



Australian Business Securitisation Fund Act 2019

No. 46, 2019

**An Act to establish the Australian Business
Securitisation Fund, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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**An Act to establish the Australian Business
Securitisation Fund, and for related purposes**

[Assented to 5 April 2019]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Australian Business Securitisation Fund Act 2019*.

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
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	6 April 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Objects of this Act

The objects of this Act are to increase the availability, and reduce the cost, of credit provided to small and medium enterprises by the Commonwealth investing in debt securities in accordance with this Act.

4 Simplified outline of this Act

This Act sets up the Australian Business Securitisation Fund.

The Fund consists of the Australian Business Securitisation Fund Special Account and the investments of the Fund.

The investments of the Fund must be debt securities that meet certain requirements.

The Minister is responsible for making investment decisions for the Fund, however, the Minister may delegate the power to make these decisions.

Investment decisions must be made in accordance with any directions given by the Minister.

5 Definitions

In this Act:

Account means the Australian Business Securitisation Fund Special Account established by section 11.

amount of credit has the same meaning as in the National Credit Code.

authorised debt security: see subsection 12(4).

credit has the same meaning as in the National Credit Code.

debtor has the same meaning as in the National Credit Code.

eligible delegate: see subsection 19(2).

Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

Fund means the Australian Business Securitisation Fund established by section 10.

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 Mandate has the meaning given by subsection 13(1).

Section 6

investment of the Fund means an investment that, under section 12, is taken to be an investment of the Fund.

listed entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

National Credit Code has the same meaning as in the *National Consumer Credit Protection Act 2009*.

non-corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

official has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

rules means rules made under section 22.

6 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.

7 Extension to external Territories

This Act extends to every external Territory.

8 Extra-territorial application

This Act extends to acts, omissions, matters and things outside Australia.

Part 2—The Australian Business Securitisation Fund

9 Simplified outline of this Part

This Part sets up the Australian Business Securitisation Fund.

The Fund consists of the Australian Business Securitisation Fund Special Account and the investments of the Fund.

The investments of the Fund must be debt securities that meet certain requirements and the investments must be made in accordance with any directions given by the Minister.

A total of \$2 billion must be credited to the Account, with an initial amount of \$250 million credited on 1 July 2019 and additional amounts credited on each 1 July for the following 4 years. The Minister may also, with the agreement of the Finance Minister, determine that additional amounts be credited to the Fund.

Amounts may be debited from the Account for the purposes of the Account, which include paying the costs of making investments. The Minister may also determine that the balance of the Account be reduced.

10 Establishment of the Australian Business Securitisation Fund

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

Section 11

11 Establishment of the Australian Business Securitisation Fund Special Account

- (1) The Australian Business Securitisation Fund Special Account is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

Note: 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.

12 Investments of the Fund

- (1) The Minister may, on behalf of the Commonwealth, invest amounts standing to the credit of the Account in any authorised debt security.
- (2) Investments under subsection (1) are taken to be investments of the Fund.
- (3) At any time before an investment of the Fund matures, the Minister may, on behalf of the Commonwealth, authorise the re-investment of the proceeds upon maturity in an authorised debt security with the same entity. The new investment is taken to be an investment of the Fund.
- (4) An **authorised debt security** is a debt security that:
 - (a) is issued by:
 - (i) a trustee of a trust; or
 - (ii) a body corporate that is a special purpose vehicle; and
 - (b) is expressed in Australian dollars; and
 - (c) relates to one or more amounts of credit provided (whether secured or unsecured) to one or more debtors where each such amount of credit:
 - (i) is provided wholly or predominantly for business purposes; and

- (ii) is less than \$5 million or, if the rules prescribe another amount of money, is less than that amount; and
 - (iii) complies with any other requirements or restrictions prescribed by the rules; and
 - (d) complies with any other requirements or restrictions prescribed by the rules.
- (5) Section 58 of the *Public Governance, Performance and Accountability Act 2013* (which deals with investment by the Commonwealth) does not apply to an investment of the Fund.

13 Investment Mandate

- (1) The Minister may, by legislative instrument, give directions about the exercise of the Minister's powers under section 12. The directions together constitute the *Investment Mandate*.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) The Minister must comply with the Investment Mandate.
- (3) Without limiting subsection (1), the Investment Mandate may include directions about any of the following:
- (a) strategies and policies to be followed for making investments;
 - (b) decision-making criteria for making investments;
 - (c) limits on making investments;
 - (d) risk and return relating to investments;
 - (e) governance arrangements relating to investments;
 - (f) any other matters that the Minister thinks appropriate.
- (4) The Minister must not give a direction under subsection (1):
- (a) that has the purpose, or is likely to have the effect, of directly or indirectly requiring the Minister to make, or not to make, a particular investment; or
 - (b) that is inconsistent with this Act (including the objects of this Act).

Section 14

14 Credits to the Account

- (1) There must be credited to the Account amounts equal to the following:
 - (a) \$250 million, to be credited on 1 July 2019;
 - (b) \$250 million, to be credited on 1 July 2020;
 - (c) \$500 million, to be credited on 1 July 2021;
 - (d) \$500 million, to be credited on 1 July 2022;
 - (e) \$500 million, to be credited on 1 July 2023;
 - (f) income derived from an investment of the Fund;
 - (g) a return of capital, or any other financial distribution, relating to an investment of the Fund;
 - (h) the proceeds of the realisation of an investment of the Fund.
- (2) The Minister may, by notifiable instrument, determine that an amount equal to a specified amount is to be credited to the Account at a time specified in, or ascertained in accordance with, the determination.
- (3) The time specified in, or ascertained in accordance with, the determination must be on or after the time the determination is made.
- (4) The determination must be expressed to be for a specified budget year.
- (5) Before making a determination under subsection (2), the Minister must obtain the agreement of the Finance Minister to the determination.

15 Purposes of the Account

The purposes of the Account are as follows:

- (a) paying the costs of the making of an investment under section 12;
- (b) paying or discharging any other costs, expenses and other obligations incurred by the Commonwealth exclusively in connection with the Fund;

- (c) reducing the balance of the Account under section 16 (and therefore the available appropriation for the Account) without making a real or notional payment.

16 Reducing the balance of the Account

- (1) The Minister may, by writing, direct that a specified amount is to be debited from the Account on a specified day (which must be on or after the day the direction is made).
- (2) A direction under subsection (1) is not a legislative instrument.
- (3) The Minister must give a copy of a direction under subsection (1) to the Finance Minister.

Part 3—Miscellaneous

17 Simplified outline of this Part

This Part contains miscellaneous provisions, including provisions about constitutional limits, delegation of the Minister's powers and functions under this Act, reporting on the operation of this Act and conducting a review of the operation of this Act.

This Part also contains the general rule-making power.

18 Constitutional limits

The Minister may exercise a power or perform a function conferred on the Minister by section 12 only:

- (a) with respect to trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (b) with respect to a Territory; or
- (c) with respect to the implied power of the Parliament to make laws with respect to nationhood; or
- (d) with respect to the executive power of the Commonwealth.

19 Delegations by the Minister

- (1) The Minister may, by written instrument, delegate to an eligible delegate (see subsection (2)) any of the Minister's powers or functions under this Act (other than the Minister's powers under section 13, 14 or 22).
- (2) An *eligible delegate* is an official of the Department of the Treasury, or a listed entity that is prescribed by the rules, who:
 - (a) is an SES employee; or

- (b) is an APS employee who holds or performs the duties of an Executive Level 2, or equivalent, position; or
 - (c) occupies an office or position at an equivalent level to that of an SES employee, or an Executive Level 2 position.
- (3) Before delegating a power or function under subsection (1), the Minister must have regard to:
 - (a) if the power or function is to be delegated to a person holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the person to exercise the power or perform the function or duty; or
 - (b) otherwise—whether the person has appropriate qualifications or expertise to exercise the power or perform the function.
- (4) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the Minister.
- (5) A direction under subsection (4) must not be inconsistent with this Act (including the objects of this Act) or a legislative instrument made under this Act.

20 Annual report

The annual report prepared by the Chief Executive Officer of the Australian Office of Financial Management and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include a report on the operation of this Act during the period.

21 Review of operation of this Act

- (1) The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after each of the following:
 - (a) the second anniversary of the commencement of this Act;
 - (b) the fifth anniversary of the commencement of this Act.
- (2) The review must include a review of the effectiveness of this Act in meeting the objectives of this Act.

Section 22

- (3) The persons undertaking the review must give the Minister a written report of the review.
- (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

22 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

*[Minister's second reading speech made in—
House of Representatives on 13 February 2019
Senate on 3 April 2019]*

(29/19)
