



Future Drought Fund Act 2019

No. 55, 2019

**An Act to establish the Future Drought Fund, and
for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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Future Drought Fund Act 2019

No. 55, 2019

An Act to establish the Future Drought Fund, and for other purposes

[Assented to 30 July 2019]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Future Drought Fund Act 2019*.

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
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 September 2019 (F2019N00066)

Note: This table relates only to the provisions of this Act as originally enacted.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 Object

The object of this Act is to enhance the public good by building drought resilience.

4 Simplified outline of this Act

- | |
|--|
| <ul style="list-style-type: none">• This Act establishes the Future Drought Fund, which will enhance the Commonwealth's ability to:<ul style="list-style-type: none">(a) make arrangements with persons or bodies in relation to drought resilience; and(b) make grants to persons or bodies in relation to drought resilience. |
|--|

- The Future Drought Fund consists of:
 - (a) the Future Drought Fund Special Account; and
 - (b) the investments of the Future Drought Fund.
- The balance of the Building Australia Fund Special Account is transferred to the Future Drought Fund Special Account. The investments of the Building Australia Fund become investments of the Future Drought Fund.
- The Future Fund Board is responsible for deciding how to invest the Future Drought Fund. In doing so, the Future Fund Board is bound by the Future Drought Fund Investment Mandate given to it by the responsible Ministers.
- On or after 1 July 2020, the Drought Minister may, on behalf of the Commonwealth:
 - (a) make an arrangement with a person or body in relation to drought resilience; and
 - (b) make a grant to a person or body in relation to drought resilience.
- This Act establishes the Agriculture Future Drought Resilience Special Account.
- During the financial year beginning on 1 July 2020, and during each subsequent financial year, \$100 million will be transferred from the Future Drought Fund Special Account to the Agriculture Future Drought Resilience Special Account.
- The purposes of the Agriculture Future Drought Resilience Special Account are as follows:
 - (a) to pay amounts payable by the Commonwealth under arrangements relating to drought resilience;
 - (b) to make grants relating to drought resilience.
- This Act establishes the Future Drought Fund Consultative Committee.

Section 5

5 Definitions

In this Act:

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

acquire includes acquire by way of issue.

advisory affairs of the Regional Investment Corporation Board means the affairs of the Regional Investment Corporation Board that relate to its function of giving advice to the Drought Minister under section 28.

Agency means the Future Fund Management Agency.

Agriculture Department means the Department administered by the Agriculture Minister.

Agriculture Future Drought Resilience Special Account means the Agriculture Future Drought Resilience Special Account established by section 33.

Agriculture Minister means the Minister administering the *Primary Industries Research and Development Act 1989*.

Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

arrangement includes contract, agreement or deed. This definition does not apply to the expressions “securities lending arrangement” or “securities lending arrangements”.

asset has the same meaning as in the *Future Fund Act 2006*.

balance of the Future Drought Fund means the sum of:

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

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

Biodiversity Convention means the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1993 No. 32 ([1993] ATS 32) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Building Australia Fund means the Building Australia Fund that was established by section 12 of the *Nation-building Funds Act 2008* before that section was repealed.

Building Australia Fund Special Account means the Building Australia Fund Special Account that was established by section 13 of the *Nation-building Funds Act 2008* before that section was repealed.

business entity means:

- (a) a company; or
- (b) a partnership; or
- (c) a trust; or
- (d) a body politic.

Climate Change Convention means the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1994 No. 2 ([1994] ATS 2) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

COAG Reform Fund means the COAG Reform Fund established by section 5 of the *COAG Reform Fund Act 2008*.

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

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

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

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Desertification Convention means the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, done at Paris on 17 June 1994, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 2000 No. 18 ([2000] ATS 18) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

drought means drought in Australia.

Drought Minister means:

- (a) if there is a Minister whose title includes the word “Drought”—that Minister; or
- (b) otherwise—the Agriculture Minister.

drought resilience means:

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

Drought Resilience Funding Plan has the meaning given by subsection 31(2).

Finance Department means the Department administered by the Finance Minister.

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

financial asset has the same meaning as in the *Future Fund Act 2006*.

Future Drought Fund means the Future Drought Fund established by section 10.

Future Drought Fund investment function of the Future Fund Board means:

- (a) a function or power conferred on the Future Fund Board by section 39, 40, 47, 49, 51 or 52; or
- (b) a right or power conferred on the Future Fund Board in its capacity as the holder of an investment of the Future Drought Fund.

Future Drought Fund Investment Mandate has the meaning given by subsection 41(3).

Future Drought Fund Special Account means the Future Drought Fund Special Account established by section 13.

Future Fund Board means the Future Fund Board of Guardians established by section 34 of the *Future Fund Act 2006*.

Future Fund Special Account means the Future Fund Special Account established by section 12 of the *Future Fund Act 2006*.

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 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 Future Fund Board;
- (b) manage the investment of funds on behalf of the Future Fund Board;
- (c) acquire derivatives on behalf of the Future Fund Board;
- (d) manage derivatives on behalf of the Future Fund Board;
- (e) enter into securities lending arrangements on behalf of the Future Fund Board;
- (f) realise financial assets on behalf of the Future Fund Board;
- (g) perform custodial functions in relation to the financial assets of the Future Fund Board.

Section 5

investment of the Building Australia Fund has the same meaning as in the *Nation-building Funds Act 2008* as in force immediately before the commencement of Schedule 2 to the *Future Drought Fund (Consequential Amendments) Act 2019*.

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

Kyoto Protocol means the Kyoto Protocol to the United Nations Framework Convention on Climate Change, done at Kyoto on 11 December 1997, as amended and in force for Australia from time to time.

Note: The Protocol is in Australian Treaty Series 2008 No. 2 ([2008] ATS 2) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

make, in relation to an arrangement, includes enter into.

member of the Regional Investment Corporation Board includes the Chair of the Regional Investment Corporation Board.

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

Paris Agreement means the Paris Agreement, done at Paris on 12 December 2015, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2016 No. 24 ([2016] ATS 24) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

person includes a partnership.

Note: See also subsection 2C(1) of the *Acts Interpretation Act 1901*.

Ramsar Convention means the Convention on Wetlands of International Importance especially as Waterfowl Habitat, done at Ramsar, Iran, on 2 February 1971, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1975 No. 48 ([1975] ATS 48) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

realise includes redeem or dispose of.

Regional Investment Corporation Board means the Board of the Regional Investment Corporation.

Note: The Regional Investment Corporation is established by section 7 of the *Regional Investment Corporation Act 2018*.

responsible Ministers means:

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

rules means rules made under section 66.

Treasury Department means the Department administered by the Treasurer.

value of an investment of the Future Drought Fund means the market value of the investment. For this purpose, disregard anything that would prevent or restrict conversion of a financial asset to money.

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—Future Drought Fund

Division 1—Introduction

9 Simplified outline of this Part

- The Future Drought Fund consists of:
 - (a) the Future Drought Fund Special Account; and
 - (b) the investments of the Future Drought Fund.
- The balance of the Building Australia Fund Special Account is transferred to the Future Drought Fund Special Account. The investments of the Building Australia Fund become investments of the Future Drought Fund.
- The responsible Ministers may determine that additional amounts be credited to the Future Drought Fund Special Account.
- A purpose of the Future Drought Fund Special Account is to transfer amounts to the Agriculture Future Drought Resilience Special Account.
- The Future Drought Fund Special Account can be debited in relation to costs and other obligations incurred by the Future Fund Board in managing the Future Drought Fund.

Division 2—Establishment of the Future Drought Fund and the Future Drought Fund Special Account

10 Establishment of the Future Drought Fund

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

11 Transfer of balance of the Building Australia Fund Special Account

As soon as practicable after the commencement of this section, there is to be credited to the Future Drought Fund Special Account an amount equal to the balance of the Building Australia Fund Special Account immediately before the commencement of this section.

Note: The balance of the Building Australia Fund Special Account does not include the value of an investment of the Building Australia Fund.

12 Transfer of investments of the Building Australia Fund

Scope

- (1) This section applies to a financial asset if, immediately before the commencement of this section, the asset was an investment of the Building Australia Fund.

Transfer

- (2) Immediately after the commencement of this section, the financial asset is taken to cease to be an investment of the Building Australia Fund and to become an investment of the Future Drought Fund.

Part 2 Future Drought Fund

Division 2 Establishment of the Future Drought Fund and the Future Drought Fund Special Account

Section 13

13 Establishment of the Future Drought Fund Special Account

- (1) The Future Drought Fund Special Account is established by this section.
- (2) The Future Drought Fund Special 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.

Division 3—Credits of amounts to the Future Drought Fund Special Account

14 Credits of amounts

- (1) The responsible Ministers may, by writing, determine that:
 - (a) a specified amount is to be credited to the Future Drought Fund Special Account on a specified day; or
 - (b) a specified amount is to be credited to the Future Drought Fund Special Account in specified instalments on specified days.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Amounts must also be credited to the Future Drought Fund Special Account under sections 40, 51, 53 and 64.

- (2) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Division 4—Debits of amounts from the Future Drought Fund

15 Purpose of the Future Drought Fund Special Account—main purpose

A purpose of the Future Drought Fund Special Account is to transfer amounts to the Agriculture Future Drought Resilience Special Account in accordance with section 34 for the purposes of:

- (a) paying amounts payable by the Commonwealth under an arrangement made under section 21; and
- (b) making grants under section 21; and
- (c) transferring amounts to the COAG Reform Fund in accordance with section 36AA for the purposes of making grants to the States and Territories under section 21.

16 Purposes of the Future Drought Fund Special Account—purposes related exclusively to the investments etc. of the Future Drought Fund

Each of the following is a purpose of the Future Drought Fund Special Account:

- (a) paying the costs of, or incidental to, the acquisition of financial assets under section 39;
- (b) paying expenses of an investment of the Future Drought Fund;
- (c) paying the costs of, or incidental to, the acquisition of derivatives under section 49;
- (d) paying or discharging the costs, expenses and other obligations incurred by the Future Fund Board under a contract between the Board and an investment manager engaged under subsection 52(1);
- (e) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Future Fund Board, if the bank account relates exclusively to the Future Drought Fund;

- (f) paying a premium in respect of a contract of insurance entered into by the Future Fund Board exclusively in connection with the Future Drought Fund;
- (g) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board exclusively in connection with the Future Drought Fund.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

17 Purposes of the Future Drought Fund Special Account— purposes not related exclusively to the Future Drought Fund

Each of the following is a purpose of the Future Drought Fund Special Account:

- (a) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Future Fund Board, if those costs, expenses or obligations are not covered by:
 - (i) paragraph 16(e); or
 - (ii) paragraph 2(1)(g) of Schedule 2 to the *Future Fund Act 2006*; or
 - (iii) paragraph 18(e) of the *Medical Research Future Fund Act 2015*; or
 - (iv) paragraph 136(1)(j) or 137(e) of the *Nation-building Funds Act 2008*; or
 - (v) paragraph 15(e) of the *DisabilityCare Australia Fund Act 2013*; or
 - (vi) paragraph 15(e) of the *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018*;
- (b) paying a premium in respect of a contract of insurance entered into by the Future Fund Board, if the premium is not covered by:
 - (i) paragraph 16(f); or
 - (ii) paragraph 2(1)(h) of Schedule 2 to the *Future Fund Act 2006*; or

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- (iii) paragraph 18(f) of the *Medical Research Future Fund Act 2015*; or
- (iv) paragraph 136(1)(k) or 137(f) of the *Nation-building Funds Act 2008*; or
- (v) paragraph 15(f) of the *DisabilityCare Australia Fund Act 2013*; or
- (vi) paragraph 15(f) of the *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018*;
- (c) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board, if the costs, expenses, obligations or liabilities are not covered by:
 - (i) a paragraph of section 16; or
 - (ii) a paragraph of subclause 2(1) of Schedule 2 to the *Future Fund Act 2006*; or
 - (iii) a paragraph of section 18 of the *Medical Research Future Fund Act 2015*; or
 - (iv) a paragraph of subsection 136(1) or of section 137 of the *Nation-building Funds Act 2008*; or
 - (v) a paragraph of section 15 of the *DisabilityCare Australia Fund Act 2013*; or
 - (vi) a paragraph of section 15 of the *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018*;
- (d) paying remuneration and allowances of Future Fund Board members;
- (e) paying remuneration, and other employment-related costs and expenses, in respect of members of the staff of the Agency;
- (f) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth or the Future Fund Board:
 - (i) under a contract entered into under section 78 or 82 of the *Future Fund Act 2006*; or
 - (ii) in connection with the operation of the Agency; or
 - (iii) before section 12 of the *Nation-building Funds Act 2008* is repealed, in connection with the management of the Building Australia Fund.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

18 Future Fund Board must ensure that the balance of the Future Drought Fund Special Account is sufficient to cover authorised debits etc.

The Future Fund Board must take all reasonable steps to ensure that the balance of the Future Drought Fund Special Account is sufficient to cover the debits of amounts for the purposes specified in sections 15, 16 and 17.

Note: This may require the Future Fund Board to realise an investment of the Future Drought Fund in accordance with section 40.

19 Transfers from the Future Drought Fund to the Future Fund

- (1) If an amount is debited from the Future Fund Special Account for a purpose mentioned in subclause 2(2) of Schedule 2 to the *Future Fund Act 2006*, the Finance Minister may, by writing, direct that, on a specified day, a specified amount is to be:
 - (a) debited from the Future Drought Fund Special Account; and
 - (b) credited to the Future Fund Special Account.
- (2) The specified amount must not exceed the amount debited from the Future Fund Special Account as mentioned in subsection (1).
- (3) A direction under subsection (1) is not a legislative instrument.

Part 3—Arrangements and grants relating to drought resilience

Division 1—Introduction

20 Simplified outline of this Part

- On or after 1 July 2020, the Drought Minister may, on behalf of the Commonwealth:
 - (a) make an arrangement with a person or body in relation to drought resilience; and
 - (b) make a grant to a person or body in relation to drought resilience.
- Before making an arrangement or a grant, the Drought Minister must request advice from the Regional Investment Corporation Board.
- The Drought Minister must determine a Drought Resilience Funding Plan for ensuring that a coherent and consistent approach is adopted in:
 - (a) making arrangements or grants; and
 - (b) entering into agreements setting out the terms and conditions of grants.
- This Part establishes the Agriculture Future Drought Resilience Special Account.
- During the financial year beginning on 1 July 2020, and during each subsequent financial year, \$100 million will be transferred from the Future Drought Fund Special Account to the Agriculture Future Drought Resilience Special Account.
- The purposes of the Agriculture Future Drought Resilience Special Account are as follows:

- (a) to pay amounts payable by the Commonwealth under arrangements relating to drought resilience;
 - (b) to make grants relating to drought resilience;
 - (c) to transfer amounts to the COAG Reform Fund for the purposes of making grants to the States and Territories in relation to drought resilience.
- This Part establishes the Future Drought Fund Consultative Committee.

Division 2—Arrangements and grants

21 Arrangements and grants

- (1) On or after 1 July 2020, the Drought Minister may, on behalf of the Commonwealth:
- (a) make an arrangement with; or
 - (b) make a grant of financial assistance to;
- a person or body for:
- (c) the carrying out of a project that is directed towards achieving drought resilience; or
 - (d) the carrying out of research that is directed towards achieving drought resilience; or
 - (e) the provision of advice that is directed towards achieving drought resilience; or
 - (f) the provision of a service that is directed towards achieving drought resilience; or
 - (g) the adoption of technology that is directed towards achieving drought resilience; or
 - (h) a matter that is incidental or ancillary to a matter mentioned in paragraph (c), (d), (e), (f) or (g).

Note: See also:

- (a) section 25 (compliance with Drought Resilience Funding Plan); and
 - (b) section 26 (constitutional limits); and
 - (c) section 28 (advice from the Regional Investment Corporation Board).
- (2) An arrangement under subsection (1) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses.
- (3) A grant under subsection (1) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses.
- (4) Subsections (2) and (3) do not limit subsection (1).
- (5) Subsection (1) does not authorise:

- (a) the acquisition of shares in a company; or
- (b) the making of a loan.

22 Terms and conditions of grants

Scope

- (1) This section applies to a grant of financial assistance made under section 21.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted must be set out in a written agreement between the Commonwealth and the grant recipient.

Note: See also:

- (a) section 25 (compliance with Drought Resilience Funding Plan); and
 - (b) section 26 (constitutional limits); and
 - (c) section 28 (advice from the Regional Investment Corporation Board).
- (3) The grant recipient must comply with the terms and conditions.
 - (4) Without limiting subsection (2), the terms and conditions must provide for the circumstances in which the grant recipient must repay amounts to the Commonwealth.

Note: An amount repayable to the Commonwealth would be a debt due to the Commonwealth.

- (5) An agreement under subsection (2) is to be entered into by the Drought Minister on behalf of the Commonwealth.

23 Drought Minister has powers etc. of the Commonwealth

- (1) The Drought Minister, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as:
 - (a) a party to an arrangement made under section 21; or
 - (b) the grantor of a grant made under section 21.

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- (2) Without limiting subsection (1):
- (a) an amount payable by the Commonwealth under a section 21 arrangement is to be paid by the Drought Minister on behalf of the Commonwealth; and
 - (b) an amount payable to the Commonwealth under a section 21 arrangement is to be paid to the Drought Minister on behalf of the Commonwealth; and
 - (c) a section 21 grant is to be paid by the Drought Minister on behalf of the Commonwealth; and
 - (d) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a section 21 grant is to be paid to the Drought Minister on behalf of the Commonwealth; and
 - (e) the Drought Minister may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns:
 - (i) a section 21 arrangement; or
 - (ii) a section 21 grant.

24 Conferral of powers on the Drought Minister

The Drought Minister may exercise a power conferred on the Drought Minister by:

- (a) an arrangement made under section 21; or
- (b) an agreement under section 22.

25 Compliance with Drought Resilience Funding Plan

In exercising a power conferred on the Drought Minister by section 21 or 22, the Drought Minister must comply with a Drought Resilience Funding Plan that is in force.

Note: A Drought Resilience Funding Plan is determined under subsection 31(1).

26 Constitutional limits

The Drought Minister may exercise a power conferred on the Drought Minister by section 21 or 22 only:

- (a) with respect to implementing Australia's international obligations under the Desertification Convention; or
- (b) with respect to implementing Australia's international obligations under the Ramsar Convention; or
- (c) with respect to implementing Australia's international obligations under the Biodiversity Convention; or
- (d) with respect to implementing Australia's international obligations under the Climate Change Convention; or
- (e) with respect to implementing Australia's international obligations under the Kyoto Protocol; or
- (f) with respect to implementing Australia's international obligations under the Paris Agreement; or
- (g) with respect to matters that are of international concern; or
- (h) with respect to the granting of financial assistance to a State or Territory; or
- (i) with respect to the granting of financial assistance to a constitutional corporation for the purposes of carrying out the corporation's activities; or
- (j) with respect to a Territory; or
- (k) with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (l) with respect to trade and 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
- (m) with respect to the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (n) with respect to research relating to the development of patents of inventions; or
- (o) with respect to statistics; or
- (p) with respect to meteorological observations; or
- (q) with respect to insurance to which paragraph 51(xiv) of the Constitution applies; or

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- (r) with respect to the implied power of the Parliament to make laws with respect to nationhood; or
- (s) with respect to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

27 Executive power of the Commonwealth

This Division does not, by implication, limit the executive power of the Commonwealth.

27A Publication of information relating to arrangements and grants

- (1) The Drought Minister must cause the following information to be published on the Agriculture Department's website:
 - (a) each amount paid by the Commonwealth under a section 21 arrangement or as a section 21 grant;
 - (b) the total of the amounts referred to in paragraph (a);
 - (c) the total of the amounts payable, but not yet paid, by the Commonwealth under a section 21 arrangement or as a section 21 grant;
 - (d) for each section 21 arrangement or section 21 grant:
 - (i) the name of the person or body with whom the arrangement was made or to whom the grant was made; and
 - (ii) the purpose of the arrangement or grant;
 - (e) the date of the most recent amount paid by the Commonwealth under a section 21 arrangement or as a section 21 grant.
- (2) The information published under subsection (1) must be kept up-to-date.
- (3) For the purposes of subsection (2), information is up-to-date if it is published as soon as practicable.

Division 3—Advice**28 Drought Minister must request advice from the Regional Investment Corporation Board**

- (1) Before:
 - (a) making an arrangement or a grant under section 21; or
 - (b) entering into an agreement under section 22;the Drought Minister must request the Regional Investment Corporation Board to advise the Drought Minister about whether the Drought Minister should make the arrangement or grant, or enter into the agreement, as the case may be.
- (2) The Regional Investment Corporation Board must comply with a request under subsection (1).
- (3) In deciding whether to:
 - (a) make an arrangement or a grant under section 21; or
 - (b) enter into an agreement under section 22;the Drought Minister must have regard to any advice that the Regional Investment Corporation Board has given to the Drought Minister under this section in relation to making the arrangement or grant, or entering into the agreement, as the case may be.
- (4) Subsection (3) does not, by implication, limit the matters to which the Drought Minister may have regard.

29 Compliance with Drought Resilience Funding Plan

In giving advice to the Drought Minister under section 28, the Regional Investment Corporation Board must comply with a Drought Resilience Funding Plan that is in force.

Note: A Drought Resilience Funding Plan is determined under subsection 31(1).

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30 Disclosure of interests

Scope

- (1) This section applies if a member of the Regional Investment Corporation Board has a material personal interest that relates to the advisory affairs of the Regional Investment Corporation Board.

Note: For *advisory affairs* of the Regional Investment Corporation Board, see section 5.

Requirement to disclose interest

- (2) As soon as practicable after the member becomes aware of the interest, the member must disclose details of the interest:
- (a) at a meeting of the Regional Investment Corporation Board; and
 - (b) to the Drought Minister.
- (3) The disclosure under subsection (2) must include details of:
- (a) the nature and extent of the interest; and
 - (b) how the interest relates to the advisory affairs of the Regional Investment Corporation Board.
- (4) A disclosure covered by paragraph (2)(a) must be recorded in the minutes of the meeting.

Consequences of disclosure

- (5) If:
- (a) the member has made a disclosure under subsection (2); and
 - (b) a matter in which the member has disclosed the interest is being considered at a meeting of the Regional Investment Corporation Board;
- the member must not:
- (c) be present while the matter is being considered at the meeting; or
 - (d) vote on the matter.

Termination of appointment

- (6) The Drought Minister may terminate the appointment of a member of the Regional Investment Corporation Board if the member fails, without reasonable excuse, to comply with subsection (2) or (5).
- (7) Subsection (6) does not limit section 26 of the *Regional Investment Corporation Act 2018*.

Effect of subsections (2), (3), (4) and (5)

- (8) Subsections (2), (3), (4) and (5) have effect despite anything in:
 - (a) subsection 29(1) of the *Public Governance, Performance and Accountability Act 2013*; or
 - (b) rules made for the purposes of subsection 29(2) of that Act.

Division 4—Drought Resilience Funding Plan

31 Drought Resilience Funding Plan

- (1) The Drought Minister must determine a plan for ensuring that a coherent and consistent approach is adopted in:
 - (a) making arrangements or grants under section 21; and
 - (b) entering into agreements under section 22.
- (2) For the purposes of this Act, ***Drought Resilience Funding Plan*** means a plan determined under subsection (1).
- (3) The Drought Minister must take all reasonable steps to ensure that:
 - (a) the first Drought Resilience Funding Plan comes into force before 1 July 2020; and
 - (b) a Drought Resilience Funding Plan is in force at all times after the first Drought Resilience Funding Plan ceases to be in force.
- (4) A Drought Resilience Funding Plan:
 - (a) comes into force at the start of the day after the day the Plan is registered under the *Legislation Act 2003*; and
 - (b) unless sooner repealed under subsection (5), is repealed at the end of the 4-year period that began when the Plan came into force.
- (5) If a Drought Resilience Funding Plan is expressed to replace an existing Drought Resilience Funding Plan, the existing Plan is taken to be repealed when the replacement Plan comes into force.
- (6) A Drought Resilience Funding Plan must not require:
 - (a) an arrangement to be made with a particular person; or
 - (b) an arrangement to be made for carrying out a particular project; or
 - (c) a grant to be made to a particular person; or
 - (d) a grant to be made for carrying out a particular project.
- (7) A Drought Resilience Funding Plan is a legislative instrument.

- (8) The Drought Minister must ensure that a Drought Resilience Funding Plan that is in force is published on the Agriculture Department's website.
- (9) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to the power under this section to determine a Drought Resilience Funding Plan.

32 Consultation before determining a Drought Resilience Funding Plan

- (1) Before determining a Drought Resilience Funding Plan, the Drought Minister must:
 - (a) publish on the Agriculture Department's website:
 - (i) a draft of the Plan; and
 - (ii) a notice inviting persons to make a submission to the Drought Minister on the draft Plan on or before a day specified in the notice; and
 - (iii) the final report of the Productivity Commission review relating to the previous Plan (if any); and
 - (b) consider any submissions received on or before the day specified in the notice.
- (2) The day specified under subparagraph (1)(a)(ii) must be at least 42 days after the day on which the notice is published.
- (3) This section does not limit section 17 of the *Legislation Act 2003*.

32A Productivity Commission review of effectiveness of Drought Resilience Funding Plan

- (1) Before the end of the period of 3 years after a Drought Resilience Funding Plan comes into force, the Minister administering the *Productivity Commission Act 1998* (the **Productivity Minister**) must, under paragraph 6(1)(a) of that Act, refer to the Productivity Commission for inquiry the matter of the effectiveness of Part 3 of this Act:
 - (a) including an assessment of the effectiveness of the Drought Resilience Funding Plan; and

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- (b) having regard to economic, social and environmental outcomes.
- (2) In referring the matter to the Productivity Commission for inquiry, the Productivity Minister must:
- (a) under paragraph 11(1)(b) of the *Productivity Commission Act 1998*, specify that the Productivity Commission must submit its report on the inquiry to the Productivity Minister no later than 5 months before the end of the 4 year period that began when the Drought Resilience Funding Plan came into force; and
 - (b) under paragraph 11(1)(d) of that Act, require the Productivity Commission to make recommendations in relation to the matter.
- Note: Under section 12 of the *Productivity Commission Act 1998*, the Productivity Minister must cause a copy of the Productivity Commission's report to be tabled in each House of the Parliament.
- (3) For the purposes of paragraph 6(1)(a) of the *Productivity Commission Act 1998*, the matter mentioned in subsection (1) of this section is taken to be a matter relating to industry, industry development and productivity.

Division 5—Agriculture Future Drought Resilience Special Account

33 Agriculture Future Drought Resilience Special Account

- (1) The Agriculture Future Drought Resilience Special Account is established by this section.
- (2) The Agriculture Future Drought Resilience Special 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.

- (3) The Secretary of the Agriculture Department is responsible for the Agriculture Future Drought Resilience Special Account.

34 Transfers to the Agriculture Future Drought Resilience Special Account

Scope

- (1) This section applies to:
 - (a) the financial year beginning on 1 July 2020; and
 - (b) each subsequent financial year.

Transfers

- (2) During a financial year, the Finance Minister must, in writing, direct that:
 - (a) \$100 million is to be:
 - (i) debited from the Future Drought Fund Special Account; and
 - (ii) credited to the Agriculture Future Drought Resilience Special Account;on a specified day in the financial year; or

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- (b) \$100 million is to be:
 - (i) debited from the Future Drought Fund Special Account;
and
 - (ii) credited to the Agriculture Future Drought Resilience Special Account;in specified instalments on specified days in the financial year.
- (3) A direction under subsection (2) is not a legislative instrument.
- (4) The Finance Minister must give a copy of a direction under subsection (2) to the Treasurer and the Drought Minister.

35 Other credits to the Agriculture Future Drought Resilience Special Account

There must be credited to the Agriculture Future Drought Resilience Special Account:

- (a) an amount equal to an amount paid to the Commonwealth under a section 21 arrangement; and
- (b) an amount equal to an amount paid to the Commonwealth by way of damages or compensation for a breach of a section 21 arrangement; and
- (c) an amount equal to an amount paid to the Commonwealth by way of the repayment of the whole or a part of a section 21 grant.

36 Purposes of the Agriculture Future Drought Resilience Special Account

The purposes of the Agriculture Future Drought Resilience Special Account are as follows:

- (a) to pay amounts payable by the Commonwealth under an arrangement made under section 21;
- (b) to make grants under section 21;
- (c) to transfer amounts to the COAG Reform Fund in accordance with section 36AA for the purposes of making grants to the States and Territories under section 21.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

Division 5A—Channelling State/Territory grants through the COAG Reform Fund

36AA Channelling State/Territory grants through the COAG Reform Fund

- (1) If the Drought Minister decides that a grant of financial assistance should be made to a State or Territory under section 21, the Drought Minister must, by writing, direct that, on a specified day, a specified amount (which must equal the amount of the grant) is to be:
 - (a) debited from the Agriculture Future Drought Resilience Special Account; and
 - (b) credited to the COAG Reform Fund.
- (2) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- (3) Two or more directions under subsection (1) may be set out in the same document.
- (4) A direction under subsection (1) is not a legislative instrument.
- (5) The Drought Minister must give a copy of a direction under subsection (1) to the Treasurer and the Finance Minister.

36AB Debits from the COAG Reform Fund

If an amount has been credited under paragraph 36AA(1)(b) to the COAG Reform Fund for a purpose in relation to a grant of financial assistance to a State or Territory, the Treasurer must:

- (a) ensure that the COAG Reform Fund is debited for the purposes of making the grant; and
- (b) do so as soon as practicable after the amount has been credited.

Division 6—Future Drought Fund Consultative Committee

Subdivision A—Preliminary

36A Definitions

In this Division:

Chair means the Chair of the Committee.

Committee means the Future Drought Fund Consultative Committee.

Subdivision B—Establishment of the Committee

36B Future Drought Fund Consultative Committee

A committee to be known as the Future Drought Fund Consultative Committee is established.

Subdivision C—Functions and powers of the Committee

36C Functions of the Committee

The Committee has the functions conferred on the Committee by this Subdivision.

36D Drought Minister must request advice from Committee about draft Drought Resilience Funding Plan

- (1) In addition to the requirements of subsection 32(1), before determining a Drought Resilience Funding Plan, the Drought Minister must:
 - (a) request the Committee to advise the Drought Minister about the draft Plan referred to in that subsection; and
 - (b) have regard to any advice that the Committee has given to the Drought Minister under this section in relation to the draft.
- (2) The Committee must comply with a request under subsection (1).

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- (3) This section does not limit section 17 of the *Legislation Act 2003*.

36E Drought Minister must request advice from the Committee on design relating to arrangements and grants

- (1) Before the Drought Minister first makes either an arrangement or a grant under section 21, the Drought Minister must request the Committee to advise the Drought Minister about whether the proposed design of the program of arrangements or grants to be made under that section is consistent with the Drought Resilience Funding Plan.
- (2) The Committee must comply with a request under subsection (1).

36F Powers of the Committee

The Committee has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.

Subdivision D—Membership etc. of the Committee

36G Membership of the Committee

The Committee consists of the following members:

- (a) a Chair;
- (b) 4 other members.

36H Appointment of members of the Committee

- (1) Each member of the Committee is to be appointed by the Drought Minister by written instrument.

Note: A member of the Committee may be reappointed, subject to subsection 36J(2); see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A member of the Committee holds office on a part-time basis.

- (3) A person must not be appointed as a member of the Committee unless the person has expertise or experience in 2 or more of the following areas:
 - (a) drought resilience measures;
 - (b) climate risk;
 - (c) the agriculture industry;
 - (d) rural and regional community leadership and resilience;
 - (e) rural and regional development;
 - (f) applied research;
 - (g) agricultural extension;
 - (h) economics.
- (4) In appointing a person as a member of the Committee, the Drought Minister must ensure, as far as practicable, the following:
 - (a) there is a balance of gender, knowledge and skills among members of the Committee;
 - (b) the membership of the Committee represents a balance of different regions across Australia affected, or that could be affected, by drought.

36J Period of appointment for members of the Committee

- (1) A member of the Committee holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.
- (2) A person must not hold office as a member of the Committee for a total of more than 8 years.

36K Acting appointments

- (1) The Drought Minister may appoint a member of the Committee (other than the Chair) to act as the Chair:
 - (a) during a vacancy in the office of the 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:
 - (i) is absent from duty or from Australia; or

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- (ii) is for any reason, unable to perform the duties of the office.
- (2) The Drought Minister may appoint a person to act as a member of the Committee (other than the Chair):
 - (a) during a vacancy in the office of a 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 member (other than the Chair):
 - (i) is absent from duty or from Australia; or
 - (ii) is for any reason, unable to perform the duties of the office.
- (3) A person is not eligible for appointment under subsection (2) unless the person is eligible for appointment as a member of the Committee.

36M Remuneration

- (1) A member of the Committee 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, a member of the Committee is to be paid the remuneration that is prescribed by an instrument under subsection (4).
- (2) A member of the Committee is to be paid the allowances that are prescribed by an instrument under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Drought Minister may, by legislative instrument, prescribe:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

36N Disclosure of interests to the Drought Minister

A member of the Committee must give written notice to the Drought Minister of all interests, pecuniary or otherwise, that the

member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

36P Outside work

A member of the Committee must not engage in any paid work that conflicts or may conflict with the proper performance of his or her duties.

36Q Leave of absence

- (1) The Drought Minister may grant leave of absence to the Chair of the Committee on the terms and conditions that the Drought Minister determines.
- (2) The Chair of the Committee may grant leave of absence to a member of the Committee (other than the Chair) on the terms and conditions that the Chair determines.

36R Resignation

- (1) A member of the Committee may resign his or her appointment by giving the Drought Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Drought Minister or, if a later day is specified in the resignation, on that later day.

36S Termination of appointment

- (1) The Drought Minister may terminate the appointment of a member of the Committee if the member is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Drought Minister may terminate the appointment of a member of the Committee if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

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- (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 member fails, without reasonable excuse, to comply with section 36N; or
- (c) the member engages in paid work that conflicts or may conflict with the proper performance of his or her duties (see section 36P); or
- (d) the member is absent, except on leave of absence, from 3 consecutive meetings of the Committee.

36T Other terms and conditions

A member of the Committee holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Drought Minister.

Part 4—Investment of the Future Drought Fund

37 Simplified outline of this Part

- The Future Fund Board is responsible for deciding how to invest the Future Drought Fund.
- Investments of the Future Drought Fund consist of financial assets, and are held in the name of the Future Fund Board.
- The Future Fund Board is bound by the Future Drought Fund Investment Mandate given to it by the responsible Ministers.

38 Objects of investment of the Future Drought Fund

- (1) The main objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Future Drought Fund are to enhance the Commonwealth's ability to transfer amounts in accordance with section 34.
- (2) The ancillary objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Future Drought Fund are to enhance the ability of the Commonwealth and the Future Fund Board to discharge the costs, expenses, obligations and liabilities mentioned in sections 16 and 17.

39 Investment of the Future Drought Fund

- (1) The Future Fund Board may invest amounts standing to the credit of the Future Drought Fund Special Account in any financial assets.
- (2) Investments under subsection (1) are to be made in the name of the Future Fund Board.
- (3) Investments under subsection (1) are taken to be investments of the Future Drought Fund.

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- (4) This section does not authorise the acquisition of a derivative.

Note: For acquisition of derivatives, see section 49.

40 Management of investments of the Future Drought Fund

- (1) Income derived from an investment of the Future Drought Fund is to be credited to the Future Drought Fund Special Account.
- (2) A return of capital, or any other financial distribution, relating to an investment of the Future Drought Fund is to be credited to the Future Drought Fund Special Account.
- (3) The Future Fund Board may realise an investment of the Future Drought Fund.
- (4) Upon realisation of an investment of the Future Drought Fund, the proceeds of the investment are to be credited to the Future Drought Fund Special Account.
- (5) At any time before an investment of the Future Drought Fund matures, the Future Fund 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 Future Drought Fund.
- (6) 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 Future Drought Fund.

41 Future Drought Fund Investment Mandate

- (1) The responsible Ministers may (subject to section 43) give the Future Fund Board written directions about the performance of its Future Drought Fund investment functions, and must give at least one such direction.

Note 1: *Future Drought Fund investment function* is defined in section 5.

Note 2: 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) the need to maximise the return earned on the Future Drought Fund over the long term, consistent with international best practice for institutional investment; and
 - (b) the need to enhance the Commonwealth's ability to:
 - (i) pay amounts payable by the Commonwealth under an arrangement made under section 21; and
 - (ii) make grants under section 21; and
 - (c) such other matters as the responsible Ministers consider relevant.
- (3) Directions under subsection (1) are to be known collectively as the ***Future Drought Fund Investment Mandate***.
- (4) Without limiting subsection (1), a direction under that subsection may set out the policies to be pursued by the Future Fund 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.

Relationship between directions and other provisions of this Act

- (5) A direction under subsection (1):
- (a) prevails over section 42 to the extent of any inconsistency; and
 - (b) must not otherwise be inconsistent with this Act.

When direction takes effect

- (6) A direction under subsection (1) must not take effect before the 15th day after the day on which it is given.

Direction is a legislative instrument

- (7) A direction under subsection (1) is a legislative instrument.

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Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction—see regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction—see regulations made for the purposes of paragraph 54(2)(b) of that Act.

42 Obligation on Future Fund Board in performing investment functions

In performing its Future Drought Fund investment function, the Future Fund Board must (subject to this Act and a direction under subsection 41(1)) seek to maximise the return earned on the Future Drought Fund over the long term, consistent with international best practice for institutional investment.

43 Limitation on Future Drought Fund Investment Mandate

- (1) The responsible Ministers must not give a direction under subsection 41(1) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring the Future Fund Board to:
 - (a) invest an amount standing to the credit of the Future Drought Fund Special Account in a particular financial asset; or
 - (b) acquire a particular derivative; or
 - (c) allocate financial assets to:
 - (i) a particular business entity; or
 - (ii) a particular activity; or
 - (iii) a particular business.
- (2) Paragraphs (1)(a) and (b) do not limit paragraph (1)(c).

44 Future Fund Board to be consulted on Future Drought Fund Investment Mandate

- (1) Before giving the Future Fund Board a direction under subsection 41(1), the responsible Ministers must:
 - (a) send a draft of the direction to the Future Fund Board; and
 - (b) invite the Future Fund Board to make a submission to the responsible Ministers on the draft direction within a

reasonable time limit specified by the responsible Ministers;
and

- (c) consider any submission that is received from the Future Fund Board within that time limit.
- (2) Any submission made by the Future Fund Board on a draft direction in accordance with paragraph (1)(b) must be tabled in each House of the Parliament with the direction.

Note: As the direction is a legislative instrument, it is also tabled in each House of the Parliament under section 38 of the *Legislation Act 2003*.

45 Compliance with Future Drought Fund Investment Mandate

- (1) The Future Fund Board must take all reasonable steps to comply with the Future Drought Fund Investment Mandate.
- (2) If the Future Fund Board becomes aware that it has failed to comply with the Future Drought Fund Investment Mandate, the Board must give the responsible Ministers a written statement, as soon as practicable after becoming so aware:
 - (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 Future Fund Board has failed to comply with the Future Drought Fund 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 Future Fund Board must comply with a direction under subsection (3).
- (5) A failure to comply with:

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- (a) the Future Drought Fund 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.

46 Future Fund Board must not trigger the takeover provisions of the *Corporations Act 2001*

- (1) Subsections 606(1A) and (2A) and section 611 of the *Corporations Act 2001* do not apply to an acquisition by the Future Fund Board if the acquisition is the result of the performance by the Future Fund Board of its Future Drought Fund investment functions.
- (2) A failure by the Future Fund 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 of the *Future Fund Act 2006* (application of the *Corporations Act 2001*).

47 Borrowing

- (1) The Future Fund Board must not borrow money for a purpose in connection with the Future Drought Fund unless the borrowing is authorised by subsection (2) or (3).
 - (2) The Future Fund Board is authorised to borrow money for a purpose in connection with the Future Drought Fund 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 Future Fund Board is authorised to borrow money for a purpose in connection with the Future Drought Fund if the
-

borrowing takes place in such circumstances (if any) as are specified in the rules.

48 Future Drought Fund investment policies

- (1) The Future Fund Board must formulate written policies to be complied with by it in relation to the following matters in connection with the Future Drought Fund:
 - (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 rules.

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

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

Publication of policies

- (3) The Future Fund Board must cause copies of policies formulated under subsection (1) to be published on the internet.
- (4) The Future Fund Board must ensure that a copy of 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 Future Fund Board must conduct periodic reviews of policies formulated under subsection (1).
- (6) If there is a change in the Future Drought Fund Investment Mandate, the Future Fund Board must review any relevant policies formulated under subsection (1).

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Compliance with policies

- (7) The Future Fund 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.

49 Derivatives

- (1) The Future Fund Board may acquire a derivative for the purpose of:
 - (a) protecting the value of an investment of the Future Drought Fund (other than a derivative); or
 - (b) protecting the return on an investment of the Future Drought Fund (other than a derivative); or
 - (c) achieving indirect exposure to financial assets (other than derivatives) for a purpose in connection with the Future Drought Fund; or
 - (d) achieving transactional efficiency for a purpose in connection with the Future Drought Fund;but must not acquire a derivative for the purpose of speculation or leverage.
- (2) The acquisition of a derivative under subsection (1) of this section must be consistent with the investment strategy embodied in a policy formulated by the Future Fund Board under subsection 48(1).
- (3) A derivative acquired under subsection (1) of this section is to be held in the name of the Future Fund Board.
- (4) A derivative acquired under subsection (1) is taken to be an investment of the Future Drought Fund.

50 Additional financial assets

An asset is taken to be an investment of the Future Drought Fund if the Future Fund Board becomes the holder of the financial asset 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.

51 Securities lending arrangements

- (1) The Future Fund Board may enter into securities lending arrangements for a purpose in connection with the Future Drought Fund.
- (2) Any money received by the Future Fund Board under a securities lending arrangement entered into under subsection (1) is to be credited to the Future Drought Fund Special Account.
- (3) To avoid doubt, a securities lending arrangement entered into under subsection (1) may provide for the Future Fund Board to realise an investment of the Future Drought Fund.
- (4) A financial asset is taken to be an investment of the Future Drought Fund if, as the result of the operation of a securities lending arrangement entered into under subsection (1), the Future Fund Board becomes the holder of the financial asset.

52 Investment managers

- (1) The Future Fund Board may engage one or more investment managers for purposes in connection with the Future Drought Fund.
- (2) The Future Fund Board must not:
 - (a) invest amounts under subsection 39(1); or
 - (b) acquire derivatives under subsection 49(1); or
 - (c) enter into a securities lending arrangement under subsection 51(1); or

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- (d) realise financial assets that are investments of the Future Drought Fund;
unless the Board does so:
 - (e) through an investment manager engaged by the Board under subsection (1) of this section; or
 - (f) in a manner approved, in writing, by the responsible Ministers.
- (3) The Future Fund Board must ensure that any investment manager engaged by the Board under subsection (1) operates within this Act.
- (4) The Future Fund Board must ensure that any investment manager engaged by the Board under subsection (1) reports to the Board and the Agency on the state of the investments of the Future Drought Fund at such times and in such manner as the Board determines.

53 Refund of franking credits

A refund of a tax offset under the *Income Tax Assessment Act 1997* is to be credited to the Future Drought Fund Special Account if:

- (a) the Future Fund Board receives the refund; and
- (b) the tax offset is attributable to an investment of the Future Drought Fund.

Note 1: See also section 84B of the *Future Fund Act 2006*.

Note 2: For refunds of tax offsets, see Division 63 of the *Income Tax Assessment Act 1997*.

54 Realisation of non-financial assets

- (1) This section applies if the Future Fund Board becomes aware of the fact that:
 - (a) an asset held by the Board as an investment of the Future Drought Fund has ceased to be a financial asset; or
 - (b) an asset acquired by the Board, purportedly as an investment of the Future Drought Fund, is not a financial asset.

- (2) The Future Fund Board must realise the asset as soon as practicable after the Board becomes aware of the fact.
- (3) 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 Future Drought Fund, from the time of its acquisition by the Future Fund Board until the realisation.

55 Additional function of the Future Fund Board

The functions of the Future Fund Board include the function of investing amounts in accordance with this Act.

Part 5—Reporting obligations etc.

56 Simplified outline of this Part

- The Future Fund Board must keep the responsible Ministers informed of its operations under this Act. It may also be required by the Finance Minister to provide reports and information.
- The Finance Minister may provide reports, documents and other information to Ministers.

57 Finance Minister may require Future Fund Board to prepare reports or give information

Reports and information

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

Compliance

- (2) The Future Fund Board must comply with a requirement under subsection (1).

Publication of reports and documents

- (3) The Finance Minister may cause a report or document under subsection (1) to be published (whether on the internet or otherwise).

Reports and documents

- (4) A report or document under subsection (1) is not a legislative instrument.

58 Keeping the responsible Ministers informed etc.

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

59 Finance Minister may give reports to other Ministers etc.

The Finance Minister may give a Minister any of the following:

- (a) a report or document under subsection 57(1) or 58(2);
- (b) any other information or document obtained by the Finance Minister under this Act.

Part 6—Miscellaneous

60 Simplified outline of this Part

- This Part deals with miscellaneous matters, such as delegations and rules.

61 Delegation by the Finance Minister

- (1) The Finance Minister may, by writing, delegate any or all of the Finance Minister's functions or powers under section 14 or 34 to:
 - (a) the Secretary of the Finance Department; or
 - (b) an SES employee, or acting SES employee, in the Finance Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) The Finance Minister may, by writing, delegate any or all of the Finance Minister's powers under section 19 to:
 - (a) the Secretary of the Finance Department; or
 - (b) an SES employee, or acting SES employee, in the Finance Department; or
 - (c) the Chair (within the meaning of section 5 of the *Future Fund Act 2006*); or
 - (d) an SES employee, or acting SES employee, in the Agency.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (3) In performing functions, or exercising powers, under a delegation under subsection (1) or (2), the delegate must comply with any directions of the Finance Minister.

62 Delegation by the Treasurer

- (1) The Treasurer may, by writing, delegate any or all of the Treasurer's powers under section 14 to:
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- (a) the Secretary of the Treasury Department; or
- (b) an SES employee, or acting SES employee, in the Treasury Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) In exercising powers under a delegation under subsection (1), the delegate must comply with any directions of the Treasurer.

63 Delegation by the Drought Minister

- (1) The Drought Minister may, by writing, delegate any or all of the Drought Minister's powers under Division 2 of Part 3 to:
 - (a) the Secretary of the Agriculture Department; or
 - (b) an SES employee, or acting SES employee, of the Agriculture Department who has the expertise appropriate to the power; or
 - (c) a person who is:
 - (i) an official of a Commonwealth entity; and
 - (ii) not covered by paragraph (a) or (b).

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) In exercising powers under a delegation under subsection (1), the delegate must comply with any directions of the Drought Minister.

64 Transitional—receipts relating to the Building Australia Fund

If the Future Fund Board receives an amount of money that relates to the Building Australia Fund, the amount is to be credited to the Future Drought Fund Special Account.

65 Review of operation of Act

- (1) The responsible Ministers must cause a review of the operation of this Act to be undertaken before the tenth anniversary of the commencement of this section.
- (2) The responsible Ministers must cause a copy of:

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- (a) the terms of reference for the review; and
 - (b) a report of the review;
- to be tabled in each House of the Parliament within 15 sitting days of that House after the tenth anniversary.
- (3) The responsible Ministers must also cause a copy of the terms of reference and report to be published on the internet as soon as practicable after the tenth anniversary.

66 Rules

- (1) The Finance 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 22 July 2019
Senate on 23 July 2019]*

(141/19)
