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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MEDICAL RESEARCH FUTURE FUND BILL 2015

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance,
Senator the Hon Mathias Cormann)

Table of abbreviations and common terms

Abbreviation or common term	Description
Agency	means the Future Fund Management Agency established by section 74 of the <i>Future Fund Act 2006</i>
COAG Reform Fund	means the Fund established by section 5(1) of the <i>COAG Reform Fund Act 2008</i>
Corporations Act	means the <i>Corporations Act 2001</i>
corporate Commonwealth entity	has the meaning set out in subsection 11(a) of the <i>Public Governance, Performance and Accountability Act 2013</i>
CRF	means the Consolidated Revenue Fund
CSIRO	means the Commonwealth Scientific and Industrial Research Organisation established by section 8 of the <i>Science and Industry Research Act 1949</i>
Finance Minister	has the same meaning as defined in the <i>Public Governance, Performance and Accountability Act 2013</i>
Future Fund	means the Future Fund established by section 11 of the <i>Future Fund Act 2006</i>
Future Fund Act	means the <i>Future Fund Act 2006</i>
Future Fund Special Account	means the Future Fund Special Account established by section 12 of the <i>Future Fund Act 2006</i>
Health Minister	means the Minister who administers the <i>Health Insurance Act 1973</i>
HHF	means the Health and Hospitals Fund established by section 214 of the <i>Nation-building Funds Act 2008</i>
HHF Special Account	means the Health and Hospitals Fund Special Account established by section 215 of the <i>Nation-building Funds Act 2008</i>
Investment Mandate	Means the Medical Research Future Fund Investment Mandate and has the same meaning as defined in the <i>Medical Research Future Fund Bill 2015</i>
ITAA	means the <i>Income Tax Assessment Act 1997</i>
Legislative Instruments Act	means the <i>Legislative Instruments Act 2003</i>
MRFF	means the Medical Research Future Fund
MRFF Act	means the <i>Medical Research Future Fund Act 2015</i>
MRFF Special Account	means the Medical Research Future Fund Special Account established by section 11 of the <i>Medical Research Future Fund Bill 2015</i>
MRFF Health Special Account	means the Medical Research Future Fund Health Special Account established by section 23 of the <i>Medical Research Future Fund Bill 2015</i>
Nation-building Funds	means the Nation-building Funds established by section 12, 131 and 214 of the <i>Nation-building Funds Act 2008</i>

Abbreviation or common term	Description
NHMRC	means the National Health and Medical Research Council established by section 5B of the <i>National Health and Medical Research Council Act 1992</i>
PGPA Act	means the <i>Public Governance, Performance and Accountability Act 2013</i>
responsible Ministers	means the following: (a) the Treasurer; and (b) the Finance Minister
The Board	means the Future Fund Board of Guardians established by section 34 of the <i>Future Fund Act 2006</i>

Medical Research Future Fund Bill 2015

Context

The Medical Research Future Fund Bill 2015 gives effect to the Government's decision (announced as a 2014-15 Budget measure) to establish a dedicated financial asset – the Medical Research Future Fund – as an endowment that supports medical research and innovation (including in health disciplines).

The Government wishes to accumulate assets that can be invested to create earnings used to financially support medical research and medical innovation over the long-term – such activity is expected to make a positive contribution to the health and wellbeing of all Australians.

Summary

The Bill establishes the Medical Research Future Fund on the later of the day after this Act receives the Royal Assent; or the day after the *Medical Research Future Fund (Consequential Amendments) Act 2015* receives Royal Assent.

The Medical Research Future Fund consists of the:

- MRFF Special Account; and
- the investments of the Medical Research Future Fund.

The Medical Research Future Fund is a dedicated investment vehicle to provide a secure revenue stream to be used for medical research and medical innovation.

Credits

The Medical Research Future Fund will be credited with amounts equal to the:

- uncommitted balance of the Health and Hospitals Fund (expected to be around \$1 billion); and
- the value of health saving measures announced.

Debits

The Finance Minister can direct in writing that specified amounts be debited from the Medical Research Future Fund and credited to:

- the MRFF Health Special Account for the purpose of making grants of financial assistance to medical research institutes, non-profit organisations, universities and corporations;
- the COAG Reform Fund for making payments to the States and Territories for expenditure on medical research and medical innovation – including application and commercialisation activity that translates discoveries to new treatments and practice; and
- corporate Commonwealth entities outside the General Government Sector (for example, CSIRO).

Investment of the Fund

The Future Fund Board will be responsible for deciding how to invest the Medical Research Future Fund to enhance the Commonwealth's ability to make grants for medical research.

The Bill requires the responsible Ministers to issue an investment mandate to the Future Fund Board regarding the investment of the Fund. The purpose of the investment mandate is to provide a mechanism for the Government to provide strategic guidance to the Board on its expectations for the investment of the Fund.

Maximum annual distributions

The Future Fund Board will be responsible for advising the Government on the maximum cash amount that can be withdrawn from the Medical Research Future Fund in a given financial year to fund grants for medical research and innovation. This amount will be provided by earnings on investments after management costs, and will be determined on the basis of preserving the nominal value of the Government's capital investment over the long-term and moderating fluctuations in the amount available for distribution as grants on a year-on-year basis. The nominal value of the capital may fluctuate from time to time, but the Future Fund Board must act to preserve the nominal value of the capital over the long-term.

Expenses

Expenses associated with investment and administration of the Medical Research Future Fund incurred by the Future Fund Board will be met from the Fund.

Reporting

The Finance Minister is responsible for ensuring that the Future Fund Board complies with Medical Research Future Fund reporting requirements, including in the financial statements and annual report prepared by the Board.

The Finance Minister has the power to request additional information required to satisfy the Government that the Future Fund Board's management of the Medical Research Future Fund complies with legislation and the Fund's Investment Mandate.

The Finance Minister has the power to publish information received from the Future Fund, as the Government deems appropriate and in the public interest. This includes publishing information about the maximum annual distributions available in a given financial year for the purposes of making grants of financial assistance to support medical research and medical innovation.

Financial Impact Statement

The initial credit of funds from the Health and Hospitals Fund into the Medical Research Future Fund will not have a direct impact on underlying cash and fiscal balances, as these are already part of, and remain within, the CRF.

The interest earnings of the Fund have a positive impact on the underlying cash and fiscal balances. Costs incurred by the Future Fund Board have a negative impact on the underlying cash and fiscal balances.

The payments from the Fund will be based on net earnings (interest earnings less management fees) of the Fund, with payments to commence from when the Fund is established, and with capital managed to allow for a steady flow of distributions over time. Payments from the Medical Research Future Fund will have a negative impact on the underlying cash and fiscal balances.

Statement of Compatibility with Human Rights

The provisions in the Bill do not:

- engage any of the applicable rights or freedoms outlined in the *Human Rights (Parliamentary Scrutiny) Act 2011*, such as encompassed in the International Covenant on Civil and Political Rights; or
- limit any human rights, nor propose any offences or penalties.

This Bill is therefore compatible with the human rights and freedoms recognised or declared in the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

MEDICAL RESEARCH FUTURE FUND BILL 2015

NOTES ON CLAUSES

Preamble

The preamble sets out a number of considerations taken into account by the Parliament in enacting this law.

Part 1 – Preliminary

Section 1 - Short Title

Section 1 provides for the Act to be cited as the *Medical Research Future Fund Act 2015*.

Note: The sections in the Bill will become sections of the Act on Royal Assent.

Section 2 – Commencement

Section 2 provides that the Bill commences on the later of: the day after this Act receives the Royal Assent; or the day after the *Medical Research Future Fund (Consequential Amendments) Act 2015* receives the Royal Assent.

Section 3 – Object

Section 3 sets out the object of the Bill, namely to improve the health and well being of Australians by providing grants of financial assistance to support medical research and medical innovation.

Section 4– Simplified outline of this Act

Section 4 provides a high level introduction to the provisions in the Bill, to aid readability. The outline is not intended to be comprehensive and should not be relied on in place of the substantive provisions in the Bill.

Section 5 – Definitions

Section 5 provides definitions of the terms and expressions used in the Bill.

Section 6 – Crown to be bound

Section 6 provides that the Act binds the Crown in each of its capacities but does not make the Crown liable to be prosecuted for an offence.

Section 7 – Extension to external Territories

Section 7 provides that the Act extends to every external Territory.

Section 8 – Extra-territorial application

Section 8 provides for the geographical reach of this Act to apply outside of Australia – due to the possibility that the recipients of grants of financial assistance from the Medical Research Future Fund may collaborate with international partners.

Section 9 – Alternative constitutional basis

Section 9 details the constitutional basis upon which making grants of financial assistance to support medical research and medical innovation relies.

Part 2 – Medical Research Future Fund

Division 1 – Introduction

Section 10 – Simplified outline of this Part

Section 10 is an overview of Part 2 to assist with readability.

Division 2 – Establishment of the Medical Research Future Fund and the Medical Research Future Fund Special Account

Section 11 – Establishment of the Medical Research Future Fund

Section 11 establishes a financial asset fund – the Medical Research Future Fund – consisting of amounts credited to a MRFF Special Account and investments of the Medical Research Future Fund.

Section 12 – Determination of amount of Medical Research Future Fund

Section 12 establishes procedures for determining the value of assets to be transferred from the Health and Hospitals Fund to the Medical Research Future Fund.

A determination made under **subsection 12(1)** is not disallowable. Such determinations would usually be regarded as administrative, rather than legislative, in character. It is not appropriate that they be disallowable as they are a one-off instrument made when funds are about to be credited. **Subsection 12(2)** is included to assist the reader.

Section 13 – Allocation of investments to the Medical Research Future Fund from the Health and Hospitals Fund

Section 13 establishes processes for the transfer to the Medical Research Future Fund of an amount forming part of the Health and Hospitals Fund.

The Future Fund Board will have 28 days to effect a transfer of financial assets to the value of the amount determined by the Finance Minister under **subsection 12(1)**. During this period the Board will identify the assets to be transferred and make whatever commercial arrangements are required to manage these assets as investments of the Medical Research Future Fund.

At the 28th day following the making of the determination under **subsection 12(1)**, the balance of the Health and Hospitals Fund not transferred to the Medical Research Future Fund will stand to the credit of the HHF Special Account. These cash amounts will be used to meet commitments related to previously approved Health and Hospitals Fund projects under an appropriation to be established by the *Medical Research Future Fund (Consequential Amendments) Bill 2015*.

Section 14 – Establishment of the Medical Research Future Fund Special Account

Section 14 establishes the MRFF Special Account – a special account for the purposes of the PGPA Act.

A special account is an appropriation mechanism that sets aside an amount within the CRF to be expended for specific purposes. Any amounts credited to the MRFF Special Account are quarantined from the rest of the CRF and can only be debited from the Medical Research Future Fund for the purposes set out in the Bill.

The note immediately following this section is included to assist the reader by clarifying that amounts could be credited to the MRFF Special Account by an Appropriation Act.

Division 3 – Credits of amounts to the Medical Research Future Fund Special Account

Section 15 – Credits of amounts

Section 15 establishes a mechanism for amounts – other than the initial transfer of assets from the Health and Hospitals Fund – to be credited to the MRFF Special Account.

Amounts are credited by a written determination of the responsible Ministers or their delegates (refer to **sections 60 and 61** for delegation powers of the Finance Minister and the Treasurer).

Subsection 15(3) provides that a determination to credit a specified amount to the MRFF Special Account is a legislative instrument for the purposes of the Legislative Instruments Act and, as such, will be tabled in the Parliament and published on the Federal Register of Legislative Instruments.

However, the determination, as a ministerial direction, is not disallowable. Such determinations would usually be regarded as administrative, rather than legislative, in character. It is not appropriate that they be disallowable as they are a one-off instrument made when funds are about to be credited. The same approach was taken for equivalent provisions in the *Future Fund Act 2006*.

Division 4 – Debits of amounts from the Medical Research Future Fund

Subdivision A – Limitation on total annual debits from the Medical Research Future Fund Special Account

Section 16 - Limitation on total annual debits from the Medical Research Future Fund Special Account

Section 16 establishes that the amount debited for expenditure from the Medical Research Future Fund cannot exceed the maximum annual distributions determined as prescribed under **section 34**.

Subdivision B – Purposes

Section 17 – Purposes of the Medical Research Future Fund Special Account – main purposes

Section 17 sets out the main purposes of the MRFF Special Account. These purposes are consistent with the objects of the Bill, namely to transfer amounts to:

- the COAG Reform Fund for the purpose of making grants of financial assistance to the States and Territories for expenditure on medical research and innovation; and
- the MRFF Health Special Account for the purpose of making grants that support medical research and medical innovation to medical research institutes, universities and corporations; and
- corporate Commonwealth entities (for example, CSIRO) that are, by definition, outside the General Government Sector.

Section 18 – Purposes of the Medical Research Future Fund Special Account – purposes related exclusively to the investments etc. of the Medical Research Future Fund

Section 18 relates to the payment of various expenses that may be incurred by the Future Fund Board, which relate exclusively to the investments of the Medical Research Future Fund, and which do not relate to the main purposes of the Fund. It sets out the additional purposes for which the Medical Research Future Fund may be debited.

Section 19 – Purposes of the Medical Research Future Fund Special Account – purposes not related exclusively to the Medical Research Future Fund

Section 19 relates to the payment of various expenses that may be incurred by the Future Fund Board in respect of its broader functions under this Bill, as well as the Future Fund Act, the *Nation-building Funds Act 2008* and the *DisabilityCare Australia Fund Act 2013*.

Section 19 sets out the range of additional purposes for which the MRFF Special Account may be debited in respect of costs that are common to the funds for which the Future Fund Board has responsibility.

Section 19 additionally provides for expenses incurred in relation to the management of the Health and Hospitals Fund prior to its abolition to be met from the MRFF Special Account. This provision recognises that these costs (for example investment manager fees) will be primarily related to assets transferred from the Health and Hospitals Fund to the Medical Research Future Fund.

Subdivision C – Channelling State/Territory grants through COAG Reform Fund

Section 20 – Channelling State/Territory grants through COAG Reform Fund

Section 20 provides for the Finance Minister to direct that a specified amount be debited from the MRFF Special Account and credited to the COAG Reform Fund to make grants of financial assistance to the States and Territories for medical research and innovation. This would occur following a Government decision.

The Finance Minister's direction is administrative, rather than legislative, in character and is therefore not a legislative instrument for the purposes of the Legislative Instruments Act. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case; that is, they do not determine or alter the content of the law itself.

Subsection 20(5) requires the Finance Minister to give a copy of the direction to the Health Minister and the Treasurer.

Section 21 – Debits from the COAG Reform Fund

Section 21 reflects the intention of the Government that the COAG Reform Fund operates as a vehicle through which payments from the Medical Research Future Fund will be distributed to States and Territories.

Consistent with this, the Treasurer is required to ensure that, as soon as practicable after an amount is credited to the COAG Reform Fund, that amount is debited for the purposes of making the payment.

If the payment cannot be made, **subsection 21(2)** provides the mechanism for its return to the MRFF Special Account. The intention is that the payment be returned to be invested by the Future Fund Board until such time as the payment can be made.

Section 22 – Terms and conditions of grant to a State or Territory

Section 22 provides that the terms and conditions upon which a grant is made to the States and Territories are to be set out in a written agreement between the Commonwealth and the State or Territory, that the State or Territory must comply with any such terms and conditions, and that such an agreement may be entered into by any Minister on behalf of the Commonwealth.

Subdivision D – Channelling grants through the MRFF Health Special Account

Section 23 – Establishment of the MRFF Health Special Account

Section 23 establishes the MRFF Health Special Account as a special account for the purposes of the PGPA Act.

A special account is an appropriation mechanism that sets aside an amount within the CRF to be expended for specific purposes. Any amounts credited to the MRFF Health Special Account are quarantined from the rest of the CRF and can only be debited for the purpose set out in **section 24**.

The note immediately following this section is included to assist the reader by clarifying amounts that could be credited to the MRFF Health Special Account by an Appropriation Act.

Section 24 – Purpose of the MRFF Health Special Account

Section 24 provides that the purpose of the MRFF Health Special Account is to enable the making of medical research and medical innovation payments, which may either be by way of a grant of financial assistance or otherwise.

The Bill will allow payments to be made to bodies such as medical research institutes, universities, corporate Commonwealth entities and corporations.

Section 25 – Channelling grants through the MRFF Health Special Account

Section 25 provides that the Finance Minister may direct that a specified amount will be debited from the MRFF Special Account and credited to the MRFF Health Special Account for the purposes of making payments to certain bodies. This would occur following a Government decision.

The Finance Minister's direction is administrative, rather than legislative, in character and is therefore not a legislative instrument for the purposes of the Legislative Instruments Act. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case; that is, they do not determine or alter the content of the law itself.

Subsection 25(5) requires the Finance Minister to give a copy of the direction to the Health Minister and the Treasurer.

Section 26 – Debits from the MRFF Health Special Account

Section 26 reflects the Government's intention that the MRFF Health Special Account operates as a vehicle through which payments from the Medical Research Future Fund will be distributed to recipients in respect of medical research and medical innovation initiatives.

Consistent with this, the Health Minister is required to ensure that, as soon as practicable after an amount is credited to the MRFF Health Special Account, the amount is debited for the purposes of making the payment.

If for any reason the payment cannot be made, **subsection 26(2)** provides the mechanism for its return to the MRFF Special Account. The intention is that the payment be returned to be invested by the Future Fund Board until such time as the payment can be made.

In providing for debits from the MRFF Health Special Account by the Health Minister, **section 26** provides the mechanism through which the Government could ask the NHMRC to manage distributions from the Medical Research Future Fund.

Section 27 – Terms and conditions of grant to a person other than a State

Section 27 is concerned with the conditions for making a grant of financial assistance to a medical research institute; a university; a corporate Commonwealth entity or a corporation by means of a debit from the MRFF Health Special Account.

The section provides that the terms and conditions upon which the grant is made are to be set out in a written agreement between the Commonwealth and the person receiving the grant, that the person must comply with any such terms and conditions, and that such an agreement may be entered into by the Health Minister on behalf of the Commonwealth.

Section 28 – Delegation by the Health Minister

Under subsection 28(1) the Health Minister may delegate his or her powers under **section 26 and 27** to the Secretary of the Health Department or to an SES employee (or acting SES employee) of the Health Department or to the CEO of the NHMRC or to an SES employee (or acting SES employee) of the NHMRC.

The Health Minister's powers under **sections 26 and 27** relate to the making of debiting determinations to authorise payments from the MRFF Health Special Account, and requiring that the use of such grants comply with the terms and conditions of a written agreement. Delegation of these functions to the Secretary of, or an SES official in, the Health Department or NHMRC is consistent with the efficient administration of these matters.

The notes at **subsection 28(1)** remind the reader of the definition of an SES employee and indicate the delegations under **subsection 28(1)** allow the NHMRC to administer medical research and medical innovation programmes. This is consistent with the Government's intention to rely on the expertise of the NHMRC to aid the distribution of funds from the Medical Research Future Fund for the purpose of making grants of financial assistance to support medical research and medical innovation.

It is envisaged that the delegate will be accountable to the Health Minister for his or her actions under any delegation. **Subsection 28(2)** reinforces this intention by requiring the delegate to comply with any direction of the Health Minister in exercising powers under a delegation.

Subdivision E – Making payments directly to corporate Commonwealth entities

Section 29 – Making payments directly to corporate Commonwealth entities

Section 29 provides that the Finance Minister may direct that a specified amount be debited from the MRFF Special Account and credited to a corporate Commonwealth entity for the purpose of supporting medical research and medical innovation. This would occur following a Government decision.

Under the definition of a corporate Commonwealth entity provided for by paragraph 11(a) of the PGPA Act, such entities are legally separate from the Commonwealth. Payments made from the MRFF Special Account will therefore be considered to have left the CRF once received by a corporate Commonwealth entity.

The Finance Minister's direction is administrative, rather than legislative, in character and is therefore not a legislative instrument for the purposes of the Legislative Instruments Act. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case; that is, they do not determine or alter the content of the law itself.

Subsection 29(4) requires the Finance Minister to give a copy of the direction to the Health Minister and the Treasurer.

Section 30 – Terms and conditions of grants to corporate Commonwealth entities

Section 30 provides that the terms and conditions upon which the grant is made under **section 29** are to be set out in a written agreement between the Commonwealth and the entity, that the entity must comply with any such terms and conditions, and that such an agreement may be entered into by any Minister on behalf of the Commonwealth.

Subdivision F – Obligation to ensure sufficient money

Section 31 – Future Fund Board must ensure that there is sufficient money in the Medical Research Future Fund Special Account to cover authorised debits etc.

Section 31 requires the Future Fund Board to take all reasonable steps to ensure that the amount standing to the credit of the MRFF Special Account is sufficient to cover amounts to be debited from the MRFF Special Account.

The note immediately below this section assists readers to understand the obligations of the Future Fund Board in respect of this requirement.

Division 5 – Inter-fund transfers

Section 32 – Transfers from the Medical Research Future Fund to the Future Fund

Section 32 allows for transfers from the MRFF Special Account to the Future Fund Special Account.

Section 32 allows for amounts to be transferred between the Medical Research Future Fund and the Future Fund. The purpose of this is to enable reimbursement to the Future Fund Special Account of expenses incurred in relation to the Medical Research Future Fund that have been debited from the Future Fund Special Account.

The section allows the Finance Minister to direct that one Fund is to be debited and the other Fund credited by a specified amount.

The Finance Minister's direction is administrative, rather than legislative, in character and is therefore not a legislative instrument for the purposes of the Legislative Instruments Act. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case, i.e. they do not determine or alter the content of the law itself. **Subsection 32(3)** has been included to assist readers.

Part 3 – Maximum annual distributions

Division 1 – Introduction

Section 33 – Simplified outline of this Part

Section 33 is an overview of Part 4 to assist with readability.

Division 2 – Maximum annual distributions

Section 34 – Maximum annual distributions

Section 34 sets out the obligations of the Future Fund Board – and the principles to be taken into account – in determining the maximum annual distributions available for release from the Medical Research Future Fund in a given financial year.

Subsections 34(1) and 34(2) require the Finance Minister to make a written determination advising of a date when the Future Fund Board must make (and give to the Finance Minister) a determination of the maximum annual distributions available in a given financial year.

Subsection 34(3) requires that a written determination issued by the Finance Minister under **subsection 34(2)** must provide the Future Fund Board with at least 90 days notice of the deadline for making a determination of the maximum annual distribution amount.

A written determination issued by the Finance Minister under **subsection 34(2)** may have effect over multiple years if not superseded by a determination issued by the Finance Minister at a later date.

Subsection 34(4) requires the Future Fund to take into account the following criteria when making a determination of the maximum annual distribution amount:

- preservation of the nominal value over the long term of financial assets transferred from the Health and Hospitals Fund to the Medical Research Future Fund at the time a determination was made under **subsection 13(1)** (that nominal value being the amount determined under **subsection 12(1)**); and
- preservation of the nominal value over the long term of the total amount of the credits made under **section 15**; and
- moderation of the year-on-year variability of the maximum annual distribution amount; and
- maintenance of the Future Fund Board's capacity to comply with the Investment Mandate issued under **section 39** (including the Future Fund Board's ability to pursue the returns within the level of risk set out in that Investment Mandate).

The principle of preserving the nominal value of capital invested in the Medical Research Future Fund by the Government is to be applied over a long-term time horizon.

Subsection 34(4) also requires that the Future Fund Board make the determination of annual maximum distribution amounts after taking into account costs that are likely to be incurred by the Future Fund Board in making and managing Medical Research Future Fund investments. The reader is reminded that the costs allowed in this regard are prescribed by **sections 18 and 19**.

Subsection 34(5) allows the Finance Minister to provide written advice of additional matters the Government may wish the Future Fund Board to consider in determining the maximum annual distribution in a given year (or over multiple years). Such written advice must be provided to the Future Fund Board at least 90 days before the next written determination of the maximum annual distribution is due under a written determination made through **subsection 34(2)**.

Subsection 34(6) requires that any additional matters advised under **subsection 34(5)** are only to be taken into consideration by the Future Fund Board to the extent that they do not interfere with the principles described at **subsection 34(4)** or its ability to comply with an Investment Mandate issued under **subsection 39(1)** or any other provision in the Act.

Subsection 34(7) requires that any additional matters advised under **subsection 34(6)** are to be provided in writing to the Future Fund Board at least 90 days before the date specified in a written determination made under **subsection 34(2)**.

Subsection 34(8) requires the Future Fund Board to provide a copy of the maximum annual distribution determination to the Finance Minister by the date prescribed by a written determination made under **subsection 34(2)**. The Future Fund Board is also required to provide a description of the methodology used for determining the amount and any considerations taken into account.

Subsection 34(9) allows the Finance Minister to make the maximum annual distribution (and any supporting documentation) available to the public on the internet.

Subsection 34(10) has been included to assist readers. The determinations under **subsections 34(1)** and **34(2)** are administrative, rather than legislative, in character and are therefore not a legislative instrument for the purposes of the Legislative Instruments Act.

Part 4 – Investment of the Medical Research Future Fund

Section 35 – Simplified outline of this Part

Section 35 is an overview of Part 4 to assist with readability.

Section 36 – Objects of investment of the Medical Research Future Fund

Subsection 36(1) is intended to reinforce that amounts are invested by the Future Fund Board for the main object of enhancing the Commonwealth's ability to provide grants for medical research and innovation.

Subsection 36(2) sets out that the ancillary objects of the investment of the Medical Research Future Fund are for enhancing the ability of the Commonwealth and the Future Fund Board to discharge costs, expenses, obligations and liabilities and make payments for the ancillary purposes as set out in **sections 18 and 19**.

Section 37 – Investment of the Medical Research Future Fund

Section 37 takes account of the investment powers provided for under section 58 of the PGPA Act. However, **subsection 37(1)** expands on those powers to provide for the investment of the Medical Research Future Fund in a broad range of financial assets. Specific conditions on the acquisition of derivatives are separately covered in **section 47**. This approach to the investment of the Medical Research Future Fund is consistent with investment arrangements for the Future Fund.

Investments of the Medical Research Future Fund will be made in the name of the Future Fund Board (rather than the Commonwealth) to make clear that the Future Fund Board manages the Medical Research Future Fund at arm's length from the Government. However beneficial ownership of the Medical Research Future Fund assets remains with the Commonwealth at all times.

Section 38 – Management of investments of the Medical Research Future Fund

Subsections 38(1) and (2) provide that income derived from an investment of the Medical Research Future Fund, including a return of capital or another form of financial distribution, must be credited to the MRFF Special Account. This is consistent with the requirements under sections 81 and 83 of the Constitution (which, in effect, provide that public money forms part of the CRF and can only be spent if authorised by an appropriation made by law). In practice, any money that has not been invested must be held in the MRFF Special Account.

Subsections 38(3) to (5) relate to the arrangements that will apply in relation to the realisation of assets, and allow the Future Fund Board to authorise, prior to an investment maturing, that the proceeds of this investment be automatically reinvested with the same entity. This avoids the need for the proceeds of realisation of the investment to be treated as public money and credited to the CRF, only to be then reappropriated and reinvested. Any reinvestment is an investment of the Medical Research Future Fund.

Subsection 38(6) provides that section 58 of the PGPA Act does not apply to an investment of the Medical Research Future Fund. Section 58 of the PGPA Act authorises the Finance Minister or the Treasurer to invest public money in only a limited range of investments, such as government bonds and bank deposits. However, **section 38(1)** provides for the investment of the Medical Research Future Fund in a broader range of financial assets.

Section 39 – Medical Research Future Fund Investment Mandate

This section provides the Government, as owner of the Medical Research Future Fund, with a mechanism for articulating its expectations for how the Medical Research Future Fund will be invested and managed by the Future Fund Board. **Section 39** establishes a framework that enables the Government to give strategic guidance to the Future Fund Board while preserving the Board's role in managing the investments of the Medical Research Future Fund at arm's length from the Government. This approach is consistent with the arrangements in place for the Future Fund.

Section 39(1) provides the responsible Ministers with the power to give the Future Fund Board written directions in relation to the performance of its investment functions and the exercise of its powers. The responsible Ministers must issue at least one such direction, and these directions will be collectively known as the Medical Research Future Fund Investment Mandate (**subsection 39(3)** refers). Note that the Medical Research Future Fund investment function is defined in **section 5**.

While the responsible Ministers can issue new directions at any time, the intention is that the Investment Mandate will reflect the Government's policy intent with regard to the investments of the Medical Research Future Fund. Any new directions would therefore be expected to take account of significant policy changes or material changes in the investment environment faced by the Medical Research Future Fund.

These requirements will give the Future Fund Board and Parliament assurance that the responsible Ministers must make appropriately considered directions in regard to investment targets, while providing flexibility to take account of broader policy issues and national interest considerations.

Section 39(2) provides that in setting an Investment Mandate the responsible Ministers must have regard to maximising the return on the Medical Research Future Fund over the long term consistent with international best practice for institutional investment, and of the need to enhance the Commonwealth's ability to provide grants of financial assistance to support medical research and medical innovation, and any other matters the responsible Ministers consider to be relevant.

Subsection 39(4) provides that the Investment Mandate may include, but is not limited to, statements about policies the Future Fund Board must pursue in relation to risk and return and the allocation of the Medical Research Future Fund to particular asset classes. This may include restrictions or thresholds for investing the Medical Research Future Fund in certain jurisdictions or asset classes and statements of the Government's appetite for risk.

Subsection 39(5) makes it clear that a Ministerial direction under subsection 39(1) prevails over **section 40** to the extent of any inconsistency, and places limitations on responsible Ministers in issuing the Investment Mandate. This means that the Investment Mandate cannot have the effect of requiring the Future Fund Board to do anything that is inconsistent with Act, including the aim of enhancing the Commonwealth's ability to provide grants of financial assistance to support medical research and medical innovation.

Subsection 39(6) provides that the Investment Mandate will not formally commence until at least 15 calendar days after it is issued. This is to allow the Future Fund Board time to adjust to any revised directions issued by the responsible Ministers. Importantly, the Future Fund Board will be able to know with certainty when the new direction will come into force.

Subsection 39(7) provides that directions under **subsection 39(1)**, which set out certain rules that the Future Fund Board must comply with, are legislative in character and are therefore legislative instruments for the purposes of section 5 of the Legislative Instruments Act. However, any directions issued by the responsible Ministers as part of the Investment Mandate are exempt from parliamentary disallowance provided for by section 44 of the Legislative Instruments Act, and are exempt from the sunset provision provided for by section 54 of the Legislative Instruments Act.

As legislative instruments, any directions given to the Future Fund Board under this section are required to be registered on the Federal Register of Legislative Instruments and tabled in the Parliament.

This approach enables the public and the Parliament to hold the Government accountable for the directions it issues to the Future Fund Board without impeding the Government's ability to manage its finances.

Section 40 – Obligation on Future Fund Board in performing investment functions

Section 40 specifies that in making the investments for the Medical Research Future Fund, the Future Fund Board will seek to maximise the return earned on the Fund, similar to the requirements for the Future Fund. It is expected that international best practice will be reflected in the investment policies of the Medical Research Future Fund. In making investments for the Medical Research Future Fund the Future Fund Board will aim to enhance the government's ability to achieve the objects of the Act i.e. to enhance the Commonwealth's ability to provide grants of financial assistance to support medical research and medical innovation.

Section 41 – Limitation on Medical Research Future Fund Investment Mandate

Section 41 specifies that the responsible Ministers cannot direct the Future Fund Board to use the assets of the Medical Research Future Fund to invest in a particular financial asset, for example shares in a particular company. It also prevents the responsible Ministers from issuing a direction that has the effect of requiring the Future Fund Board to use the assets of the Medical Research Future Fund to support a particular business entity, activity or business.

Section 42– Future Fund Board to be consulted on Medical Research Future Fund Investment Mandate

Consistent with the Future Fund arrangements, the responsible Ministers are required to consult the Future Fund Board on any changes to the Investment Mandate.

Subsection 42(1) requires the responsible Ministers to send a draft of the new direction to the Future Fund Board and invite the Board to make a submission within a specified time limit. The specified time limit will be determined on a case by case basis with regard to relevant circumstances and priorities at the time. It may be the case that urgent changes are required in the national interest. In this situation it would be reasonable for the Future Fund Board to be asked to consider a draft direction quickly. However, where there is less urgency, or the change in the Investment Mandate is substantial, it would be reasonable to provide the Future Fund Board with sufficient time to consider a draft direction.

Subsection 42(2) provides that any submission received from the Future Fund Board on a draft direction must be tabled in the Parliament, with the direction. In this way, the views of the Future Fund Board on the expected impact of any changes will be publicly known.

Section 43 – Compliance with Medical Research Future Fund Investment Mandate

Subsection 43(1) requires the Future Fund Board to take all reasonable steps to ensure that all policies and decisions regarding the operation and investment of Medical Research Future Fund are in accordance the Investment Mandate issued by the responsible Ministers. Since the Investment Mandate is intended to provide broad guidance to the Future Fund Board, it may contain directions that require the Board to apply its judgment on whether or not Medical Research Future Fund investments comply with the Investment Mandate.

Subsection 43(2) requires that if the Future Fund Board becomes aware of a breach of the Investment Mandate, the Board must inform the responsible Ministers in writing as soon as is practicable, including a proposed strategy to bring the operations of the Medical Research Future Fund into compliance with the Investment Mandate.

Similarly, **subsections 43(3) and 43(4)** provide that if the Government identifies areas where the Future Fund Board is not complying with the Investment Mandate, the responsible Ministers can issue written directions to the Future Fund Board to take action to remedy the situation. The Future Fund Board is required to comply with any such directions, noting that the responsible Ministers are the final arbiters on what is intended by the Investment Mandate.

Subsection 43(5) provides that any transactions undertaken by the Future Fund Board and subsequently deemed not to have complied with the Investment Mandate remain valid, and the Future Fund Board is required to honour any commitments made. This protects third parties who enter into transactions with the Future Fund Board or its agents in good faith.

Subsection 43(6) makes it clear that a direction under **subsection 43(3)** is not a legislative instrument. This provision is simply declaratory in nature. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case; i.e. they do not determine or alter the content of the law itself.

Section 44 – Future Fund Board must not trigger the takeover provisions of the Corporations Act

Section 44 aims to minimise market distortion and eliminate the potential for conflicts of interest for the Government as a market regulator. It provides that the Future Fund Board is prohibited from triggering the takeover provisions under section 606 of the Corporations Act.

Section 606 of the Corporations Act essentially prohibits acquisitions of relevant interests in the voting shares of a listed company, or unlisted company with more than 50 share holders, if a person's voting power increases from a figure at or below 20 per cent to a figure above 20 per cent (or from a figure above 20 per cent but below 90 per cent to a higher figure) – unless the shares are acquired in one of the circumstances set out at section 611 of that Act.

It is the Government's intention that the takeover threshold be adhered to quite strictly in relation to listed companies and unlisted companies with more than 50 shareholders. Therefore, **subsection 44(1)** provides that the exceptions provided under section 611 of the Corporations Act (that is, exceptions to the prohibition in section 606) do not apply in relation to acquisitions by the Future Fund Board.

Subsection 44(2) provides that if for some reason the Future Fund Board has not complied with section 606 of the Corporations Act (as it is applied to the Future Fund Board under section 39 of the *Future Fund Act 2006*) the relevant transactions will still be valid. The aim of this provision is to ensure third parties are not adversely affected by any non-compliance of the Future Fund Board.

A note at the end of the section assists the reader by referring to section 39 of the Future Fund Act, which sets out the application of the Corporations Act to the Future Fund Board.

Section 45 – Borrowing

Section 45 prohibits the Future Fund Board from borrowing money, except for short term borrowing associated with the settlement of transactions, or in other circumstances prescribed in the rules.

The overall aim of this section is to ensure that the Future Fund Board is able to operate efficiently without exposing the budget to undue risk.

Subsection 45(3) provides that rules may be made to specify circumstances in which it is considered appropriate for the Future Fund Board to be able to borrow. The rules may also be used to clarify any uncertainty on whether a particular activity constitutes borrowing. While it is not anticipated that the Future Fund Board will have a need to borrow, this provision allows for unforeseen events or changes in the investment environment without the need to amend the primary legislation. The rules will be disallowable by either House of the Parliament.

Section 46 – Medical Research Future Fund investment policies

Section 46 provides that the Future Fund Board is required to formulate, publish and comply with a number of policies on its investment activities.

The aim of this provision is to ensure rigour and transparency around how the Future Fund Board performs its investment function in relation to the Medical Research Future Fund, including risk management, performance assessment and benchmarks.

Subsection 46(1) and 46(7) requires the Future Fund Board to formulate and comply with policies and any additional matters specified in the rules.

A note at the end of **subsection 46(1)** reminds the reader that, under subsection 33(3) of the *Acts Interpretation Act 1901*, the Future Fund Board is able to repeal, rescind, revoke, amend, or vary any such policies.

Subsection 46(2) provides that the policies that the Future Fund Board develops must be consistent with the Investment Mandate.

Subsection 46(3) and 46(4) provides that the Future Fund Board must publish such policies on the internet.

Subsections 46(5) and 46(6) provide that the Future Fund Board must conduct reviews of these policies periodically, and when the responsible Ministers change the Investment Mandate. It is not expected that the results of the reviews would be published. However, if a review resulted in any changes to policies, it is intended that the updated policies would be published on the internet.

Subsection 46(8) provides that if the Future Fund Board enters into a transaction which is not consistent with a policy that it has published under this section, the transaction will still be valid. This will ensure that third parties are not affected by any inconsistency with the Future Fund Board's policies. However, **subsection 46(7)** provides that the Future Fund Board is required to take all reasonable steps to comply with the policies it develops under **subsection 46(1)**.

Subsection 46(9) makes it clear that the policies of the Future Fund Board are not legislative instruments, because they are administrative in character. They do not determine or alter the content of the law. Rather they are administrative policies that the Future Fund Board are required to formulate and comply with, to ensure rigour and transparency around how the Board performs its investment function.

Section 47 – Derivatives

Derivatives are widely used by financial market participants as a tool for risk management. As the sophistication, size and mobility of capital markets around the world increases, investment managers are looking for ways to maximise the returns on investments while minimising the volatility of results. The types and volumes of derivatives being traded has grown exponentially as the underlying markets have created demand for these types of instruments.

Section 47 provides for the Future Fund Board to make use of derivatives for certain purposes. This includes as a risk management tool and to achieve indirect exposure to assets that it could not otherwise achieve. The Future Fund Board may also use derivatives to reduce the transaction cost of achieving required exposures.

Section 47 makes it clear that the Future Fund Board of Guardians cannot acquire or use derivatives for the purposes of speculation or leverage.

Subsection 47(2) provides that the acquisition of derivatives under this section cannot be inconsistent with the requirement under **section 46** for the Future Fund Board to formulate a policy on its investment strategy and take all reasonable steps to comply with that policy.

Subsections 47(3) and 47(4) provide that derivatives must be held in the name of the Future Fund Board and are taken to be an investment of the Medical Research Future Fund.

Similar to other investments, derivatives may be realised by the Future Fund Board under **subsection 38(3)**.

Section 48 – Additional financial assets

Section 48 provides that if the Future Fund Board becomes a holder of another financial asset, for example through a capital distribution, that asset becomes an investment of the Medical Research Future Fund and is therefore subject to all the restrictions and requirements for investments of the Medical Research Future Fund.

Section 49 – Securities lending arrangements

Section 49 provides that the Future Fund Board is able to enter into securities lending arrangements. Lending of securities is commonplace among institutional investors. It may also take collateral as part of a securities lending arrangement. Any collateral it takes is either credited to the MRFF Special Account or becomes an investment of the Medical Research Future Fund.

Section 50 – Investment managers

Subsection 50(1) provides that the Future Fund Board is able to hire one or more investment managers. An investment manager is defined broadly to include custodians, transition managers and other investment managers. However the Agency is excluded from this definition as it is generally expected that investment activities, such as acquiring derivatives or investing money, will be outsourced.

Unless approved by the responsible Ministers, the Future Fund Board must use investment managers to invest money in financial assets, acquire derivatives, and enter into securities lending arrangements or to realise financial assets.

Subsection 50(2) provides that the responsible Ministers may provide approval in writing for certain methods of investment, other than through investment managers, should it be prudent and cost effective to do so.

Subsections 50(3) and 50(4) provide that the Future Fund Board is required to ensure that investment managers operate within this Act and must report on the state of investments of the Medical Research Future Fund to the Future Fund Board and the Agency. It would be expected that such obligations are set out in the contractual arrangements between the Future Fund Board and the investment manager.

Section 51 – Refund of franking credits

Under subsection 84B(1) of the Future Fund Act, the Future Fund Board is deemed to be an exempt institution that is eligible for a refund of franking credits under the ITAA. As the Future Fund Board is exempt from income tax, it may have an investment bias towards assets whose return had not previously been subject to income tax (such as debt instruments or unfranked dividends). Refunding franking credits removes any potential bias against franked dividends.

Section 51 deals with the refund of franking credits and provides that if the Future Fund Board receives a refund of a tax offset under the ITAA and the tax offset is attributable to the investment of the Medical Research Future Fund, any refund received is credited to the MRFF Special Account.

Section 52 – Realisation of non-financial assets

Section 52 requires the Future Fund Board to realise an asset that ceases to be a financial asset or any asset acquired by the Board (as an investment of the Medical Research Future Fund) that is not a financial asset. This could include circumstances where the Future Fund Board holds an asset which was mistakenly acquired by the Board, or given to the Board, or which ceases to be a financial asset due to a revision of the *Australian Bureau of Statistics Government Finance Statistics Manual*, for example.

The section requires that a non-financial asset be treated as a financial asset up to the time it is realised. **Section 52(1)** ensures that the asset is considered an investment of Medical Research Future Fund and that relevant provisions relating to investments of the Medical Research Future Fund apply to that asset for the time it is held by the Future Fund Board.

Section 53 – Additional function of the Future Fund Board

Section 53 provides that the functions of the Future Fund Board include the function of investing amounts in accordance with the Act.

Part 5 - Reporting obligations etc.

Section 54 – Simplified outline of this Part

Section 54 is an information provision which provides an overview of Part 5 to assist with readability.

Section 55 – Finance Minister may require Future Fund Board to prepare reports or give information

Section 55 provides that the Finance Minister may require, in writing, that the Future Fund Board prepare a report or a document on one or more specified matters relating to the performance of the Future Fund Board's functions under Part 3. This report or information must be provided within the timeframe outlined in the Finance Minister's request.

The Finance Minister may choose to publish any report or document provided.

Section 56 – Keeping the responsible Ministers informed etc.

Section 56 requires the Future Fund Board to notify the responsible Ministers of any information that the responsible Ministers should know, including by providing any written information to the Finance Minister. This could include significant investment results, concerns regarding fraud and any non-compliance with the Board's policy on conflicts of interest.

Section 57 – Finance Minister may give reports to other Ministers etc.

Section 57 allows the Finance Minister to give reports, documents and other information to another Minister. This includes reports and documents under **sections 55 and 56** and any other information obtained by the Finance Minister under the Act.

Section 58 – Health Minister must publish information

Section 58 requires the Health Minister to publish information on grants funded from the MRFF Health Special Account on the internet. It is anticipated that, where appropriate, this reporting will make use of existing mechanisms for providing public information on grants provided by the Commonwealth (for example, those previously implemented to comply with reporting requirements under the *Commonwealth Grant Rules and Guidelines*).

Part 6 – Miscellaneous

Section 59 – Simplified outline of this Part

Section 59 is an information provision which provides an overview of Part 7 to assist with readability.

Section 60 – Delegation by the Finance Minister

Under **subsection 60(1)**, the Finance Minister may, in writing, delegate his or her powers under **sections 15, 20, 25, or 29** to the Secretary of the Finance Department or to an SES employee (or acting SES employee) in that Department.

The Finance Minister's powers under **sections 15, 20, 25, or 29** relate to the making of crediting determinations to the Medical Research Future Fund and authorising payments from the Medical Research Future Fund. Delegation of these functions to the Secretary of, or SES official in, the Finance Department is consistent with the efficient administration of these matters.

Subsection 60(2) allows the Finance Minister to delegate, in writing, his or her powers under **Section 32** to the Secretary of the Finance Department; or to an SES employee (or acting SES employee) in that Department; or to the Chair of the Future Fund Board of Guardians; or an SES employee (or an acting SES employee) of the Future Fund Management Agency. **Section 32** relates to the transfer of funds from the MRFF Special Account to the Future Fund Special Account for the purpose of apportioning management costs incurred by one fund but paid from the special account related to the other.

A note in this section assists the reader by referring to the relevant section of the *Acts Interpretation Act 1901* in relation to the expressions 'SES employee' and 'acting SES employee'.

It is envisaged that the delegate will be accountable to the Finance Minister for his or her actions under any delegation. **Subsection 60(3)** reinforces this intention by requiring the delegate to comply with any direction of the Minister in exercising powers under a delegation.

Section 61 – Delegation by the Treasurer

Under **section 61** the Treasurer may, in writing, delegate his or her powers under **section 15** or **subsection 21(1)** to the Secretary of the Treasury Department or to an SES employee (or acting SES employee) in that Department.

A note in this section assists the reader by referring to the relevant section of the *Acts Interpretation Act 1901* in relation to the expressions 'SES employee' and 'acting SES employee'.

The Treasurer's powers under **section 15** and **subsection 21(1)** relate to the making of crediting determinations to the Medical Research Future Fund and ensuring payments are made from the COAG Reform Fund. Delegation of these functions to the Secretary of, or SES official in, the Treasury Department is consistent with the efficient administration of these matters.

Section 62 – Review of operation of Act

Section 62 allows for the responsible Ministers to require that a review of the Act be undertaken by 30 June 2023 or another date the responsible Ministers deem appropriate. This review mechanism is intended to provide the opportunity to consider whether the Act is providing the outcomes envisaged.

Section 63 – Rules

Section 63 provides that the Finance Minister, by legislative instrument, may make rules covering matters required to be prescribed in this Act, or matters that it would be convenient to prescribe for the purposes of this Act.