in relation to former employees of the South Australian railways.

superannuation benefit means a pension, allowance or other benefit payable under:

- (a) the *Superannuation Act 1922*; or
- (b) the *Superannuation Act 1976*; or
- (c) the scheme established under the *Superannuation Act 1990*;
or
- (d) the *Parliamentary Contributory Superannuation Act 1948*; or

- (e) the scheme established under the *Military Superannuation and Benefits Act 1991*; or
- (f) the *Defence Forces Retirement Benefits Act 1948*; or
- (g) the *Defence Force Retirement and Death Benefits Act 1973*; or
- (h) the *Judges' Pensions Act 1968*; or
- (i) section 4, 4A or 4AA of the *Governor-General Act 1974*.

superannuation liability means a liability to make a payment of a superannuation benefit.

target asset level declaration means a declaration under subclause 3(1) of Schedule 3.

Tasmanian railways arrangement means an arrangement between the Commonwealth and Tasmania dealing with employer superannuation liabilities arising in relation to former employees of the Tasmanian railways.

unfunded superannuation liability means:

- (a) so much of a superannuation liability as is not attributable to the funded component of a superannuation benefit; or
- (b) an amount payable by the Commonwealth under a South Australian railways arrangement; or
- (c) an amount payable by the Commonwealth under a Tasmanian railways arrangement.

value means market value. For this purpose, disregard anything that would prevent or restrict conversion of a financial asset to money.

6 Financial assets

A reference in this Act to a ***financial asset*** is a reference to:

- (a) an asset that, in accordance with GFS Australia, is treated as a financial asset for the purposes of the GFS system in Australia; or
- (b) an asset specified in regulations made for the purposes of this paragraph;

Section 7

but does not include a reference to an asset that, under the regulations, is taken to be a non-financial asset for the purposes of this Act.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

7 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

8 Extension to external Territories

This Act extends to every external Territory.

9 Extra-territorial application

This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).

Part 2—The Future Fund

10 Simplified outline

The following is a simplified outline of this Part:

- This Part sets up the Future Fund.
- The Future Fund consists of the Future Fund Special Account and the investments of the Future Fund.

11 Establishment of the Future Fund

- (1) The Future Fund is established by this section.
- (2) The Future Fund consists of:
 - (a) the Future Fund Special Account; and
 - (b) the investments of the Fund.

12 Establishment of the Future Fund Special Account

- (1) The Future Fund Special Account is established by this section.
- (2) The Fund Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

Note 1: **Fund Account** means the Future Fund Special Account—see section 5.

Note 2: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

13 Operation of the Future Fund

Schedules 1, 2 and 3 have effect.

Note 1: Schedule 1 is about credits of amounts, and transfers of financial assets, to the Future Fund.

Part 2 The Future Fund

Section 13

Note 2: Schedule 2 is about debits of amounts from the Future Fund.

Note 3: Schedule 3 is about target asset level declarations.

Part 3—Investment of the Future Fund

14 Simplified outline

The following is a simplified outline of this Part:

- The Future Fund Board of Guardians is responsible for deciding how to invest the Future Fund.
- Investments of the Future Fund will consist of financial assets.
- Investments of the Future Fund will be held in the name of the Board.
- The Board is bound by an Investment Mandate given to it by the responsible Ministers.

15 Objects of investment of the Fund

- (1) The main object of the acquisition by the Board of a financial asset as an investment of the Fund is to enhance the ability of the Commonwealth to discharge unfunded superannuation liabilities as mentioned in paragraphs 2(a) and (b) of Schedule 2.
- (2) The ancillary objects of the acquisition by the Board of a financial asset as an investment of the Fund are to enhance the ability of the Commonwealth and the Board to:
 - (a) discharge liabilities, costs, expenses and obligations; and
 - (b) make payments;as mentioned in paragraphs 2(c) to (m) of Schedule 2.

16 Investment of the Fund

- (1) The Board may invest amounts standing to the credit of the Fund Account in any financial assets.

Section 17

- (2) Investments under subsection (1) are to be made in the name of the Board.
- (3) Investments under subsection (1) are taken to be investments of the Fund.
- (4) This section does not authorise the acquisition of a derivative.

Note: For acquisition of derivatives, see section 25.

17 Management of investments of the Fund

- (1) Income derived from an investment of the Fund is to be credited to the Fund Account.
- (2) A return of capital, or any other financial distribution, relating to an investment of the Fund is to be credited to the Fund Account.
- (3) The Board may realise an investment of the Fund.
- (4) Upon realisation of an investment of the Fund, the proceeds of the investment are to be credited to the Fund Account.
- (5) At any time before an investment of the Fund matures, the Board may authorise the re-investment of the proceeds upon maturity in a financial asset investment with the same entity. The new investment is taken to be an investment of the Fund.
- (6) Section 39 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Fund.

18 Investment Mandate

- (1) The responsible Ministers may give the Board written directions about the performance of its investment functions, and must give at least one such direction.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) In giving a direction under subsection (1), the responsible Ministers must have regard to:

- (a) maximising the return earned on the Fund over the long term, consistent with international best practice for institutional investment; and
 - (b) such other matters as the responsible Ministers consider relevant.
- (3) Directions under subsection (1) are to be known collectively as the Investment Mandate.
- (4) A direction under subsection (1) may set out the policies to be pursued by the Board in relation to:
 - (a) matters of risk and return; and
 - (b) the allocation of financial assets.

A policy relating to the allocation of financial assets must not be inconsistent with a policy relating to matters of risk and return.
- (5) Subsection (4) does not limit subsection (1).
- (6) The Investment Mandate prevails over subsection (10) to the extent of any inconsistency.
- (7) The responsible Ministers must not give a direction under subsection (1) that is inconsistent with this Act (other than subsection (10)).
- (8) A direction under subsection (1) must not take effect before the 15th day after the day on which it is given.
- (9) A direction under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Note: Section 42 of the *Legislative Instruments Act 2003* does not apply to the direction—see section 44 of that Act.
- (10) In the performance of its investment functions, the Board must seek to maximise the return earned on the Fund over the long term, consistent with international best practice for institutional investment.

Note: **Investment function** is defined in section 5.
- (11) Subsection (10) has effect subject to:
 - (a) this Act; and

Section 19

- (b) a direction under subsection (1); and
 - (c) a direction under subclause 8(1) of Schedule 1.
- (12) Before the first occasion on which an amount is debited from the Fund Account for the purpose of discharging, in whole or in part, an unfunded superannuation liability, the responsible Ministers must review the Investment Mandate in consultation with the Board.

Note: If there is to be a change in the Investment Mandate, the responsible Ministers must consult the Board under section 19.

19 Board to be consulted on Investment Mandate

- (1) Before giving the Board a direction under subsection 18(1), the responsible Ministers must:
- (a) send a draft of the direction to the Board; and
 - (b) invite the Board to make a submission to the responsible Ministers on the draft direction within a time limit specified by the responsible Ministers; and
 - (c) consider any submission that is received from the Board within that time limit.
- (2) If:
- (a) the responsible Ministers give the Board a direction under subsection 18(1); and
 - (b) the Board made a submission to the responsible Ministers on a draft of the direction within the time limit specified by the responsible Ministers;
- the submission is to be tabled in each House of the Parliament with the direction.

Note: For tabling of the direction, see section 38 of the *Legislative Instruments Act 2003*.

- (3) A time limit specified under this section must be reasonable.

20 Compliance with Investment Mandate

- (1) The Board must take all reasonable steps to comply with the Investment Mandate.

- (2) As soon as practicable after the Board becomes aware that it has failed to comply with the Investment Mandate, the Board must give the responsible Ministers a written statement:
 - (a) informing the responsible Ministers of the failure to comply with the Investment Mandate; and
 - (b) setting out the action that the Board proposes to take in order to comply with the Investment Mandate.
- (3) If the responsible Ministers are satisfied that the Board has failed to comply with the Investment Mandate, the responsible Ministers may, by written notice given to the Board, direct the Board:
 - (a) to give the responsible Ministers, within a period specified in the notice, a written explanation for the failure to comply with the Investment Mandate; and
 - (b) to take action specified in the notice, within a period specified in the notice, in order to comply with the Investment Mandate.
- (4) The Board must comply with a direction under subsection (3).
- (5) A failure to comply with:
 - (a) the Investment Mandate; or
 - (b) a direction under subsection (3);does not affect the validity of any transaction.
- (6) A direction under subsection (3) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

21 Board must not trigger the takeover provisions of the *Corporations Act 2001*

- (1) Section 606 of the *Corporations Act 2001* does not apply to an acquisition by the Board if the acquisition is the result of a transfer under clause 6 or 7 of Schedule 1 to this Act.
- (2) Subsections 606(1A) and (2A) and section 611 of the *Corporations Act 2001* do not apply to an acquisition by the Board.

Section 22

- (3) A failure by the Board to comply with section 606 of the *Corporations Act 2001* (as modified by this section) does not affect the validity of any transaction.

Note: See also section 39 (application of the *Corporations Act 2001*).

22 Board must not have a significant stake in a foreign listed company

- (1) The Board must take all reasonable steps to ensure that it does not hold a stake in a foreign listed company of more than 20%.

Stake

- (2) The *Financial Sector (Shareholdings) Act 1998* applies for the purposes of determining the Board's stake in a foreign listed company, with the following modifications:
- (a) assume that the Board does not have any associates;
 - (b) assume that any financial assets held by the Board were held by the Board in its own right;
 - (c) disregard paragraph 8(1)(c) of Schedule 1 to that Act;
 - (d) the modification set out in subsection (3).
- (3) For the purposes of determining the Board's stake in a foreign listed company, if, under a securities lending arrangement:
- (a) at a particular time (the *disposal time*), the Board disposed of a financial asset (the *borrowed financial asset*) to another person (the *borrower*); and
 - (b) the Board may come under an obligation to:
 - (i) re-acquire the borrowed financial asset from the borrower at a later time; or
 - (ii) acquire an identical financial asset from the borrower at a later time;
- the borrowed financial asset is taken to be held by the Board during the period:
- (c) beginning at the disposal time; and
 - (d) ending when the obligation mentioned in paragraph (b) is discharged or can no longer arise.

Validity of transactions

- (4) A failure to comply with subsection (1) does not affect the validity of any transaction.

23 Borrowing

- (1) The Board must not borrow money unless the borrowing is authorised by subsection (2) or (3).
- (2) The Board is authorised to borrow money if:
- (a) the purpose of the borrowing is to enable the Board to cover settlement of a transaction for the acquisition of one or more financial assets; and
 - (b) at the time the relevant acquisition decision was made, it was likely that the borrowing would not be needed; and
 - (c) the period of the borrowing does not exceed 7 days; and
 - (d) if the borrowing were to take place, the total amount borrowed by the Board would not exceed 10% of the balance of the Fund.
- (3) The Board is authorised to borrow money in such circumstances (if any) as are specified in the regulations.

24 Investment policies

- (1) The Board must formulate written policies to be complied with by it in relation to the following matters:
- (a) the investment strategy for the Fund;
 - (b) benchmarks and standards for assessing the performance of the Fund;
 - (c) risk management for the Fund;
 - (d) a matter relating to international best practice for institutional investment;
 - (e) a matter specified in the regulations.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Board must ensure that policies formulated under subsection (1) are consistent with the Investment Mandate.

Section 25

Publication of policies

- (3) The Board must cause copies of policies formulated under subsection (1) to be published on the Internet.
- (4) The Board must ensure that the first set of policies formulated under subsection (1) is published on the Internet as soon as practicable after the commencement of this section.

Review of policies

- (5) The Board must conduct periodic reviews of policies formulated under subsection (1).
- (6) If there is a change in the Investment Mandate, the Board must review any relevant policies formulated under subsection (1).

Compliance with policies

- (7) The Board must take all reasonable steps to comply with policies formulated under subsection (1).
- (8) A failure to comply with a policy formulated under subsection (1) does not affect the validity of any transaction.

Policies

- (9) A policy formulated under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

25 Derivatives

- (1) The Board may acquire a derivative for the purpose of:
 - (a) protecting the value of an investment of the Fund (other than a derivative); or
 - (b) protecting the return on an investment of the Fund (other than a derivative); or
 - (c) achieving indirect exposure to financial assets (other than derivatives); or
 - (d) achieving transactional efficiency;

but must not acquire a derivative for the purpose of:

- (e) speculation; or
 - (f) leverage.
- (2) The acquisition of a derivative under subsection (1) must be consistent with the investment strategy embodied in a policy formulated by the Board under subsection 24(1).
 - (3) A derivative acquired under subsection (1) is to be held in the name of the Board.
 - (4) A derivative acquired under subsection (1) is taken to be an investment of the Fund.

26 Additional financial assets

If, as a result of:

- (a) the Board's holding of an investment of the Fund; or
 - (b) the exercise of any rights or powers conferred on the Board in its capacity as the holder of an investment of the Fund;
- the Board becomes the holder of a financial asset, that financial asset is taken to be an investment of the Fund.

27 Securities lending arrangements

- (1) The Board may enter into securities lending arrangements.
- (2) Any money received by the Board under a securities lending arrangement is to be credited to the Fund Account.
- (3) To avoid doubt, a securities lending arrangement may provide for the Board to realise an investment of the Fund.
- (4) If, as the result of the operation of a securities lending arrangement, the Board becomes the holder of a financial asset, that financial asset is taken to be an investment of the Fund.

28 Investment managers

- (1) The Board may engage one or more investment managers.

Section 29

- (2) The Board must not:
 - (a) invest amounts under subsection 16(1); or
 - (b) acquire derivatives under subsection 25(1); or
 - (c) enter into a securities lending arrangement; or
 - (d) realise financial assets;unless the Board does so:
 - (e) through an investment manager engaged by the Board; or
 - (f) in a manner approved, in writing, by the responsible Ministers.
- (3) The Board must ensure that any investment manager engaged by the Board operates within this Act.
- (4) The Board must ensure that any investment manager engaged by the Board reports to the Board and the Agency on the state of the investments of the Fund at such times and in such manner as the Board determines.

29 Custody of securities

Section 40 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Fund.

30 Exemption from taxation

Income tax

- (1) To avoid doubt, for the purposes of section 50-25 of the *Income Tax Assessment Act 1997*, the Board is taken to be a public authority constituted under an Australian law.

Note: This means that the Board is exempt from income tax.

State/Territory taxes

- (2) To avoid doubt, the Board is not subject to taxation under a law of a State or Territory, if the Commonwealth is not subject to the taxation.

31 Franking credits

- (1) For the purposes of the *Income Tax Assessment Act 1997*, the Board is taken to be an exempt institution that is eligible for a refund.

Note: See Division 207 of the *Income Tax Assessment Act 1997* (franked distributions).

- (2) Subsection (1) has effect despite subsection 207-115(1) of the *Income Tax Assessment Act 1997*.
- (3) For the purposes of the *Income Tax Assessment Act 1997*, the Board's entitlement to a tax offset is to be determined as if any financial assets held by the Board were held by the Board in its own right.
- (4) If the Board receives a refund of a tax offset under the *Income Tax Assessment Act 1997*, the refund is to be credited to the Fund Account.

Note: For refunds of tax offsets, see section 67-30 of the *Income Tax Assessment Act 1997*.

32 Realisation of non-financial assets

- (1) If an asset held by the Board as an investment of the Fund ceases to be a financial asset:
- (a) the Board must realise the asset as soon as practicable after the Board becomes aware of the cessation; and
 - (b) this Act (other than this section) applies in relation to the asset (including in relation to the realisation of the asset) as if the asset had remained a financial asset, and an investment of the Fund, until the realisation.
- (2) If an asset acquired by the Board, purportedly as an investment of the Fund, is not a financial asset:
- (a) the Board must realise the asset as soon as practicable after the Board becomes aware that the asset is not a financial asset; and
 - (b) this Act (other than this section) applies in relation to the asset (including in relation to the realisation of the asset) as if the asset had been a financial asset, and an investment of the

Section 32

Fund, from the time of its acquisition by the Board until the realisation.

Part 4—The Future Fund Board of Guardians

Division 1—Introduction

33 Simplified outline

The following is a simplified outline of this Part:

- This Part establishes the Future Fund Board of Guardians.
- The Future Fund Board of Guardians is responsible for deciding how to invest the Future Fund.
- The Board consists of a Chair and 6 other members.
- An asset held by the Board is held for and on behalf of the Commonwealth.
- Board members must act in good faith.

Division 2—Establishment and functions of the Future Fund Board of Guardians

34 Establishment of the Future Fund Board of Guardians

The Future Fund Board of Guardians is established by this section.

35 Board's functions

The Board has the following functions:

- (a) to invest amounts in accordance with this Act;
- (b) such other functions as are conferred on the Board by this Act;
- (c) to do anything incidental to or conducive to the performance of any of the above functions.

36 Board's ordinary powers

- (1) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions, other than the power to lease the whole or any part of any land or building for the purposes of the Board.
- (2) The Board's powers include, but are not limited to, the power to enter into contracts.
Example: A contract of insurance.
- (3) Any real or personal property held by the Board is held for and on behalf of the Commonwealth.
- (4) Any money received by the Board is received by the Board for and on behalf of the Commonwealth.

37 Board is a body corporate

- (1) The Board:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a seal; and

- (c) may acquire, hold and dispose of real and personal property;
and
- (d) may sue and be sued in its corporate name.

Seal

- (2) The seal of the Board must be kept in such custody as the Board directs, and must not be used except as authorised by the Board.
- (3) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the Board appearing on a document; and
 - (b) presume that the document was duly sealed.

38 Membership

- (1) The Board consists of the following members:
 - (a) a Chair;
 - (b) 6 other members.

Note: Section 18B of the *Acts Interpretation Act 1901* deals with the title of the Chair.

- (2) Board members are to be appointed by the responsible Ministers by written instrument.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

- (3) A person is not eligible for appointment as a Board member unless the responsible Ministers are satisfied that the person has:
 - (a) substantial experience or expertise; and
 - (b) professional credibility and significant standing;in at least one of the following fields:
 - (c) investing in financial assets;
 - (d) the management of investments in financial assets;
 - (e) corporate governance.
- (4) A person is not eligible for appointment as a Board member if the person is:
 - (a) an employee of the Commonwealth; or

Part 4 The Future Fund Board of Guardians

Division 2 Establishment and functions of the Future Fund Board of Guardians

Section 39

- (b) an employee of a statutory authority of the Commonwealth;
or
- (c) an employee of a Commonwealth company; or
- (d) the holder of a full-time office under a law of the Commonwealth.

Note: A Board member is not an employee of the Commonwealth. A Board member holds a part-time office under a law of the Commonwealth.

39 Application of the *Corporations Act 2001*

- (1) The Board is taken to be an exempt public authority for the purposes of the *Corporations Act 2001*.
- (2) To avoid doubt, the Board is taken to be an instrumentality of the Crown in right of the Commonwealth for the purposes of section 5A of the *Corporations Act 2001*.

Division 3—Terms and conditions for Board members

40 Term of appointment and related matters for Board members

- (1) A Board member is to be appointed on a part-time basis.
- (2) A Board member holds office for the period that is specified in the instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

41 Remuneration and allowances of Board members

- (1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Board member is to be paid the remuneration that is determined by the responsible Ministers.
- (2) A Board member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

42 Leave of absence of Board members

- (1) The nominated Minister may grant leave of absence to the Chair on the terms and conditions that the nominated Minister determines.
- (2) The Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines.

43 Resignation of Board members

A Board member may resign his or her appointment by giving the responsible Ministers a written resignation.

44 Termination of appointment of Board members

- (1) The responsible Ministers may terminate the appointment of a Board member for misbehaviour or physical or mental incapacity.
- (2) The responsible Ministers may terminate the appointment of a Board member if:
 - (a) the Board member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Board member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
 - (c) the Board member contravenes section 56, 57, 58, 59, 60, 61 or 62; or
 - (d) the Board member fails, without reasonable excuse, to comply with section 68, 69 or 71; or
 - (e) the responsible Ministers are satisfied that the performance of the Board member has been unsatisfactory for a significant period.

45 Other terms and conditions of Board members

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the responsible Ministers.

46 Acting Board members

Acting Chair

- (1) The nominated Minister may appoint a person to act as the Chair:
 - (a) during a vacancy in the office of Chair, whether or not an appointment has previously been made to the office; or

- (b) during any period, or during all periods, when the Chair is absent from duty or Australia, or is, for any reason, unable to perform the duties of the office.

Acting Board member (other than the Chair)

- (2) The nominated Minister may appoint a person to act as a Board member (other than the Chair):
 - (a) during a vacancy in the office of a Board member (other than the Chair), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a Board member (other than the Chair) is absent from duty or Australia, or is, for any reason, unable to perform the duties of the office.

Qualifications

- (3) A person is not eligible for appointment to act as:
 - (a) the Chair; or
 - (b) a Board member (other than the Chair);unless the person is eligible for appointment as a Board member.

Note: See subsections 38(3) and (4).

Validation

- (4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See section 33A of the *Acts Interpretation Act 1901*.

Division 4—Meetings

47 Holding of meetings

- (1) The Board is to hold such meetings as are necessary for the performance of its functions.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting within 30 days after receiving a written request from another Board member.

Note: See also section 33B of the *Acts Interpretation Act 1901* (participation in meetings by telephone etc.).

48 Who is to preside at a meeting

- (1) The Chair is to preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting:
 - (a) a Board member nominated by the Chair is to preside; or
 - (b) if no Board member is so nominated—the Board members present are to elect one of their number to preside.

49 Quorum

- (1) At a meeting, 5 Board members form a quorum.
- (2) Despite subsection (1), if:
 - (a) section 71 prevents one or more Board members from participating in the deliberations, or decisions, of the Board with respect to a particular matter; and
 - (b) as a result, there is no longer a quorum present; and
 - (c) there are in attendance at least 3 other Board members who would be counted in determining whether a quorum is present;those other Board members constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

50 Voting

- (1) Decisions at a meeting must be affirmed by a majority of votes of Board members voting.
- (2) The Board member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

51 Records of meetings

The Board must keep accurate records of all its meetings.

Division 5—Resolutions without meetings

52 Resolutions without meetings

- (1) A resolution is taken to have been passed at a meeting of the Board if:
 - (a) the Board has determined:
 - (i) that resolutions may be passed in accordance with this section; and
 - (ii) the method by which Board members are to indicate agreement with a resolution proposed to be passed in accordance with this section; and
 - (b) without meeting, a majority of the Board members indicate agreement with the resolution in accordance with the method determined by the Board; and
 - (c) the majority would have constituted a quorum at a meeting of the Board; and
 - (d) either:
 - (i) all the Board members were informed of the resolution; or
 - (ii) reasonable efforts were made to inform all the Board members of the resolution.
- (2) Paragraph (1)(b) does not apply to a Board member who would have been prevented by section 71 from deliberating on the resolution if the resolution had been put to a meeting of the Board.

53 Record of resolutions

The Board must keep a record of resolutions passed in accordance with section 52.

Division 6—Reporting obligations

54 Nominated Minister may require Board to prepare reports or give information

Reports

- (1) The nominated Minister may, by written notice given to the Board, require the Board:
 - (a) to prepare a report about one or more specified matters relating to the performance of the Board's functions; and
 - (b) give copies of the report to the nominated Minister within the period specified in the notice.

Information

- (2) The nominated Minister may, by written notice given to the Board, require the Board to:
 - (a) prepare a document setting out specified information relating to the performance of the Board's functions; and
 - (b) give copies of the document to the nominated Minister within the period specified in the notice.

Compliance

- (3) The Board must comply with a requirement under subsection (1) or (2).

Publication of reports and documents

- (4) The nominated Minister may cause to be published (whether on the Internet or otherwise):
 - (a) a report under subsection (1); or
 - (b) a document under subsection (2).

Reports and documents

- (5) A report under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

- (6) A document under subsection (2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

55 Keeping the responsible Ministers informed etc.

- (1) The Board must keep the responsible Ministers informed of the operations of the Board.
- (2) The Board must give the nominated Minister such reports, documents and information in relation to those operations as are appropriate.

Division 7—Duties of Board members etc.

56 Care and diligence—civil obligation

- (1) A Board member must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:
 - (a) were a Board member in the Board’s circumstances; and
 - (b) occupied the office held by, and had the same responsibilities within the Board as, the Board member.

Note: This subsection is a civil penalty provision (see section 66).

Business judgment rule

- (2) A Board member who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if he or she:
 - (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material personal interest in the subject matter of the judgment; and
 - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of performing the functions of the Board.

The Board member’s belief that the judgment is in the best interests of performing the functions of the Board is a rational one unless the belief is one that no reasonable person in his or her position would hold.

57 Good faith—civil obligation

- (1) A Board member must exercise his or her powers and discharge his or her duties:
 - (a) in good faith in the best interests of performing the functions of the Board; and
 - (b) for a proper purpose.

Section 58

Note: This subsection is a civil penalty provision (see section 66).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 66).

58 Use of position—civil obligation

- (1) A Board member or a member of the staff of the Agency must not improperly use his or her position to:
- (a) gain an advantage for himself or herself or someone else; or
 - (b) cause detriment to the Board's ability to perform its functions; or
 - (c) cause detriment to another person.

Note: This subsection is a civil penalty provision (see section 66).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 66).

59 Use of information—civil obligation

- (1) A person who obtains information because he or she is, or has been, a Board member or a member of the staff of the Agency must not improperly use the information to:
- (a) gain an advantage for himself or herself or someone else; or
 - (b) cause detriment to the Board's ability to perform its functions; or
 - (c) cause detriment to another person.

Note 1: This duty continues after the person stops being a Board member or a member of the staff of the Agency.

Note 2: This subsection is a civil penalty provision (see section 66).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 66).

60 Good faith—criminal offence

A Board member commits an offence if he or she:

- (a) is reckless; or
- (b) is intentionally dishonest;

and fails to exercise his or her powers and discharge his or her duties:

- (c) in good faith in what he or she believes to be in the best interests of the performance of the functions of the Board; or
- (d) for a proper purpose.

Penalty: Imprisonment for 5 years.

61 Use of position—criminal offence

A Board member or a member of the staff of the Agency commits an offence if he or she uses his or her position dishonestly:

- (a) with the intention of:
 - (i) directly or indirectly gaining an advantage for himself or herself or someone else; or
 - (ii) causing detriment to the ability of the Board to perform its functions; or
 - (iii) causing detriment to another person; or
- (b) recklessly as to whether the use may result in:
 - (i) him or her or someone else directly or indirectly gaining an advantage; or
 - (ii) causing detriment to the ability of the Board to perform its functions; or
 - (iii) causing detriment to another person.

Penalty: Imprisonment for 5 years.

62 Use of information—criminal offence

A person who obtains information because he or she is, or has been, a Board member or a member of the staff of the Agency commits an offence if he or she uses the information dishonestly:

- (a) with the intention of:

Section 63

- (i) directly or indirectly gaining an advantage for himself or herself or someone else; or
- (ii) causing detriment to the ability of the Board to perform its functions; or
- (iii) causing detriment to another person; or
- (b) recklessly as to whether the use may result in:
 - (i) him or her or someone else directly or indirectly gaining an advantage; or
 - (ii) causing detriment to the ability of the Board to perform its functions; or
 - (iii) causing detriment to another person.

Penalty: Imprisonment for 5 years.

63 Compliance with statutory duties

- (1) A Board member does not contravene section 57, 58 or 59, or commit an offence against section 60, 61 or 62, by doing an act that another provision of this Act requires the Board member to do.
- (2) The Chair does not contravene section 57, 58 or 59, or commit an offence against section 60, 61 or 62, by doing an act that:
 - (a) another provision of this Act; or
 - (b) the *Financial Management and Accountability Act 1997*; or
 - (c) regulations or orders under the *Financial Management and Accountability Act 1997*;requires the Chair to do.

64 Interaction of sections 56 to 62 with other laws etc.

Sections 56 to 62:

- (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of his or her office as a Board member or employment in relation to the Agency; and
- (b) do not prevent the commencement of proceedings for a breach of duty, or in respect of a liability, referred to in paragraph (a).

This section does not apply to subsection 56(2) to the extent to which it operates on the duties at common law and in equity that are equivalent to the requirements of subsection 56(1).

65 Reliance on information or advice provided by others

If:

- (a) a Board member relies on information, or professional or expert advice, given or prepared by:
 - (i) a member of the staff of the Agency whom the Board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
 - (ii) a professional adviser or expert in relation to matters that the Board member believes on reasonable grounds to be within the person's professional or expert competence; or
 - (iii) another Board member in relation to matters within the Board member's authority; or
 - (iv) a committee of Board members on which the Board member did not serve in relation to matters within the committee's authority; and
 - (b) the reliance was made:
 - (i) in good faith; and
 - (ii) after making proper inquiry if the circumstances indicated the need for inquiry; and
 - (c) the reasonableness of the Board member's reliance on the information or advice arises in proceedings brought to determine whether a Board member has performed a duty under this Division, or an equivalent general law duty;
- the Board member's reliance on the information or advice is taken to be reasonable unless the contrary is proved.

66 Consequences of breach of duty—additional effect of the *Commonwealth Authorities and Companies Act 1997*

The following provisions (the *CAC Act consequences provisions*):

- (a) subsections 6(2), (3) and (4) of the *Commonwealth Authorities and Companies Act 1997*;

Section 67

- (b) section 27C of that Act;
 - (c) Schedule 2 to that Act;
- have effect as if:
- (d) in addition to the provisions specified in subclause 1(1) of Schedule 2 to that Act, the following provisions were also specified in that subclause:
 - (i) subsection 56(1) of this Act;
 - (ii) subsections 57(1) and (2) of this Act;
 - (iii) subsections 58(1) and (2) of this Act;
 - (iv) subsections 59(1) and (2) of this Act; and
 - (e) each reference in the CAC Act consequences provisions to an officer or director of a Commonwealth authority included a reference to a Board member; and
 - (f) each reference in the CAC Act consequences provisions to a Commonwealth authority included a reference to the Board.

Note 1: Section 27C of the *Commonwealth Authorities and Companies Act 1997* is about disqualification orders.

Note 2: Schedule 2 to the *Commonwealth Authorities and Companies Act 1997* is about the consequences of contravening civil penalty provisions.

Note 3: Sections 11, 22, 23, 24 and 25 of the *Commonwealth Authorities and Companies Act 1997* do not apply in relation to the Board or Board members. This is because the Board is not a Commonwealth authority.

67 Insurance for certain liabilities of Board members

- (1) Except as provided in subsection (2), the Board may insure a person who is or has been a Board member against liabilities incurred by the person as a Board member.
- (2) The Board must not pay, or agree to pay, a premium for a contract insuring a person who is, or has been, a Board member against a liability (other than one for legal costs) arising out of:
 - (a) conduct involving a wilful breach of duty in relation to the Board; or
 - (b) a contravention of section 58 or 59.

This subsection applies to a premium whether it is paid directly or through an interposed entity.

- (3) This section does not authorise anything that would otherwise be unlawful.
- (4) Anything that purports to insure a person against a liability is void to the extent that it contravenes this section.

Division 8—Conflict of interests

68 Material personal interest—Board member’s duty to disclose

Board member’s duty to notify other Board members of material personal interest when conflict arises

- (1) A Board member who has a material personal interest in a matter that relates to the affairs of the Board must give the other Board members notice of the interest unless subsection (2) says otherwise.
- (2) The Board member does not need to give notice of an interest under subsection (1) if:
 - (a) the interest relates to a contract that insures, or would insure, the Board member against liabilities the Board member incurs as a Board member (but only if the contract does not make the Board the insurer); or
 - (b) all the following conditions are satisfied:
 - (i) the Board member has already given notice of the nature and extent of the interest and its relation to the affairs of the Board under subsection (1);
 - (ii) if a person who was not a Board member at the time when the notice under subsection (1) was given is appointed as a Board member—the notice is given to that person;
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
 - (c) the Board member has given a standing notice of the nature and extent of the interest under section 69 and the notice is still effective in relation to the interest.
- (3) The notice required by subsection (1) must:
 - (a) give details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Board;
 - and

- (b) be given at a Board meeting as soon as practicable after the Board member becomes aware of his or her interest in the matter.

The details must be recorded in the minutes of the meeting.

Effect of contravention by Board member

- (4) A contravention of this section by a Board member does not affect the validity of any transaction or resolution.

69 Board member may give other Board members standing notice about an interest

Power to give notice

- (1) A Board member who has an interest in a matter may give the other Board members standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the Board at the time the notice is given.

Note: The standing notice may be given to the other Board members before the interest becomes a material personal interest.

- (2) The notice under subsection (1) must:
 - (a) give details of the nature and extent of the interest; and
 - (b) be given:
 - (i) at a Board meeting (either orally or in writing); or
 - (ii) to the other Board members individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every Board member.

Standing notice must be tabled at meeting if given to Board members individually

- (3) If the standing notice is given to the other Board members individually in writing it must be tabled at the next Board meeting after it is given.

Section 70

Nature and extent of interest must be recorded in minutes

- (4) The Board member must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

Dates of effect and expiry of standing notice

- (5) The standing notice:
- (a) takes effect as soon as it is given; and
 - (b) ceases to have effect if a person who was not a Board member at the time when the notice was given is appointed as a Board member.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

Effect of material increase in nature or extent of interest

- (6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

Effect of contravention by Board member

- (7) A contravention of this section by a Board member does not affect the validity of any transaction or resolution.

70 Interaction of sections 68 and 69 with other laws etc.

Sections 68 and 69 have effect in addition to, and not in derogation of, any general law rule about conflicts of interest.

71 Restrictions on voting

Restrictions on voting and being present

- (1) A Board member who has a material personal interest in a matter that is being considered at a Board meeting must not:
- (a) be present while the matter is being considered at the meeting; or

- (b) vote on the matter;
- unless:
 - (c) subsection (2) or (3) allows the Board member to be present;
 - or
 - (d) the interest does not need to be disclosed under section 68.

Participation with approval of other Board members

- (2) The Board member may be present and vote if Board members who do not have a material personal interest in the matter have passed a resolution that:
 - (a) identifies the Board member, the nature and extent of the Board member's interest in the matter and its relation to the affairs of the Board; and
 - (b) states that those Board members are satisfied that the interest should not disqualify the Board member from voting or being present.

Participation with Ministerial approval

- (3) The Board member may be present and vote if the Board member is so entitled under a declaration or order made by the responsible Ministers under section 72.

Effect of contravention by Board member

- (4) A contravention by a Board member of:
 - (a) this section; or
 - (b) a condition attached to a declaration or order made by the responsible Ministers under section 72;does not affect the validity of any resolution.

72 Ministerial power to make declarations and class orders

Ministerial power to make specific declarations

- (1) The responsible Ministers may declare in writing that a Board member who has a material personal interest in a matter that is being, or is to be, considered at a Board meeting may, despite the Board member's interest, be present while the matter is being

Section 72

considered at the meeting, vote on the matter, or both be present and vote. However, the responsible Ministers may only make the declaration if:

- (a) the number of Board members entitled to be present and vote on the matter would be less than the quorum for a Board meeting if the Board member were not allowed to vote on the matter at the meeting; and
- (b) the matter needs to be dealt with urgently, or if there is some other compelling reason for the matter being dealt with at the Board meeting.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The declaration may:
 - (a) apply to all or only some of the Board members; or
 - (b) specify conditions that the Board or Board member must comply with.
- (3) The declaration is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Ministerial power to make class orders

- (4) The responsible Ministers may make an order in writing that enables Board members who have a material personal interest in a matter to be present while the matter is being considered at a Board meeting, vote on that matter, or both be present and vote. The order may be made in respect of a specified class of Board members, resolutions or interests.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (5) The order may be expressed to be subject to conditions.
- (6) The nominated Minister must cause a copy of the order to be published on the Internet.
- (7) The order is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Part 5—The Future Fund Management Agency

Division 1—Introduction

73 Simplified outline

The following is a simplified outline of this Part:

- This Part establishes the Future Fund Management Agency.
- The Agency is responsible for assisting and advising the Board.

Division 2—Establishment and functions of the Future Fund Management Agency

74 Establishment of the Future Fund Management Agency

- (1) The Future Fund Management Agency is established by this section.
- (2) The Agency consists of:
 - (a) the Chair; and
 - (b) the staff of the Future Fund Management Agency.

Note: The Future Fund Management Agency does not have a legal identity separate from the Commonwealth.

75 Functions of the Agency

- (1) The Agency has the following functions:
 - (a) to make such arrangements as are necessary to give effect to the decisions of the Board;
 - (b) to provide administrative services to the Board;
 - (c) to provide information to the Board;
 - (d) to advise the Board about the performance of any of the Board's functions;
 - (e) to make resources and facilities (including meeting facilities, communication facilities, secretariat services and clerical assistance) available to the Board;
 - (f) such other functions as are conferred on the Agency by this Act;
 - (g) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) In performing its functions, the Agency must act in accordance with any policies determined, and any directions given, by the Board.

Division 3—Management and staff of the Future Fund Management Agency

76 Duties of the Chair

The Chair, under the Minister, is responsible for managing the Agency.

77 Staff of the Agency

- (1) The staff of the Agency are persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chair and the staff of the Agency together constitute a Statutory Agency; and
 - (b) the Chair is the Head of that Statutory Agency.

78 Consultants and persons seconded to the Agency

- (1) The Chair may, on behalf of the Commonwealth, engage consultants to perform services for the Agency in connection with the performance of any of its functions.
- (2) The terms and conditions of engagement are as determined in writing by the Chair.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (3) The Agency may also be assisted:
 - (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
 - (b) by officers and employees of authorities of the Commonwealth; or
 - (c) by employees of Commonwealth companies;
whose services are made available to the Agency in connection with the performance of any of its functions.

79 Chair not subject to direction by the Board on certain matters

To avoid doubt, the Chair is not subject to direction by the Board in relation to the Chair's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
 - (b) the *Public Service Act 1999*;
- in relation to the Agency.

Division 4—Other provisions

80 Application of the *Financial Management and Accountability Act 1997*

To avoid doubt, sections 45, 46, 47, 48, 49, 50 and 57 of the *Financial Management and Accountability Act 1997* have effect as if:

- (a) the Board and the Future Fund Management Agency were a single Agency; and
- (b) the Chair were the Chief Executive of that single Agency; and
- (c) an annual report under section 81 of this Act were an annual report of that single Agency; and
- (d) in a case where the Future Fund Management Agency is a prescribed Agency for the purposes of that Act—the Future Fund Management Agency were not an Agency in its own right.

Note: This means that there will be:

- (a) a single fraud control plan for both the Board and the Agency; and
- (b) a single audit committee for both the Board and the Agency; and
- (c) a single set of accounts and records for both the Board and the Agency; and
- (d) a single set of annual financial statements in relation to both the Board and the Agency; and
- (e) a single set of additional financial statements in relation to both the Board and the Agency (if required by the Finance Minister); and
- (f) auditing of the single set of annual financial statements.

81 Annual report

- (1) The Chair must, as soon as practicable after the end of each financial year, prepare and give to the nominated Minister a report of:
 - (a) the Agency's operations; and

Section 82

- (b) the Board's operations; and
 - (c) the performance of the investments of the Fund; and
 - (d) the total amount debited from the Fund Account for the purpose mentioned in paragraph 2(c) of Schedule 2; and
 - (e) the total amount debited from the Fund Account for the purpose mentioned in paragraph 2(g) of Schedule 2; and
 - (f) the total amount debited from the Fund Account for the purpose mentioned in paragraph 2(k) of Schedule 2; and
 - (g) the total amount debited from the Fund Account for the purpose mentioned in paragraph 2(l) of Schedule 2; and
 - (h) the total amount debited from the Fund Account for the purpose mentioned in paragraph 2(m) of Schedule 2;
- during the financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*.

- (2) A report under this section must include a benchmark in relation to the amounts referred to in paragraphs (1)(d) to (h).
- (3) The nominated Minister must cause a copy of each report under this section to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

82 Consultants and advisers to the Board

Consultants

- (1) The Chair may, on behalf of the Commonwealth, engage consultants to perform services for the Board in connection with the performance of any of its functions.
- (2) The terms and conditions of engagement are as determined in writing by the Chair.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Advisers

- (3) The Chair may, on behalf of the Commonwealth, engage persons to provide professional or investment advice to the Board in connection with the performance of any of its functions.

- (4) The terms and conditions of engagement are as determined in writing by the Chair.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Part 6—Miscellaneous

83 Nominated Minister

- (1) As soon as practicable after the commencement of this subsection, the responsible Ministers must, by writing, determine that one of them is to be the ***nominated Minister*** for the purposes of this Act.
- (2) A determination under subsection (1) may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (3) A determination under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (4) The nominated Minister may give the other responsible Minister:
 - (a) a report under subsection 54(1) or 55(2); or
 - (b) a document under subsection 54(2) or 55(2); or
 - (c) any other information or document obtained by the nominated Minister under this Act.

84 Miscellaneous receipts to be credited to the Fund Account

If:

- (a) the Board receives an amount of money; and
 - (b) another provision of this Act does not require the amount to be credited to the Fund Account;
- the amount is to be credited to the Fund Account.

85 Regulations

The Governor-General may make regulations prescribing matters:

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

Schedule 1—Credits of amounts, and transfers of financial assets, to the Future Fund

Note: See section 13.

Part 1—Introduction

1 Simplified outline

The following is a simplified outline of this Schedule:

- An initial amount of \$18 billion must be credited to the Fund Account.
- The responsible Ministers may determine that additional amounts are to be credited to the Fund Account, so long as the additional amounts do not result in the balance of the Fund exceeding the target asset level.
- The responsible Ministers may transfer Commonwealth-owned financial assets to the Fund.

Note: The target asset level is specified in a declaration (a *target asset level declaration*) given by the designated actuary under Schedule 3. The target asset level represents the amount that is expected to offset the present value of projected unfunded superannuation liabilities.

Section 2

Part 2—Credits of amounts to the Future Fund

2 Credit of \$18 billion to the Fund Account

- (1) Before 1 July 2006, the responsible Ministers must:
 - (a) by writing, determine that \$18 billion is to be credited to the Fund Account on a specified day; or
 - (b) by writing, determine that \$18 billion is to be credited to the Fund Account in specified instalments on specified days.
- (2) A day must not be specified under paragraph (1)(a) or (b) unless the day occurs before 1 July 2006.
- (3) A determination under subclause (1) is irrevocable.
- (4) A determination under subclause (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the determination.

3 Credit of additional amounts to the Fund Account—Ministerial determinations

- (1) If a target asset level declaration is in force for a financial year, the responsible Ministers may, by writing, determine that:
 - (a) a specified amount is to be credited to the Fund Account on a specified day in the financial year; or
 - (b) a specified amount is to be credited to the Fund Account in specified instalments on specified days in the financial year.

Note: A target asset level declaration is given by the designated actuary under Schedule 3.

- (2) The responsible Ministers must not make a determination under subclause (1) in relation to a financial year unless the sum of:
 - (a) the balance of the Fund at the start of a day that:
 - (i) is identified in the determination as the balance day for the determination; and

Section 4

- (ii) is not earlier than 3 months before the day on which the determination is made; and
 - (b) the amount specified in the determination; and
 - (c) the value, as at the start of the balance day for the determination, of any financial assets that have been transferred to the Board under subclause 6(1) since the start of the balance day for the determination;does not exceed the target asset level specified in the target asset level declaration that:
 - (d) is in force when the determination is made; and
 - (e) relates to the financial year.
- (3) The responsible Ministers must not make a determination under subclause (1) if another determination is in force under subclause (1).
- (4) A determination under subclause (1) may be revoked, but not varied, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (5) A determination under subclause (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the determination.

4 Duration of subclause 3(1) determinations

- (1) If:
 - (a) a subclause 3(1) determination specifies a day in a financial year in accordance with paragraph 3(1)(a) of this Schedule; and
 - (b) a target asset level declaration for the financial year was in force when the determination was made;the determination ceases to be in force at whichever is the earliest of the following:
 - (c) the end of the specified day;
 - (d) the time when the target asset level declaration ceases to be in force;
 - (e) if the determination is revoked—the time when the determination is revoked.

Section 5

- (2) If:
 - (a) a subclause 3(1) determination specifies 2 or more days in a financial year in accordance with paragraph 3(1)(b) of this Schedule; and
 - (b) a target asset level declaration for the financial year was in force when the determination was made;the determination ceases to be in force at whichever is the earliest of the following:
 - (c) the end of the latest of those specified days;
 - (d) the time when the target asset level declaration ceases to be in force;
 - (e) if the determination is revoked—the time when the determination is revoked.
- (3) If a determination under subclause 3(1) ceases to be in force, the cessation does not affect the crediting of an amount to the Fund Account before the cessation.

5 Credit of amounts to the Fund Account—gifts

- (1) The Board may accept a gift of money if the nominated Minister, by written notice given to the Board, authorises the acceptance of the gift.
- (2) An amount accepted under subclause (1) is to be credited to the Fund Account.

Part 3—Transfers of financial assets to the Future Fund

6 Transfers to the Fund—Commonwealth-owned financial assets

Transfer of financial assets

- (1) If a target asset level declaration is in force for a financial year, the responsible Ministers may cause one or more Commonwealth-owned financial assets to be transferred to the Board during the financial year.
- (2) The responsible Ministers must not cause financial assets to be transferred under subclause (1) during a financial year unless the sum of:
 - (a) the balance of the Fund as at the start of a day that:
 - (i) is identified in a written declaration made by the responsible Ministers as the balance day for the financial assets; and
 - (ii) is not earlier than 3 months before the transfer of the financial assets; and
 - (b) the value, as at the start of the balance day for the financial assets, of the financial assets; and
 - (c) the value, as at the start of the balance day for the first-mentioned financial assets, of any other financial assets that have been transferred to the Board under subclause (1) since the start of the balance day for the first-mentioned financial assets; and
 - (d) any amounts that have been credited to the Fund Account under subclause 2(1) or 3(1) during the period:
 - (i) beginning at the start of the balance day for the first-mentioned financial assets; and
 - (ii) ending immediately before the time when the first-mentioned financial assets are transferred; and
 - (e) if a determination was in force under subclause 2(1) or 3(1) when the first-mentioned financial assets are transferred—so

Section 6

much of the amount specified in the determination as had not been credited to the Fund Account before the time when the first-mentioned financial assets are transferred;

does not exceed the target asset level specified in the target asset level declaration that:

- (f) is in force when the first-mentioned financial assets are transferred; and
- (g) relates to the financial year.

Note: A target asset level declaration is given by the designated actuary under Schedule 3.

Investment of the Fund

- (3) A financial asset transferred to the Board under subclause (1) is taken to be an investment of the Fund.

Realisation of financial asset etc.

- (4) To avoid doubt, if a financial asset is transferred to the Board under subclause (1), this Act does not prevent:
 - (a) the realisation of the financial asset under section 17; or
 - (b) the disposal of the financial asset under a securities lending arrangement entered into under section 27.

Telstra sale scheme

- (5) To avoid doubt, action taken under subclause (1) is not a Telstra sale scheme for the purposes of the *Telstra Corporation Act 1991*.

Publication of details of transfer of financial assets

- (6) As soon as practicable after financial assets are transferred to the Board under subclause (1), the nominated Minister must cause to be published on the Internet a statement setting out:
 - (a) details of the transfer; and
 - (b) the balance day for the financial assets.

Section 7

Declaration

- (7) A declaration under subparagraph (2)(a)(i) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

7 Transfers of financial assets to the Fund—gifts

- (1) The Board may accept a gift of one or more financial assets if the nominated Minister, by written notice given to the Board, authorises the acceptance of the gift.
- (2) A financial asset accepted under subclause (1) is taken to be an investment of the Fund.
- (3) A financial asset accepted under subclause (1) is taken to be transferred to the Board under that subclause.
- (4) To avoid doubt, if a financial asset is transferred to the Board under subclause (1), this Act does not prevent:
- (a) the realisation of the financial asset under section 17; or
 - (b) the disposal of the financial asset under a securities lending arrangement entered into under section 27.
- (5) To avoid doubt, a financial asset may be transferred to the Board under subclause (1) even if the Commonwealth has a beneficial interest in the financial asset.

8 Ministerial directions about transferred financial assets

- (1) If financial assets are or have been transferred to the Board under subclause 6(1) or 7(1), the nominated Minister may give the Board written directions about the financial assets.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A direction under subclause (1) may:
- (a) require the Board not to realise the financial assets before the end of a specified period; or
 - (b) relate to the exercise by the Board of specified:
 - (i) rights (including voting rights); or

Section 9

- (ii) powers;
conferred on the Board in its capacity as the holder of the financial assets.
- (3) Subclause (2) does not limit subclause (1).
- (4) Paragraph (2)(a) has effect despite subclauses 6(4) and 7(4).
- (5) A direction under subclause (1) prevails over subsection 18(10) to the extent of any inconsistency.
- (6) The nominated Minister must not give a direction under subclause (1) that is inconsistent with this Act (other than subsection 18(10)).
- (7) The Board must comply with a direction under subclause (1).
- (8) A failure to comply with a direction under subclause (1) does not affect the validity of any transaction.
- (9) This clause does not limit subsection 18(1).
- (10) As soon as practicable after a direction is given under subclause (1), the Chair must cause a copy of the direction to be published on the Internet.
- (11) A direction under subclause (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

9 Continuing effect of instruments relating to transferred financial assets

- (1) If financial assets are transferred to the Board under subclause 6(1), the nominated Minister may, by writing, declare that a specified instrument relating to the assets continues to have effect after the transfer as if a reference in the instrument to the Commonwealth were a reference to the Board.
- (2) A declaration under subclause (1) has effect accordingly.
- (3) A declaration under subclause (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 2—Debits of amounts from the Future Fund

Note: See section 13.

1 Simplified outline

The following is a simplified outline of this Schedule:

- Amounts may be debited from the Fund Account in accordance with the purposes of the Fund Account.
- The main purpose of the Fund Account is to discharge unfunded superannuation liabilities from whichever is the earlier of:
 - (a) the time when the balance of the Fund is greater than or equal to the target asset level;
 - (b) 1 July 2020.

Note: The target asset level is specified in a declaration (a ***target asset level declaration***) given by the designated actuary under Schedule 3. The target asset level represents the amount that is expected to offset the present value of projected unfunded superannuation liabilities.

2 Purposes of the Fund Account

The purposes of the Fund Account are as follows:

- (a) discharging, in whole or in part, an unfunded superannuation liability that becomes payable in a financial year, where:
 - (i) the financial year ends before 1 July 2020; and
 - (ii) a target asset level declaration is in force for the financial year; and
 - (iii) the balance of the Fund, as at the start of the financial year, is not less than the target asset level specified in the target asset level declaration;

Section 3

- (b) discharging, in whole or in part, an unfunded superannuation liability that becomes payable in a financial year beginning on or after 1 July 2020;
- (c) paying remuneration and allowances of Board members;
- (d) paying the costs of, or incidental to, the acquisition of financial assets under section 16;
- (e) paying expenses of an investment of the Fund;
- (f) paying the costs of, or incidental to, the acquisition of derivatives under section 25;
- (g) paying or discharging the costs, expenses and other obligations incurred by the Board under a contract between the Board and an investment manager;
- (h) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Board;
- (i) paying a premium in respect of a contract of insurance entered into by the Board;
- (j) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Board;
- (k) paying remuneration, and other employment-related costs and expenses, in respect of members of the staff of the Agency;
- (l) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth under a contract entered into under section 78 or 82;
- (m) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in connection with the establishment or operation of the Agency.

Note 1: See section 21 of the *Financial Management and Accountability Act 1997* (debts from Special Accounts).

Note 2: A target asset level declaration is given by the designated actuary under Schedule 3.

3 Board must ensure that there is sufficient money to cover the main purposes of the Fund Account

The Board must take all reasonable steps to ensure that, during a financial year to which paragraph 2(a) or (b) of this Schedule

Section 3

applies, the amount of money standing to the credit of the Fund Account is sufficient to cover the purpose mentioned in that paragraph.

Note: This may require the Board to realise an investment of the Fund in accordance with section 17.

Section 1

Schedule 3—Target asset level declarations

Note: See section 13.

1 Simplified outline

The following is a simplified outline of this Schedule:

- The designated actuary is an actuary specified in a determination made by the nominated Minister.
- The target asset level is specified in a declaration (a ***target asset level declaration***) given by the designated actuary.
- The target asset level represents the amount that is expected to offset the present value of projected unfunded superannuation liabilities.

2 Designated actuary

- (1) For the purposes of this Act, the ***designated actuary*** is an actuary specified in a written determination made by the nominated Minister under this subclause.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A determination under subclause (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (3) As soon as practicable after a determination is made under subclause (1), the Chair must cause a copy of the determination to be published on the Internet.

3 Target asset level declarations

- (1) The designated actuary may give the responsible Ministers:
- (a) a written declaration stating that a specified amount is the ***target asset level*** for a specified financial year; and

Section 3

- (b) a written statement setting out the designated actuary's reasons for specifying the target asset level.
 - (2) A declaration under subclause (1) is to be known as a ***target asset level declaration*** for the financial year concerned.
 - (3) 2 or more target asset level declarations may be set out in the same document.
 - (4) A target asset level declaration for a particular financial year may be given before or during the financial year.
 - (5) A target asset level for a particular financial year must not be specified in a target asset level declaration unless the designated actuary is satisfied that:
 - (a) if the balance of the Fund, as at the start of the financial year, were equal to the target asset level for the financial year; the balance of the Fund would (based on the designated actuary's best estimate) be expected to offset:
 - (b) the present value of projected unfunded superannuation liabilities in respect of services rendered before the start of the financial year.
 - (6) A target asset level declaration for a particular financial year remains in force until whichever is the earliest of the following:
 - (a) the end of the financial year;
 - (b) the occurrence of an event specified in the declaration;
 - (c) if the declaration is revoked—the time when the declaration is revoked.
 - (7) The designated actuary must take all reasonable steps to ensure that:
 - (a) the first target asset level declaration is given as soon as practicable after the commencement of this clause; and
 - (b) if a target asset level declaration for a particular financial year ceases to be in force before the end of the financial year—a new target asset level declaration for the financial year is given as soon as practicable afterwards; and
 - (c) not more than one target asset level declaration for the same financial year is in force at the same time; and
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Section 4

- (d) not more than 5 target asset level declarations for different financial years are in force at the same time.
- (8) A target asset level declaration may be revoked, but not varied, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (9) A target asset level declaration is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (10) As soon as practicable after receiving:
 - (a) a target asset level declaration; and
 - (b) a statement setting out the designated actuary's reasons for specifying the target asset level;the nominated Minister must cause:
 - (c) a copy of the declaration; and
 - (d) a copy of the statement;to be published on the Internet.
- (11) If a target asset level declaration ceases to be in force, the cessation does not affect:
 - (a) the crediting of an amount to the Fund Account; or
 - (b) the transfer of a financial asset to the Board; or
 - (c) the debiting of an amount from the Fund Account;before the cessation.

4 Reliance on projections when making target asset level declarations etc.

In making a target asset level declaration, the designated actuary may:

- (a) rely on, or have regard to, the projections, findings, estimates, opinions or conclusions of any other actuaries who have conducted, or are conducting, actuarial reviews of:
 - (i) a scheme under which superannuation benefits are payable; or
 - (ii) a South Australian railways arrangement; or
 - (iii) a Tasmanian railways arrangement; and

Section 4

- (b) make such assumptions and estimates as the designated actuary considers reasonable; and
- (c) have regard to such other matters as the designated actuary considers relevant.

*[Minister's second reading speech made in—
House of Representatives on 7 December 2005
Senate on 9 February 2006]*

(199/05)
