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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Future Fund Bill 2005

No. , 2005

(Finance and Administration)

**A Bill for an Act about the Future Fund, and for
related purposes**

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1 **A Bill for an Act about the Future Fund, and for**
2 **related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Introduction**
5

6 **1 Short title**

7 This Act may be cited as the *Future Fund Act 2005*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

column 2 of the table. Any other statement in column 2 has effect according to its terms.

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

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

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

3 Object

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

1 **4 Simplified outline**

2 The following is a simplified outline of this Act:

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- | |
|---|
| <ul style="list-style-type: none">• This Act sets up the Future Fund.• The Future Fund Board of Guardians is responsible for deciding how to invest the Future Fund.• Investments of the Future Fund will consist of financial assets.• The Board is bound by an Investment Mandate given to it by the responsible Ministers.• The Future Fund Management Agency is responsible for assisting and advising the Board. |
|---|

11 **5 Definitions**

12 In this Act:

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

15 **Agency** means the Future Fund Management Agency established
16 by section 74.

17 **asset** means:

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

22 **balance of the Fund** means the sum of:

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

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

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

3 **Board member** means a member of the Board, and includes the
4 Chair.

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

7 **Chair** means the Chair of the Board.

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

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

12 **Commonwealth-owned financial asset** means a financial asset
13 held by the Commonwealth.

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

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

18 **dishonest** means:

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

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

24 **financial asset** has the meaning given by section 6.

25 **foreign listed company** means a company:

- 26 (a) any of the shares of which are listed for quotation in the
27 official list of a stock exchange in a foreign country; and
28 (b) none of the shares of which are listed for quotation in the
29 official list of a stock exchange in Australia.

30 **Fund** means the Future Fund established by section 11.

Section 5

1 **Fund Account** means the Future Fund Special Account established
2 by section 12.

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

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

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

16 **GFS system** has the same meaning as in GFS Australia.

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

20 **investment function** of the Board means:

- 21 (a) a function or power conferred on the Board by section 16, 17,
22 23, 25, 27 or 28; or
23 (b) a right or power conferred on the Board in its capacity as the
24 holder of an investment of the Fund.

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

- 27 (a) invest amounts on behalf of the Board;
28 (b) manage the investment of funds on behalf of the Board;
29 (c) acquire derivatives on behalf of the Board;
30 (d) manage derivatives on behalf of the Board;
31 (e) enter into securities lending arrangements on behalf of the
32 Board;
33 (f) realise financial assets on behalf of the Board;

1 (g) perform custodial functions in relation to the financial assets
2 of the Board.

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

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

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

8 ***nominated Minister*** has the meaning given by section 83.

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

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

11 ***realise*** includes redeem or dispose of.

12 ***responsible Ministers*** means:

13 (a) the Treasurer; and

14 (b) the Finance Minister.

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

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

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

23 (a) the *Superannuation Act 1922*; or

24 (b) the *Superannuation Act 1976*; or

25 (c) the scheme established under the *Superannuation Act 1990*;
26 or

27 (d) the *Parliamentary Contributory Superannuation Act 1948*; or

28 (e) the scheme established under the *Military Superannuation
29 and Benefits Act 1991*; or

30 (f) the *Defence Forces Retirement Benefits Act 1948*; or

Section 6

- 1 (g) the *Defence Force Retirement and Death Benefits Act 1973*;
2 or
3 (h) the *Judges' Pensions Act 1968*; or
4 (i) section 4, 4A or 4AA of the *Governor-General Act 1974*.

5 ***superannuation liability*** means a liability to make a payment of a
6 superannuation benefit.

7 ***target asset level declaration*** means a declaration under subclause
8 3(1) of Schedule 3.

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

13 ***unfunded superannuation liability*** means:

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

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

23 **6 Financial assets**

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

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

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

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

3 **7 Crown to be bound**

4 (1) This Act binds the Crown in each of its capacities.

5 (2) This Act does not make the Crown liable to be prosecuted for an
6 offence.

7 **8 Extension to external Territories**

8 This Act extends to every external Territory.

9 **9 Extra-territorial application**

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

1

2

Part 2—The Future Fund

3

4

10 Simplified outline

5

The following is a simplified outline of this Part:

6

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

7

8

9

11 Establishment of the Future Fund

10

(1) The Future Fund is established by this section.

11

(2) The Future Fund consists of:

12

(a) the Future Fund Special Account; and

13

(b) the investments of the Fund.

14

12 Establishment of the Future Fund Special Account

15

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

16

(2) The Fund Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

17

18

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

19

20

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

21

22

23

24

25

13 Operation of the Future Fund

26

Schedules 1, 2 and 3 have effect.

27

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

28

Section 13

- 1 Note 2: Schedule 2 is about debits of amounts from the Future Fund.
- 2 Note 3: Schedule 3 is about target asset level declarations.

1

2

Part 3—Investment of the Future Fund

3

4

14 Simplified outline

5

The following is a simplified outline of this Part:

6

- The Future Fund Board of Guardians is responsible for deciding how to invest the Future Fund.

7

8

- Investments of the Future Fund will consist of financial assets.

9

- Investments of the Future Fund will be held in the name of the Board.

10

11

- The Board is bound by an Investment Mandate given to it by the responsible Ministers.

12

13

15 Objects of investment of the Fund

14

- (1) The main object of the acquisition by the Board of a financial asset as an investment of the Fund is to enhance the ability of the Commonwealth to discharge unfunded superannuation liabilities as mentioned in paragraphs 2(a) and (b) of Schedule 2.

15

16

17

18

- (2) The ancillary objects of the acquisition by the Board of a financial asset as an investment of the Fund are to enhance the ability of the Commonwealth and the Board to:

19

20

21

- (a) discharge liabilities, costs, expenses and obligations; and

22

- (b) make payments;

23

as mentioned in paragraphs 2(c) to (m) of Schedule 2.

24

16 Investment of the Fund

25

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

26

- 1 (2) Investments under subsection (1) are to be made in the name of the
2 Board.
- 3 (3) Investments under subsection (1) are taken to be investments of the
4 Fund.
- 5 (4) This section does not authorise the acquisition of a derivative.
- 6 Note: For acquisition of derivatives, see section 25.

7 **17 Management of investments of the Fund**

- 8 (1) Income derived from an investment of the Fund is to be credited to
9 the Fund Account.
- 10 (2) A return of capital, or any other financial distribution, relating to
11 an investment of the Fund is to be credited to the Fund Account.
- 12 (3) The Board may realise an investment of the Fund.
- 13 (4) Upon realisation of an investment of the Fund, the proceeds of the
14 investment are to be credited to the Fund Account.
- 15 (5) At any time before an investment of the Fund matures, the Board
16 may authorise the re-investment of the proceeds upon maturity in a
17 financial asset investment with the same entity. The new
18 investment is taken to be an investment of the Fund.
- 19 (6) Section 39 of the *Financial Management and Accountability Act*
20 *1997* does not apply to an investment of the Fund.

21 **18 Investment Mandate**

- 22 (1) The responsible Ministers may give the Board written directions
23 about the performance of its investment functions, and must give at
24 least one such direction.
- 25 Note: For variation and revocation, see subsection 33(3) of the *Acts*
26 *Interpretation Act 1901*.
- 27 (2) In giving a direction under subsection (1), the responsible
28 Ministers must have regard to:

Section 18

- 1 (a) maximising the return earned on the Fund over the long term,
2 consistent with international best practice for institutional
3 investment; and
4 (b) such other matters as the responsible Ministers consider
5 relevant.
- 6 (3) Directions under subsection (1) are to be known collectively as the
7 Investment Mandate.
- 8 (4) A direction under subsection (1) may set out the policies to be
9 pursued by the Board in relation to:
10 (a) matters of risk and return; and
11 (b) the allocation of financial assets.
12 A policy relating to the allocation of financial assets must not be
13 inconsistent with a policy relating to matters of risk and return.
- 14 (5) Subsection (4) does not limit subsection (1).
- 15 (6) The Investment Mandate prevails over subsection (10) to the extent
16 of any inconsistency.
- 17 (7) The responsible Ministers must not give a direction under
18 subsection (1) that is inconsistent with this Act (other than
19 subsection (10)).
- 20 (8) A direction under subsection (1) must not take effect before the
21 15th day after the day on which it is given.
- 22 (9) A direction under subsection (1) is a legislative instrument for the
23 purposes of the *Legislative Instruments Act 2003*.
24 Note: Section 42 of the *Legislative Instruments Act 2003* does not apply to
25 the direction—see section 44 of that Act.
- 26 (10) In the performance of its investment functions, the Board must
27 seek to maximise the return earned on the Fund over the long term,
28 consistent with international best practice for institutional
29 investment.
30 Note: *Investment function* is defined in section 5.
- 31 (11) Subsection (10) has effect subject to:
32 (a) this Act; and

- 1 (b) a direction under subsection (1); and
 2 (c) a direction under subclause 8(1) of Schedule 1.

- 3 (12) Before the first occasion on which an amount is debited from the
 4 Fund Account for the purpose of discharging, in whole or in part,
 5 an unfunded superannuation liability, the responsible Ministers
 6 must review the Investment Mandate in consultation with the
 7 Board.

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

10 **19 Board to be consulted on Investment Mandate**

- 11 (1) Before giving the Board a direction under subsection 18(1), the
 12 responsible Ministers must:
 13 (a) send a draft of the direction to the Board; and
 14 (b) invite the Board to make a submission to the responsible
 15 Ministers on the draft direction within a time limit specified
 16 by the responsible Ministers; and
 17 (c) consider any submission that is received from the Board
 18 within that time limit.

- 19 (2) If:
 20 (a) the responsible Ministers give the Board a direction under
 21 subsection 18(1); and
 22 (b) the Board made a submission to the responsible Ministers on
 23 a draft of the direction within the time limit specified by the
 24 responsible Ministers;
 25 the submission is to be tabled in each House of the Parliament with
 26 the direction.

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

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

30 **20 Compliance with Investment Mandate**

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

Section 21

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

24 **21 Board must not trigger the takeover provisions of the**
25 ***Corporations Act 2001***

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

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

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

5 **22 Board must not have a significant stake in a foreign listed**
6 **company**

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

9 *Stake*

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

Section 23

1 *Validity of transactions*

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

4 **23 Borrowing**

5 (1) The Board must not borrow money unless the borrowing is
6 authorised by subsection (2) or (3).

7 (2) The Board is authorised to borrow money if:

8 (a) the purpose of the borrowing is to enable the Board to cover
9 settlement of a transaction for the acquisition of one or more
10 financial assets; and

11 (b) at the time the relevant acquisition decision was made, it was
12 likely that the borrowing would not be needed; and

13 (c) the period of the borrowing does not exceed 7 days; and

14 (d) if the borrowing were to take place, the total amount
15 borrowed by the Board would not exceed 10% of the balance
16 of the Fund.

17 (3) The Board is authorised to borrow money in such circumstances (if
18 any) as are specified in the regulations.

19 **24 Investment policies**

20 (1) The Board must formulate written policies to be complied with by
21 it in relation to the following matters:

22 (a) the investment strategy for the Fund;

23 (b) benchmarks and standards for assessing the performance of
24 the Fund;

25 (c) risk management for the Fund;

26 (d) a matter relating to international best practice for institutional
27 investment;

28 (e) a matter specified in the regulations.

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

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

1 *Publication of policies*2 (3) The Board must cause copies of policies formulated under
3 subsection (1) to be published on the Internet.4 (4) The Board must ensure that the first set of policies formulated
5 under subsection (1) is published on the Internet as soon as
6 practicable after the commencement of this section.7 *Review of policies*8 (5) The Board must conduct periodic reviews of policies formulated
9 under subsection (1).10 (6) If there is a change in the Investment Mandate, the Board must
11 review any relevant policies formulated under subsection (1).12 *Compliance with policies*13 (7) The Board must take all reasonable steps to comply with policies
14 formulated under subsection (1).15 (8) A failure to comply with a policy formulated under subsection (1)
16 does not affect the validity of any transaction.17 *Policies*18 (9) A policy formulated under subsection (1) is not a legislative
19 instrument for the purposes of the *Legislative Instruments Act*
20 2003.21 **25 Derivatives**

22 (1) The Board may acquire a derivative for the purpose of:

23 (a) protecting the value of an investment of the Fund (other than
24 a derivative); or25 (b) protecting the return on an investment of the Fund (other than
26 a derivative); or27 (c) achieving indirect exposure to financial assets (other than
28 derivatives); or

29 (d) achieving transactional efficiency;

Section 26

- 1 but must not acquire a derivative for the purpose of:
2 (e) speculation; or
3 (f) leverage.
- 4 (2) The acquisition of a derivative under subsection (1) must be
5 consistent with the investment strategy embodied in a policy
6 formulated by the Board under subsection 24(1).
- 7 (3) A derivative acquired under subsection (1) is to be held in the
8 name of the Board.
- 9 (4) A derivative acquired under subsection (1) is taken to be an
10 investment of the Fund.

11 **26 Additional financial assets**

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

18 **27 Securities lending arrangements**

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

27 **28 Investment managers**

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

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

16 **29 Custody of securities**

17 Section 40 of the *Financial Management and Accountability Act*

18 1997 does not apply to an investment of the Fund.

19 **30 Exemption from taxation**

20 *Income tax*

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

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

25 *State/Territory taxes*

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

1 **31 Franking credits**

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

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

7 (2) Subsection (1) has effect despite subsection 207-115(1) of the
8 *Income Tax Assessment Act 1997*.

9 (3) For the purposes of the *Income Tax Assessment Act 1997*, the
10 Board's entitlement to a tax offset is to be determined as if any
11 financial assets held by the Board were held by the Board in its
12 own right.

13 (4) If the Board receives a refund of a tax offset under the *Income Tax*
14 *Assessment Act 1997*, the refund is to be credited to the Fund
15 Account.

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

18 **32 Realisation of non-financial assets**

19 (1) If an asset held by the Board as an investment of the Fund ceases to
20 be a financial asset:

- 21 (a) the Board must realise the asset as soon as practicable after
22 the Board becomes aware of the cessation; and
23 (b) this Act (other than this section) applies in relation to the
24 asset (including in relation to the realisation of the asset) as if
25 the asset had remained a financial asset, and an investment of
26 the Fund, until the realisation.

27 (2) If an asset acquired by the Board, purportedly as an investment of
28 the Fund, is not a financial asset:

- 29 (a) the Board must realise the asset as soon as practicable after
30 the Board becomes aware that the asset is not a financial
31 asset; and
32 (b) this Act (other than this section) applies in relation to the
33 asset (including in relation to the realisation of the asset) as if
34 the asset had been a financial asset, and an investment of the

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

1

2 **Part 4—The Future Fund Board of Guardians**

3 **Division 1—Introduction**

4 **33 Simplified outline**

5 The following is a simplified outline of this Part:

6

- This Part establishes the Future Fund Board of Guardians.

7

- The Future Fund Board of Guardians is responsible for deciding how to invest the Future Fund.

8

9

- The Board consists of a Chair and 6 other members.

10

- An asset held by the Board is held for and on behalf of the Commonwealth.

11

12

- Board members must act in good faith.

1

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

4 **34 Establishment of the Future Fund Board of Guardians**

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

6 **35 Board's functions**

7 The Board has the following functions:

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

13 **36 Board's ordinary powers**

14 (1) The Board has power to do all things necessary or convenient to be

15 done for or in connection with the performance of its functions,

16 other than the power to lease the whole or any part of any land or

17 building for the purposes of the Board.

18 (2) The Board's powers include, but are not limited to, the power to

19 enter into contracts.

20 Example: A contract of insurance.

21 (3) Any real or personal property held by the Board is held for and on

22 behalf of the Commonwealth.

23 (4) Any money received by the Board is received by the Board for and

24 on behalf of the Commonwealth.

25 **37 Board is a body corporate**

26 (1) The Board:

- 27 (a) is a body corporate with perpetual succession; and
- 28 (b) must have a seal; and

Part 4 The Future Fund Board of Guardians

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

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1 (c) may acquire, hold and dispose of real and personal property;
2 and

3 (d) may sue and be sued in its corporate name.

4 *Seal*

5 (2) The seal of the Board must be kept in such custody as the Board
6 directs, and must not be used except as authorised by the Board.

7 (3) All courts, judges and persons acting judicially must:

8 (a) take judicial notice of the imprint of the seal of the Board
9 appearing on a document; and

10 (b) presume that the document was duly sealed.

11 **38 Membership**

12 (1) The Board consists of the following members:

13 (a) a Chair;

14 (b) 6 other members.

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

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

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

21 (3) A person is not eligible for appointment as a Board member unless
22 the responsible Ministers are satisfied that the person has:

23 (a) substantial experience or expertise; and

24 (b) professional credibility and significant standing;

25 in at least one of the following fields:

26 (c) investing in financial assets;

27 (d) the management of investments in financial assets;

28 (e) corporate governance.

29 (4) A person is not eligible for appointment as a Board member if the
30 person is:

31 (a) an employee of the Commonwealth; or

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

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

8 **39 Application of the *Corporations Act 2001***

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

1

2 **Division 3—Terms and conditions for Board members**

3 **40 Term of appointment and related matters for Board members**

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

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

9 **41 Remuneration and allowances of Board members**

- 10 (1) A Board member is to be paid the remuneration that is determined
11 by the Remuneration Tribunal. If no determination of that
12 remuneration by the Tribunal is in operation, the Board member is
13 to be paid the remuneration that is determined by the responsible
14 Ministers.
- 15 (2) A Board member is to be paid the allowances that are prescribed.
- 16 (3) This section has effect subject to the *Remuneration Tribunal Act*
17 *1973*.

18 **42 Leave of absence of Board members**

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

23 **43 Resignation of Board members**

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

1 **44 Termination of appointment of Board members**

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

22 **45 Other terms and conditions of Board members**

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

26 **46 Acting Board members**

27 *Acting Chair*

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

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

4 *Acting Board member (other than the Chair)*

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

14 *Qualifications*

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

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

20 *Validation*

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

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

1

2 **Division 4—Meetings**

3 **47 Holding of meetings**

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

6 (2) The Chair:

7 (a) may convene a meeting at any time; and

8 (b) must convene a meeting within 30 days after receiving a
9 written request from another Board member.

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

12 **48 Who is to preside at a meeting**

13 (1) The Chair is to preside at all meetings at which he or she is present.

14 (2) If the Chair is not present at a meeting:

15 (a) a Board member nominated by the Chair is to preside; or

16 (b) if no Board member is so nominated—the Board members
17 present are to elect one of their number to preside.

18 **49 Quorum**

19 (1) At a meeting, 5 Board members form a quorum.

20 (2) Despite subsection (1), if:

21 (a) section 71 prevents one or more Board members from
22 participating in the deliberations, or decisions, of the Board
23 with respect to a particular matter; and

24 (b) as a result, there is no longer a quorum present; and

25 (c) there are in attendance at least 3 other Board members who
26 would be counted in determining whether a quorum is
27 present;

28 those other Board members constitute a quorum for the purpose of
29 any deliberation or decision at that meeting with respect to that
30 matter.

Part 4 The Future Fund Board of Guardians

Division 4 Meetings

Section 50

1 **50 Voting**

2 (1) Decisions at a meeting must be affirmed by a majority of votes of
3 Board members voting.

4 (2) The Board member presiding at a meeting has a deliberative vote
5 and, in the event of an equality of votes, also has a casting vote.

6 **51 Records of meetings**

7 The Board must keep accurate records of all its meetings.

1

2 **Division 5—Resolutions without meetings**

3 **52 Resolutions without meetings**

4 (1) A resolution is taken to have been passed at a meeting of the Board
5 if:

6 (a) the Board has determined:

7 (i) that resolutions may be passed in accordance with this
8 section; and

9 (ii) the method by which Board members are to indicate
10 agreement with a resolution proposed to be passed in
11 accordance with this section; and

12 (b) without meeting, a majority of the Board members indicate
13 agreement with the resolution in accordance with the method
14 determined by the Board; and

15 (c) the majority would have constituted a quorum at a meeting of
16 the Board; and

17 (d) either:

18 (i) all the Board members were informed of the resolution;
19 or

20 (ii) reasonable efforts were made to inform all the Board
21 members of the resolution.

22 (2) Paragraph (1)(b) does not apply to a Board member who would
23 have been prevented by section 71 from deliberating on the
24 resolution if the resolution had been put to a meeting of the Board.

25 **53 Record of resolutions**

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

1

2 **Division 6—Reporting obligations**

3 **54 Nominated Minister may require Board to prepare reports or**
4 **give information**

5 *Reports*

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

12 *Information*

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

19 *Compliance*

- 20 (3) The Board must comply with a requirement under subsection (1) or
21 (2).

22 *Publication of reports and documents*

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

27 *Reports and documents*

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

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

3 **55 Keeping the responsible Ministers informed etc.**

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

1

2 **Division 7—Duties of Board members etc.**

3 **56 Care and diligence—civil obligation**

4 (1) A Board member must exercise his or her powers and discharge his
5 or her duties with the degree of care and diligence that a reasonable
6 person would exercise if he or she:

- 7 (a) were a Board member in the Board’s circumstances; and
8 (b) occupied the office held by, and had the same responsibilities
9 within the Board as, the Board member.

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

11 *Business judgment rule*

12 (2) A Board member who makes a business judgment is taken to meet
13 the requirements of subsection (1), and their equivalent duties at
14 common law and in equity, in respect of the judgment if he or she:

- 15 (a) makes the judgment in good faith for a proper purpose; and
16 (b) does not have a material personal interest in the subject
17 matter of the judgment; and
18 (c) informs himself or herself about the subject matter of the
19 judgment to the extent he or she reasonably believes to be
20 appropriate; and
21 (d) rationally believes that the judgment is in the best interests of
22 performing the functions of the Board.

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

27 **57 Good faith—civil obligation**

28 (1) A Board member must exercise his or her powers and discharge his
29 or her duties:

- 30 (a) in good faith in the best interests of performing the functions
31 of the Board; and
32 (b) for a proper purpose.

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

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

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

5 **58 Use of position—civil obligation**

6 (1) A Board member or a member of the staff of the Agency must not
7 improperly use his or her position to:

8 (a) gain an advantage for himself or herself or someone else; or

9 (b) cause detriment to the Board's ability to perform its
10 functions; or

11 (c) cause detriment to another person.

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

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

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

16 **59 Use of information—civil obligation**

17 (1) A person who obtains information because he or she is, or has
18 been, a Board member or a member of the staff of the Agency must
19 not improperly use the information to:

20 (a) gain an advantage for himself or herself or someone else; or

21 (b) cause detriment to the Board's ability to perform its
22 functions; or

23 (c) cause detriment to another person.

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

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

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

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

1 **60 Good faith—criminal offence**

2 A Board member commits an offence if he or she:

3 (a) is reckless; or

4 (b) is intentionally dishonest;

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

7 (c) in good faith in what he or she believes to be in the best

8 interests of the performance of the functions of the Board; or

9 (d) for a proper purpose.

10 Penalty: Imprisonment for 5 years.

11 **61 Use of position—criminal offence**

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

14 (a) with the intention of:

15 (i) directly or indirectly gaining an advantage for himself
16 or herself or someone else; or

17 (ii) causing detriment to the ability of the Board to perform
18 its functions; or

19 (iii) causing detriment to another person; or

20 (b) recklessly as to whether the use may result in:

21 (i) him or her or someone else directly or indirectly gaining
22 an advantage; or

23 (ii) causing detriment to the ability of the Board to perform
24 its functions; or

25 (iii) causing detriment to another person.

26 Penalty: Imprisonment for 5 years.

27 **62 Use of information—criminal offence**

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

31 (a) with the intention of:

- 1 (i) directly or indirectly gaining an advantage for himself
2 or herself or someone else; or
3 (ii) causing detriment to the ability of the Board to perform
4 its functions; or
5 (iii) causing detriment to another person; or
6 (b) recklessly as to whether the use may result in:
7 (i) him or her or someone else directly or indirectly gaining
8 an advantage; or
9 (ii) causing detriment to the ability of the Board to perform
10 its functions; or
11 (iii) causing detriment to another person.

12 Penalty: Imprisonment for 5 years.

13 **63 Compliance with statutory duties**

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

24 **64 Interaction of sections 56 to 62 with other laws etc.**

- 25 Sections 56 to 62:
- 26 (a) have effect in addition to, and not in derogation of, any rule
27 of law relating to the duty or liability of a person because of
28 his or her office as a Board member or employment in
29 relation to the Agency; and
30 (b) do not prevent the commencement of proceedings for a
31 breach of duty, or in respect of a liability, referred to in
32 paragraph (a).

Section 65

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

4 **65 Reliance on information or advice provided by others**

5 If:

- 6 (a) a Board member relies on information, or professional or
7 expert advice, given or prepared by:
- 8 (i) a member of the staff of the Agency whom the Board
9 member believes on reasonable grounds to be reliable
10 and competent in relation to the matters concerned; or
 - 11 (ii) a professional adviser or expert in relation to matters
12 that the Board member believes on reasonable grounds
13 to be within the person's professional or expert
14 competence; or
 - 15 (iii) another Board member in relation to matters within the
16 Board member's authority; or
 - 17 (iv) a committee of Board members on which the Board
18 member did not serve in relation to matters within the
19 committee's authority; and
- 20 (b) the reliance was made:
- 21 (i) in good faith; and
 - 22 (ii) after making proper inquiry if the circumstances
23 indicated the need for inquiry; and
- 24 (c) the reasonableness of the Board member's reliance on the
25 information or advice arises in proceedings brought to
26 determine whether a Board member has performed a duty
27 under this Division, or an equivalent general law duty;
- 28 the Board member's reliance on the information or advice is taken
29 to be reasonable unless the contrary is proved.

30 **66 Consequences of breach of duty—additional effect of the**
31 ***Commonwealth Authorities and Companies Act 1997***

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

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

- 1 (b) section 27C of that Act;
2 (c) Schedule 2 to that Act;
3 have effect as if:
4 (d) in addition to the provisions specified in subclause 1(1) of
5 Schedule 2 to that Act, the following provisions were also
6 specified in that subclause:
7 (i) subsection 56(1) of this Act;
8 (ii) subsections 57(1) and (2) of this Act;
9 (iii) subsections 58(1) and (2) of this Act;
10 (iv) subsections 59(1) and (2) of this Act; and
11 (e) each reference in the CAC Act consequences provisions to an
12 officer or director of a Commonwealth authority included a
13 reference to a Board member; and
14 (f) each reference in the CAC Act consequences provisions to a
15 Commonwealth authority included a reference to the Board.
- 16 Note 1: Section 27C of the *Commonwealth Authorities and Companies Act*
17 *1997* is about disqualification orders.
- 18 Note 2: Schedule 2 to the *Commonwealth Authorities and Companies Act*
19 *1997* is about the consequences of contravening civil penalty
20 provisions.
- 21 Note 3: Sections 11, 22, 23, 24 and 25 of the *Commonwealth Authorities and*
22 *Companies Act 1997* do not apply in relation to the Board or Board
23 members. This is because the Board is not a Commonwealth authority.

24 **67 Insurance for certain liabilities of Board members**

- 25 (1) Except as provided in subsection (2), the Board may insure a
26 person who is or has been a Board member against liabilities
27 incurred by the person as a Board member.
- 28 (2) The Board must not pay, or agree to pay, a premium for a contract
29 insuring a person who is, or has been, a Board member against a
30 liability (other than one for legal costs) arising out of:
31 (a) conduct involving a wilful breach of duty in relation to the
32 Board; or
33 (b) a contravention of section 58 or 59.
- 34 This subsection applies to a premium whether it is paid directly or
35 through an interposed entity.

Part 4 The Future Fund Board of Guardians

Division 7 Duties of Board members etc.

Section 67

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

1

2 **Division 8—Conflict of interests**

3 **68 Material personal interest—Board member’s duty to disclose**

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

6 (1) A Board member who has a material personal interest in a matter
7 that relates to the affairs of the Board must give the other Board
8 members notice of the interest unless subsection (2) says
9 otherwise.

10 (2) The Board member does not need to give notice of an interest
11 under subsection (1) if:

12 (a) the interest relates to a contract that insures, or would insure,
13 the Board member against liabilities the Board member
14 incurs as a Board member (but only if the contract does not
15 make the Board the insurer); or

16 (b) all the following conditions are satisfied:

17 (i) the Board member has already given notice of the
18 nature and extent of the interest and its relation to the
19 affairs of the Board under subsection (1);

20 (ii) if a person who was not a Board member at the time
21 when the notice under subsection (1) was given is
22 appointed as a Board member—the notice is given to
23 that person;

24 (iii) the nature or extent of the interest has not materially
25 increased above that disclosed in the notice; or

26 (c) the Board member has given a standing notice of the nature
27 and extent of the interest under section 69 and the notice is
28 still effective in relation to the interest.

29 (3) The notice required by subsection (1) must:

30 (a) give details of:

31 (i) the nature and extent of the interest; and

32 (ii) the relation of the interest to the affairs of the Board;
33 and

Section 69

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

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

5 *Effect of contravention by Board member*

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

8 **69 Board member may give other Board members standing notice**
9 **about an interest**

10 *Power to give notice*

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

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

18 (2) The notice under subsection (1) must:

19 (a) give details of the nature and extent of the interest; and

20 (b) be given:

21 (i) at a Board meeting (either orally or in writing); or

22 (ii) to the other Board members individually in writing.

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

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

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

1 *Nature and extent of interest must be recorded in minutes*

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

5 *Dates of effect and expiry of standing notice*

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

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

14 *Effect of material increase in nature or extent of interest*

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

18 *Effect of contravention by Board member*

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

21 **70 Interaction of sections 68 and 69 with other laws etc.**

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

24 **71 Restrictions on voting**

25 *Restrictions on voting and being present*

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

Section 72

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

6 *Participation with approval of other Board members*

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

16 *Participation with Ministerial approval*

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

20 *Effect of contravention by Board member*

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

26 **72 Ministerial power to make declarations and class orders**

27 *Ministerial power to make specific declarations*

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

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

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

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

13 (2) The declaration may:

- 14 (a) apply to all or only some of the Board members; or
15 (b) specify conditions that the Board or Board member must
16 comply with.

17 (3) The declaration is not a legislative instrument for the purposes of
18 the *Legislative Instruments Act 2003*.

19 *Ministerial power to make class orders*

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

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

28 (5) The order may be expressed to be subject to conditions.

29 (6) The nominated Minister must cause a copy of the order to be
30 published on the Internet.

31 (7) The order is not a legislative instrument for the purposes of the
32 *Legislative Instruments Act 2003*.

Part 5 The Future Fund Management Agency

Division 1 Introduction

Section 73

1

2

Part 5—The Future Fund Management Agency

3

Division 1—Introduction

4

73 Simplified outline

5

The following is a simplified outline of this Part:

6

- This Part establishes the Future Fund Management Agency.

7

- The Agency is responsible for assisting and advising the Board.

8

1

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

4 **74 Establishment of the Future Fund Management Agency**

5 (1) The Future Fund Management Agency is established by this
6 section.

7 (2) The Agency consists of:

8 (a) the Chair; and

9 (b) the staff of the Future Fund Management Agency.

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

12 **75 Functions of the Agency**

13 (1) The Agency has the following functions:

14 (a) to make such arrangements as are necessary to give effect to
15 the decisions of the Board;

16 (b) to provide administrative services to the Board;

17 (c) to provide information to the Board;

18 (d) to advise the Board about the performance of any of the
19 Board's functions;

20 (e) to make resources and facilities (including meeting facilities,
21 communication facilities, secretariat services and clerical
22 assistance) available to the Board;

23 (f) such other functions as are conferred on the Agency by this
24 Act;

25 (g) to do anything incidental to or conducive to the performance
26 of any of the above functions.

27 (2) In performing its functions, the Agency must act in accordance
28 with any policies determined, and any directions given, by the
29 Board.

1

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

4 **76 Duties of the Chair**

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

7 **77 Staff of the Agency**

8 (1) The staff of the Agency are persons engaged under the *Public*
9 *Service Act 1999*.

10 (2) For the purposes of the *Public Service Act 1999*:

11 (a) the Chair and the staff of the Agency together constitute a
12 Statutory Agency; and

13 (b) the Chair is the Head of that Statutory Agency.

14 **78 Consultants and persons seconded to the Agency**

15 (1) The Chair may, on behalf of the Commonwealth, engage
16 consultants to perform services for the Agency in connection with
17 the performance of any of its functions.

18 (2) The terms and conditions of engagement are as determined in
19 writing by the Chair.

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

22 (3) The Agency may also be assisted:

23 (a) by officers and employees of Agencies (within the meaning
24 of the *Public Service Act 1999*); or

25 (b) by officers and employees of authorities of the
26 Commonwealth; or

27 (c) by employees of Commonwealth companies;
28 whose services are made available to the Agency in connection
29 with the performance of any of its functions.

1 **79 Chair not subject to direction by the Board on certain matters**

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

5 (a) the *Financial Management and Accountability Act 1997*; or

6 (b) the *Public Service Act 1999*;

7 in relation to the Agency.

1

2 **Division 4—Other provisions**

3 **80 Application of the *Financial Management and Accountability Act***
4 ***1997***

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

- 8 (a) the Board and the Future Fund Management Agency were a
9 single Agency; and
10 (b) the Chair were the Chief Executive of that single Agency;
11 and
12 (c) an annual report under section 80 of this Act were an annual
13 report of that single Agency; and
14 (d) in a case where the Future Fund Management Agency is a
15 prescribed Agency for the purposes of that Act—the Future
16 Fund Management Agency were not an Agency in its own
17 right.

18 Note: This means that there will be:

- 19 (a) a single fraud control plan for both the Board and the Agency;
20 and
21 (b) a single audit committee for both the Board and the Agency; and
22 (c) a single set of accounts and records for both the Board and the
23 Agency; and
24 (d) a single set of annual financial statements in relation to both the
25 Board and the Agency; and
26 (e) a single set of additional financial statements in relation to both
27 the Board and the Agency (if required by the Finance Minister);
28 and
29 (f) auditing of the single set of annual financial statements.

30 **81 Annual report**

31 (1) The Chair must, as soon as practicable after the end of each
32 financial year, prepare and give to the nominated Minister a report
33 of:

- 34 (a) the Agency's operations; and

- 1 (b) the Board's operations; and
2 (c) the performance of the investments of the Fund; and
3 (d) the total amount debited from the Fund Account for the
4 purpose mentioned in paragraph 2(c) of Schedule 2; and
5 (e) the total amount debited from the Fund Account for the
6 purpose mentioned in paragraph 2(g) of Schedule 2; and
7 (f) the total amount debited from the Fund Account for the
8 purpose mentioned in paragraph 2(k) of Schedule 2; and
9 (g) the total amount debited from the Fund Account for the
10 purpose mentioned in paragraph 2(l) of Schedule 2; and
11 (h) the total amount debited from the Fund Account for the
12 purpose mentioned in paragraph 2(m) of Schedule 2;
13 during the financial year.

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

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

20 **82 Consultants and advisers to the Board**

21 *Consultants*

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

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

29 *Advisers*

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

Part 5 The Future Fund Management Agency

Division 4 Other provisions

Section 82

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

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

1

2

3

Part 6—Miscellaneous

4

83 Nominated Minister

5

6

7

(1) As soon as practicable after the commencement of this subsection, the responsible Ministers must, by writing, determine that one of them is to be the *nominated Minister* for the purposes of this Act.

8

9

10

(2) A determination under subsection (1) may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

11

12

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

13

14

15

16

17

(4) The nominated Minister may give the other responsible Minister:

- (a) a report under subsection 54(1) or 55(2); or
- (b) a document under subsection 54(2) or 55(2); or
- (c) any other information or document obtained by the nominated Minister under this Act.

18

84 Miscellaneous receipts to be credited to the Fund Account

19

20

21

22

23

If:

(a) the Board receives an amount of money; and

(b) another provision of this Act does not require the amount to be credited to the Fund Account;

the amount is to be credited to the Fund Account.

24

85 Regulations

25

26

27

28

The Governor-General may make regulations prescribing matters:

(a) required or permitted to be prescribed by this Act; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Clause 1

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

4 Note: See section 13.

5 **Part 1—Introduction**
6

7 **1 Simplified outline**

8 The following is a simplified outline of this Schedule:

- | |
|---|
| 9 • An initial amount of \$18 billion must be credited to the Fund
10 Account.
11 • The responsible Ministers may determine that additional
12 amounts are to be credited to the Fund Account, so long as the
13 additional amounts do not result in the balance of the Fund
14 exceeding the target asset level.
15 • The responsible Ministers may transfer
16 Commonwealth-owned financial assets to the Fund. |
|---|

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

1

2

3

Part 2—Credits of amounts to the Future Fund

4

2 Credit of \$18 billion to the Fund Account

5

(1) Before 1 July 2006, the responsible Ministers must:

6

(a) by writing, determine that \$18 billion is to be credited to the Fund Account on a specified day; or

7

8

(b) by writing, determine that \$18 billion is to be credited to the Fund Account in specified instalments on specified days.

9

10

(2) A day must not be specified under paragraph (1)(a) or (b) unless the day occurs before 1 July 2006.

11

12

(3) A determination under subclause (1) is irrevocable.

13

(4) A determination under subclause (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the determination.

14

15

16

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

17

18

(1) If a target asset level declaration is in force for a financial year, the responsible Ministers may, by writing, determine that:

19

20

(a) a specified amount is to be credited to the Fund Account on a specified day in the financial year; or

21

22

(b) a specified amount is to be credited to the Fund Account in specified instalments on specified days in the financial year.

23

24

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

25

26

(2) The responsible Ministers must not make a determination under subclause (1) in relation to a financial year unless the sum of:

27

28

(a) the balance of the Fund at the start of a day that:

29

(i) is identified in the determination as the balance day for the determination; and

30

Clause 4

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

21 **4 Duration of subclause 3(1) determinations**

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

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

17 **5 Credit of amounts to the Fund Account—gifts**

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

1

2

Part 3—Transfers of financial assets to the Future Fund

3

4

5

6 Transfers to the Fund—Commonwealth-owned financial assets

6

Transfer of financial assets

7

(1) If a target asset level declaration is in force for a financial year, the responsible Ministers may cause one or more Commonwealth-owned financial assets to be transferred to the Board during the financial year.

8

9

10

11

(2) The responsible Ministers must not cause financial assets to be transferred under subclause (1) during a financial year unless the sum of:

12

13

14

(a) the balance of the Fund as at the start of a day that:

15

16

17

(i) is identified in a written declaration made by the responsible Ministers as the balance day for the financial assets; and

18

19

(ii) is not earlier than 3 months before the transfer of the financial assets; and

20

21

(b) the value, as at the start of the balance day for the financial assets, of the financial assets; and

22

23

24

25

26

(c) the value, as at the start of the balance day for the first-mentioned financial assets, of any other financial assets that have been transferred to the Board under subclause (1) since the start of the balance day for the first-mentioned financial assets; and

27

28

(d) any amounts that have been credited to the Fund Account under subclause 2(1) or 3(1) during the period:

29

30

31

32

(i) beginning at the start of the balance day for the first-mentioned financial assets; and

(ii) ending immediately before the time when the first-mentioned financial assets are transferred; and

33

34

(e) if a determination was in force under subclause 2(1) or 3(1) when the first-mentioned financial assets are transferred—so

- 1 much of the amount specified in the determination as had not
2 been credited to the Fund Account before the time when the
3 first-mentioned financial assets are transferred;
4 does not exceed the target asset level specified in the target asset
5 level declaration that:
6 (f) is in force when the first-mentioned financial assets are
7 transferred; and
8 (g) relates to the financial year.

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

11 *Investment of the Fund*

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

14 *Realisation of financial asset etc.*

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

20 *Telstra sale scheme*

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

23 *Publication of details of transfer of financial assets*

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

Clause 7

1

Declaration

2

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

3

4

5

7 Transfers of financial assets to the Fund—gifts

6

- (1) The Board may accept a gift of one or more financial assets if the nominated Minister, by written notice given to the Board, authorises the acceptance of the gift.

7

8

9

- (2) A financial asset accepted under subclause (1) is taken to be an investment of the Fund.

10

11

- (3) A financial asset accepted under subclause (1) is taken to be transferred to the Board under that subclause.

12

13

- (4) To avoid doubt, if a financial asset is transferred to the Board under subclause (1), this Act does not prevent:

14

15

- (a) the realisation of the financial asset under section 17; or

16

- (b) the disposal of the financial asset under a securities lending arrangement entered into under section 27.

17

18

- (5) To avoid doubt, a financial asset may be transferred to the Board under subclause (1) even if the Commonwealth has a beneficial interest in the financial asset.

19

20

21

8 Ministerial directions about transferred financial assets

22

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

23

24

25

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

26

27

- (2) A direction under subclause (1) may:

28

- (a) require the Board not to realise the financial assets before the end of a specified period; or

29

30

- (b) relate to the exercise by the Board of specified:

31

- (i) rights (including voting rights); or

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

20 **9 Continuing effect of instruments relating to transferred financial**
21 **assets**

- 22 (1) If financial assets are transferred to the Board under subclause
23 6(1), the nominated Minister may, by writing, declare that a
24 specified instrument relating to the assets continues to have effect
25 after the transfer as if a reference in the instrument to the
26 Commonwealth were a reference to the Board.
- 27 (2) A declaration under subclause (1) has effect accordingly.
- 28 (3) A declaration under subclause (1) is not a legislative instrument for
29 the purposes of the *Legislative Instruments Act 2003*.

1
2 **Schedule 2—Debits of amounts from the**
3 **Future Fund**

4 Note: See section 13.
5
6

7 **1 Simplified outline**

8 The following is a simplified outline of this Schedule:

- 9
10
- Amounts may be debited from the Fund Account in accordance with the purposes of the Fund Account.
 - The main purpose of the Fund Account is to discharge unfunded superannuation liabilities from whichever is the earlier of:
 - 14 (a) the time when the balance of the Fund is greater
15 than or equal to the target asset level;
 - 16 (b) 1 July 2020.

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

21 **2 Purposes of the Fund Account**

22 The purposes of the Fund Account are as follows:

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

- 1 (b) discharging, in whole or in part, an unfunded superannuation
2 liability that becomes payable in a financial year beginning
3 on or after 1 July 2020;
- 4 (c) paying remuneration and allowances of Board members;
- 5 (d) paying the costs of, or incidental to, the acquisition of
6 financial assets under section 16;
- 7 (e) paying expenses of an investment of the Fund;
- 8 (f) paying the costs of, or incidental to, the acquisition of
9 derivatives under section 25;
- 10 (g) paying or discharging the costs, expenses and other
11 obligations incurred by the Board under a contract between
12 the Board and an investment manager;
- 13 (h) paying or discharging the costs, expenses and other
14 obligations incurred in connection with the establishment,
15 maintenance or operation of a bank account of the Board;
- 16 (i) paying a premium in respect of a contract of insurance
17 entered into by the Board;
- 18 (j) paying or discharging any other costs, expenses, obligations
19 or liabilities incurred by the Board;
- 20 (k) paying remuneration, and other employment-related costs
21 and expenses, in respect of members of the staff of the
22 Agency;
- 23 (l) paying or discharging the costs, expenses and other
24 obligations incurred by the Commonwealth under a contract
25 entered into under section 78 or 82;
- 26 (m) paying or discharging the costs, expenses and other
27 obligations incurred by the Commonwealth in connection
28 with the establishment or operation of the Agency.

29 Note 1: See section 21 of the *Financial Management and Accountability Act*
30 *1997* (debits from Special Accounts).

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

33 **3 Board must ensure that there is sufficient money to cover the main**
34 **purposes of the Fund Account**

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

Schedule 2 Debits of amounts from the Future Fund

Clause 3

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

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

1
2 **Schedule 3—Target asset level declarations**

3 Note: See section 13.
4
5

6 **1 Simplified outline**

7 The following is a simplified outline of this Schedule:

- | |
|--|
| <p>8 • The designated actuary is an actuary specified in a
9 determination made by the nominated Minister.</p> <p>10 • The target asset level is specified in a declaration (a <i>target</i>
11 <i>asset level declaration</i>) given by the designated actuary.</p> <p>12 • The target asset level represents the amount that is expected to
13 offset the present value of projected unfunded superannuation
14 liabilities.</p> |
|--|

15 **2 Designated actuary**

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

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

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

26 **3 Target asset level declarations**

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

Clause 3

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

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

22 **4 Reliance on projections when making target asset level** 23 **declarations etc.**

- 24 In making a target asset level declaration, the designated actuary
25 may:
26 (a) rely on, or have regard to, the projections, findings,
27 estimates, opinions or conclusions of any other actuaries who
28 have conducted, or are conducting, actuarial reviews of:
29 (i) a scheme under which superannuation benefits are
30 payable; or
31 (ii) a South Australian railways arrangement; or
32 (iii) a Tasmanian railways arrangement; and

Schedule 3 Target asset level declarations

Clause 4

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

