



# **Australian Business Growth Fund (Coronavirus Economic Response Package) Act 2020**

**No. 28, 2020**

**An Act about Commonwealth investment in the  
Australian Business Growth Fund, and for related  
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# **Australian Business Growth Fund (Coronavirus Economic Response Package) Act 2020**

**No. 28, 2020**

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**An Act about Commonwealth investment in the  
Australian Business Growth Fund, and for related  
purposes**

*[Assented to 24 March 2020]*

The Parliament of Australia enacts:

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*No. 28, 2020      Australian Business Growth Fund (Coronavirus Economic Response  
Package) Act 2020      1*

## Part 1—Preliminary

### 1 Short title

This Act is the *Australian Business Growth Fund (Coronavirus Economic Response Package) Act 2020*.

### 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.

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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.	25 March 2020

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Note: This table relates only to the provisions of this Act as originally enacted.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

The object of this Act is to increase investment in small and medium Australian enterprises by the Commonwealth participating in, and investing in (together with other persons), the Australian Business Growth Fund in accordance with this Act.

#### 4 Simplified outline of this Act

This Act authorises investment by the Commonwealth in the Australian Business Growth Fund.
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#### 5 Definitions

In this Act:

*Australian Business Growth Fund* or *Fund*: see subsection 10(4).

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

*Corporations Act company* means a body corporate that is incorporated, or taken to be incorporated, under the *Corporations Act 2001*.

*debenture* has the same meaning as in the *Corporations Act 2001*.

*rules* means rules made under section 22.

*subsidiary* has the same meaning as in the *Corporations Act 2001*.

#### 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.

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## **Part 2—Commonwealth investment in the Australian Business Growth Fund**

### **9 Simplified outline of this Part**

The Commonwealth may invest in a Corporations Act company that is the Australian Business Growth Fund for the purpose of providing small and medium Australian enterprises with access to capital (within constitutional limits).

The Commonwealth may make arrangements relating to the operations of the Fund, but must not control the Fund.

### **10 Commonwealth investment in the Australian Business Growth Fund**

- (1) The Minister may, on behalf of the Commonwealth, do either or both of the following:
  - (a) participate in forming a Corporations Act company;
  - (b) acquire shares (either by purchase or subscription) in a Corporations Act company, or become a member of a Corporations Act company;in circumstances that would not result in the company becoming a Commonwealth company.
- (2) The Minister may, on behalf of the Commonwealth, acquire debentures (either by purchase or subscription) of a Corporations Act company.
- (3) However, the Minister may not exercise the powers conferred by this section in relation to more than one Corporations Act company.
- (4) For the purposes of this Act, if the Minister exercises a power conferred by this section in relation to a company, that company is



the *Australian Business Growth Fund* (whether or not the company's name includes the words "Australian Business Growth Fund").

### **11 Arrangements relating to the operations of the Fund**

- (1) The Minister may, on behalf of the Commonwealth, make arrangements, relating to the operations of the Fund, with any of the following:
  - (a) the Fund, or a Corporations Act company that is proposed to become the Fund;
  - (b) a member of the Fund, or a proposed member of the Fund;
  - (c) a subsidiary of the Fund;in circumstances that would not result in the Fund becoming a Commonwealth company.
- (2) An arrangement made under subsection (1) may provide for the Commonwealth to make payments.

### **12 Minister has powers etc. of the Commonwealth**

The 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 member of the Fund; or
- (b) a shareholder in the Fund; or
- (c) a holder of debentures of the Fund; or
- (d) a party to an arrangement made under section 11.

### **13 Constitutional limits**

- (1) The Minister may exercise a power conferred on the Minister by section 10, 11 or 12 only if arrangements of the kind referred to in subsection (2) of this section have been made, or will be made before the Fund makes any investment.
- (2) The arrangements are arrangements requiring the Fund to apply money received from the Commonwealth only:

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- (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) otherwise with respect to the executive power of the Commonwealth.

Example: Arrangements could allow the Fund to apply money received from the Commonwealth, for the purpose of generating a commercial return for the Fund, in a small or medium Australian enterprise that is engaged predominantly in trade or commerce between Australia and places outside Australia.

- (3) To avoid doubt, the Minister may exercise a power conferred by section 10 or 11 for the purpose of making arrangements of the kind referred to in subsection (2) of this section.
- (4) If:
  - (a) the Commonwealth holds shares in or debentures of, or is a member of, the Fund; and
  - (b) either of the following applies:
    - (i) arrangements of the kind referred to in subsection (2) are unlikely to be made before the Fund makes any investment;
    - (ii) arrangements of the kind referred to in subsection (2) are no longer in force;the Minister must, as soon as practicable, take such steps as are necessary to divest the Commonwealth of its investment in the Fund.
- (5) Subsection (1) applies in relation to a right, responsibility or duty conferred on the Minister by section 12 in the same way that subsection applies in relation to a power conferred on the Minister by that section.

**14 Fund not to become a Commonwealth company**

The Minister must ensure that the Fund does not become a Commonwealth company.

**15 Executive power**

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

**16 Rules about the exercise of powers etc. under this Act**

The rules may make provision for, or in relation to, the exercise of rights, responsibilities, duties and powers by the Minister under this Act.

## Part 3—Miscellaneous

### 17 Simplified outline of this Part

This Part contains miscellaneous provisions, including an appropriation of the Consolidated Revenue Fund, delegation of the Minister's powers 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 Appropriation of Consolidated Revenue Fund

- (1) The Consolidated Revenue Fund is appropriated to the extent of \$100 million for the following purposes:
  - (a) paying the costs of, or incidental to, the Commonwealth's participation in the formation of the Fund under section 10;
  - (b) paying the costs of, or incidental to, the acquisition by the Commonwealth of shares (either by purchase or subscription) in the Fund under section 10;
  - (c) paying the costs of, or incidental to, the acquisition by the Commonwealth of debentures (either by purchase or subscription) of the Fund under section 10;
  - (d) paying amounts payable by the Commonwealth under an arrangement made under section 11;
  - (e) paying or discharging any other costs, expenses or other obligations incurred by the Commonwealth exclusively in connection with the Fund.
- (2) If no amount has been debited against the appropriation set out in subsection (1) by the end of the period of 2 years beginning on the day this Act commences, the appropriation ceases to have effect for any purpose at the end of that period.

**19 Delegations by the Minister**

- (1) The Minister may, by written instrument, delegate all or any of the Minister's powers or functions under this Act (other than the Minister's powers under section 22) to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or an acting SES employee, in the 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 or functions under a delegation, the delegate must comply with any directions of the Minister.

**20 Annual report**

The annual report prepared by the Secretary of the Department 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 the third anniversary of the commencement of this Act.
- (2) The review must include:
  - (a) the effectiveness of this Act in meeting the object of this Act; and
  - (b) the effectiveness of any investment by the Commonwealth in the Fund in relation to the following:
    - (i) demand for equity investments by businesses;
    - (ii) the impact of the creation of the Fund on the overall access to capital for small and medium Australian enterprises;

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- (iii) the impact of the creation of the Fund on competition within capital markets in relation to small and medium Australian enterprises;
  - (iv) the operation of the rights and powers of the Commonwealth in relation to the governance arrangements of the Fund.
- (3) The persons undertaking the review must give the Minister a written report of the review. The report must not include information that is commercially sensitive.
- (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.

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*[Minister's second reading speech made in—  
House of Representatives on 23 March 2020  
Senate on 23 March 2020]*

*(33/20)*

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