

2013-2014-2015

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Medical Research Future Fund Bill 2015**

**No.     , 2015**

*(Finance)*

**A Bill for an Act to establish the Medical Research  
Future Fund, and for related purposes**



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# **A Bill for an Act to establish the Medical Research Future Fund, and for related purposes**

## **Preamble**

The Parliament of Australia recognises that the health and wellbeing of all Australians is essential to the future of Australia. Discoveries in medical research and important medical innovations in the future will contribute to improving the health and wellbeing of all Australians.

In order for medical research and medical innovation to support a healthy and productive nation, long-term and large-scale funding is required. The Parliament believes that the establishment of a perpetual fund capable of generating income over the long term is the most appropriate mechanism for ensuring that this funding is available on an ongoing basis. The Commonwealth has a role in

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meeting this funding need as it is able to marshal and deploy resources not available through other means.

Funding a system for medical research and medical innovation requires a national approach. The establishment of the Medical Research Future Fund and its administration will ensure that a coherent and consistent approach is adopted in the funding of medical research and medical innovation to ensure that such research and innovation benefits all Australians.

The Parliament of Australia enacts:

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Medical Research Future Fund Act 2015*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 63	The later of the following days: (a) the day after this Act receives the Royal Assent;	



<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	(b) the day after the <i>Medical Research Future Fund (Consequential Amendments) Act 2015</i> receives the Royal Assent.	

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

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

### 3 Object

The object of this Act is to improve the health and wellbeing of Australians by establishing the Medical Research Future Fund to provide grants of financial assistance to support medical research and medical innovation.

### 4 Simplified outline of this Act

This Act establishes the Medical Research Future Fund to provide grants of financial assistance to support medical research and medical innovation.

The Medical Research Future Fund consists of the Medical Research Future Fund Special Account and the investments of the Medical Research Future Fund. Initially, the Fund's investments are a portion of the investments of the Health and Hospitals Fund which was established under the *Nation-building Funds Act 2008*. Additional amounts may also be credited to the Medical Research Future Fund Special Account.

The Medical Research Future Fund Special Account can be debited for 3 main purposes:

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- (a) channelling grants to the COAG Reform Fund to make grants of financial assistance to States and Territories; and
- (b) channelling grants to the MRFF Health Special Account to make grants of financial assistance to certain bodies; and
- (c) making grants of financial assistance directly to corporate Commonwealth entities.

There is a limit on the amount that can be debited from the Medical Research Future Fund Special Account each financial year. The limit, which is called the maximum annual distribution, is determined by the Future Fund Board for each financial year.

The Medical Research Future Fund is invested by the Future Fund Board in accordance with an Investment Mandate given by the responsible Ministers.

## 5 Definitions

In this Act:

**acquire** includes acquire by way of issue.

**Agency** means the Future Fund Management Agency.

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

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

**balance of the Medical Research Future Fund** means the sum of:

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

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

**business entity** means:

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

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

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

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

**Finance Department** means the Department administered by the Finance Minister.

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

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

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

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

**Health and Hospitals Fund** means the Health and Hospitals Fund that was established by section 214 of the *Nation-building Funds Act 2008* before that section was repealed.

**Health and Hospitals Fund Special Account** means the Health and Hospitals Fund Special Account that was established by section 215 of the *Nation-building Funds Act 2008* before that section was repealed.

**Health Department** means the Department administered by the Health Minister.

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**Health Minister** means the Minister administering the *National Health Act 1953*.

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

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

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

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

**maximum annual distribution** for a financial year means the maximum amount that may be debited from the Medical Research Future Fund Special Account during the financial year.

**medical innovation** means the application and commercialisation of medical research, and the translation of medical research into new or improved medical treatments, for the purpose of improving the health and wellbeing of individuals.

**medical research** includes research into health.

**Medical Research Future Fund** means the Medical Research Future Fund established by section 11.

**Medical Research Future Fund investment function** of the Future Fund Board means:

- (a) a function or power conferred on the Future Fund Board by section 37, 38, 45, 47, 49 or 50; or
- (b) a right or power conferred on the Future Fund Board in its capacity as the holder of an investment of the Medical Research Future Fund.

***Medical Research Future Fund Investment Mandate*** has the meaning given by subsection 39(3).

***Medical Research Future Fund Special Account*** means the Medical Research Future Fund Special Account established by section 14.

***medical research institute*** means an institute (however described) that:

- (a) has a primary purpose of conducting medical research; and
- (b) is an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

***MRFF Health Special Account*** means the MRFF Health Special Account established by section 23.

***NHMRC*** means the National Health and Medical Research Council established by section 5B of the *National Health and Medical Research Council Act 1992*.

***person*** includes a partnership.

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

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

***responsible Ministers*** means:

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

***rules*** means rules made under section 63.

***Treasury Department*** means the Department administered by the Treasurer.

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

**6 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

**7 Extension to external Territories**

This Act extends to every external Territory.

**8 Extra-territorial application**

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

**9 Alternative constitutional basis**

- (1) Without limiting its effect apart from this section, this Act also has effect with respect to the making of grants provided by this section.

*Grants under section 96 or 122 of the Constitution*

- (2) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants of financial assistance to a State or Territory.

*Medical and dental services*

- (3) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants relating to the provision of medical and dental services.

*Pharmaceutical, sickness and hospital benefits*

- (4) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants relating to the provision of pharmaceutical, sickness and hospital benefits.

*Benefits to students*

- (5) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants for the purposes of supporting medical research and medical innovation through the provision of benefits to students.

*Communication*

- (6) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants for the purposes of supporting medical research and medical innovation through postal, telegraphic, telephonic or other like services.

*Territories*

- (7) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants for the purposes of supporting medical research and medical innovation in or with respect to a Territory.

*Trade and commerce*

- (8) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants for the purposes of supporting medical research and medical innovation with respect to trade or commerce:
- (a) between Australia and other countries; or
  - (b) among the States; or
  - (c) between Territories or between a Territory and a State.

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*Corporations*

- (9) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants to a corporation to which paragraph 51(xx) of the Constitution applies for the purposes of carrying out the corporation's activities.

*Race*

- (10) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants for the purposes of supporting medical research and medical innovation with respect to the people of any race for whom it is deemed necessary to make special laws.

*Quarantine*

- (11) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants for the purposes of supporting medical research and medical innovation with respect to quarantine.

*External affairs*

- (12) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants with respect to:
- (a) Australia's rights and obligations under an agreement with one or more countries; or
  - (b) matters that are of international concern.

*Patents of invention*

- (13) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants for the purposes of supporting medical research and medical innovation with respect to the development of patents of invention.



*Incidental to powers of the Parliament*

- (14) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants for purposes relating to matters incidental to the exercise of any of the legislative powers of the Parliament.

*Executive power*

- (15) This Act also has the effect it would have if its operation with respect to making grants were expressly confined to making grants for purposes relating to matters incidental to the exercise of any power vested in the Executive Government.

## Part 2—Medical Research Future Fund

### Division 1—Introduction

#### 10 Simplified outline of this Part

The Medical Research Future Fund consists of the Medical Research Future Fund Special Account and the investments of the Medical Research Future Fund. Initially, its investments are a portion of the investments of the Health and Hospitals Fund which was established under the *Nation-building Funds Act 2008*. Additional amounts may also be credited to the Medical Research Future Fund Special Account.

The Medical Research Future Fund Special Account can be debited for 3 main purposes:

- (a) channelling grants to the COAG Reform Fund to make grants of financial assistance to States and Territories; and
- (b) channelling grants to the MRFF Health Special Account to make grants of financial assistance to certain bodies; and
- (c) making grants of financial assistance directly to corporate Commonwealth entities.

The Medical Research Future Fund Special Account can also be debited in relation to costs and other obligations incurred by the Future Fund Board in managing the Fund.

## **Division 2—Establishment of the Medical Research Future Fund and the Medical Research Future Fund Special Account**

### **11 Establishment of the Medical Research Future Fund**

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

### **12 Determination of amount of Medical Research Future Fund**

- (1) The day after this section commences, the Finance Minister must:
  - (a) determine, by writing, an amount to be transferred from the Health and Hospitals Fund to the Medical Research Future Fund; and
  - (b) give the determination to the Future Fund Board on that day.
- (2) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

### **13 Allocation of investments to the Medical Research Future Fund from the Health and Hospitals Fund**

- (1) Before the end of the 28th day after the determination is made under subsection 12(1), the Future Fund Board must:
  - (a) determine, by writing, sufficient financial assets that were, immediately before that time, investments of the Health and Hospitals Fund that are to be allocated from that Fund to the Medical Research Future Fund, to ensure that the portion of the balance of the Medical Research Future Fund allocated from the Health and Hospitals Fund will equal the amount determined under subsection 12(1); and

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- (b) ensure that the value of the remaining financial assets of the Health and Hospitals Fund remains in the Health and Hospitals Fund Special Account.
- (2) Immediately after the determination under paragraph (1)(a) is made, the financial assets specified in the determination are taken to cease to be investments of the Health and Hospitals Fund and to become investments of the Medical Research Future Fund.
- (3) A determination made under paragraph (1)(a) is not a legislative instrument.

**14 Establishment of the Medical Research Future Fund Special Account**

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

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

## **Division 3—Credits of amounts to the Medical Research Future Fund Special Account**

### **15 Credits of amounts**

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

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

Note 2: Amounts must also be credited to the Medical Research Future Fund Special Account under sections 38, 49 and 51.

- (2) In making a determination under subsection (1), the responsible Ministers must (subject to subsection (4)) have regard to the object of this Act.
- (3) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.
- (4) To avoid doubt, the responsible Ministers are not required to determine that any amounts are to be credited to the Medical Research Future Fund Special Account under this section (even if the amounts referred to in paragraph 34(4)(a) are not preserved over the long-term).

## **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**

#### **16 Limitation on total annual debits from the Medical Research Future Fund Special Account**

- (1) The total amount debited from the Medical Research Future Fund Special Account in a financial year must not be more than the maximum annual distribution determined under section 34 for the year.
- (2) An amount must not be debited from the Medical Research Future Fund Special Account before 1 July 2015.

### **Subdivision B—Purposes**

#### **17 Purposes of the Medical Research Future Fund Special Account—main purposes**

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

- (a) to transfer amounts to the COAG Reform Fund in accordance with section 20 for the purpose of making grants of financial assistance to the States and Territories;
- (b) to transfer amounts to the MRFF Health Special Account in accordance with section 25 for the purpose of making grants to bodies referred to in section 24;
- (c) to make grants to corporate Commonwealth entities in accordance with section 29.

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

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

- (a) paying the costs of, or incidental to, the acquisition of financial assets under section 37;
- (b) paying expenses of an investment of the Medical Research Future Fund;
- (c) paying the costs of, or incidental to, the acquisition of derivatives under section 47;
- (d) paying or discharging the costs, expenses and other obligations incurred by the Future Fund Board under a contract between the Board and an investment manager engaged under subsection 50(1);
- (e) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Future Fund Board, if the bank account relates exclusively to the Medical Research Future Fund;
- (f) paying a premium in respect of a contract of insurance entered into by the Future Fund Board exclusively in connection with the Medical Research Future Fund;
- (g) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board exclusively in connection with the Medical Research Future Fund.

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

**19 Purposes of the Medical Research Future Fund Special Account—purposes not related exclusively to the Medical Research Future Fund**

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

- (a) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment,

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maintenance or operation of a bank account of the Future Fund Board, if those costs, expenses or obligations are not covered by:

- (i) paragraph 18(e); or
  - (ii) paragraph 2(1)(g) of Schedule 2 to the *Future Fund Act 2006*; or
  - (iii) paragraph 18(1)(j), 136(1)(j), 137(e) or 218(1)(f) of the *Nation-building Funds Act 2008*; or
  - (iv) paragraph 16(a) of the *DisabilityCare Australia Fund Act 2013*;
- (b) paying a premium in respect of a contract of insurance entered into by the Future Fund Board, if the premium is not covered by:
- (i) paragraph 18(f); or
  - (ii) paragraph 2(1)(h) of Schedule 2 to the *Future Fund Act 2006*; or
  - (iii) paragraph 18(1)(k), 136(1)(k), 137(f) or 218(1)(g) of the *Nation-building Funds Act 2008*; or
  - (iv) paragraph 16(b) of the *DisabilityCare Australia Fund Act 2013*;
- (c) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board, if the costs, expenses, obligations or liabilities are not covered by:
- (i) a paragraph of section 18; or
  - (ii) a paragraph of subclause 2(1) of Schedule 2 to the *Future Fund Act 2006*; or
  - (iii) a paragraph of subsection 18(1), 136(1) or 218(1) or of section 137 of the *Nation-building Funds Act 2008*; or
  - (iv) paragraph 16(c) of the *DisabilityCare Australia Fund Act 2013*;
- (d) paying remuneration and allowances of Future Fund Board members;
- (e) paying remuneration, and other employment-related costs and expenses, in respect of members of the staff of the Agency;



- (f) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth or the Future Fund Board:
  - (i) under a contract entered into under section 78 or 82 of the *Future Fund Act 2006*; or
  - (ii) in connection with the operation of the Agency; or
  - (iii) before section 214 of the *Nation-building Funds Act 2008* is repealed, in connection with the management of the Health and Hospitals Fund.

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

### **Subdivision C—Channelling State/Territory grants through COAG Reform Fund**

#### **20 Channelling State/Territory grants through the COAG Reform Fund**

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

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**21 Debits from the COAG Reform Fund**

- (1) As soon as practicable after an amount has been credited under paragraph 20(1)(b) to the COAG Reform Fund, the Treasurer must ensure that the COAG Reform Fund is debited for the purposes of making the grant.
- (2) However, if the grant cannot be made, an amount equal to the credited amount is to be:
  - (a) debited from the COAG Reform Fund; and
  - (b) credited to the Medical Research Future Fund Special Account.

**22 Terms and conditions of grant to a State or Territory**

- (1) The terms and conditions on which a grant referred to in subsection 20(2) is made to a State or Territory are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (2) The State or Territory must comply with the terms and conditions.
- (3) The agreement may be entered into by a Minister on behalf of the Commonwealth.

**Subdivision D—Channelling grants through the MRFF Health Special Account**

**23 Establishment of the MRFF Health Special Account**

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

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

## **24 Purpose of the MRFF Health Special Account**

- (1) The purpose of the MRFF Health Special Account is (subject to subsection (2)) to make grants, for the purposes of supporting medical research and medical innovation, to any one or more of the following bodies:
  - (a) a medical research institute;
  - (b) a university;
  - (c) a corporate Commonwealth entity;
  - (d) a corporation.

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

- (2) A grant referred to in subsection (1) may be made only if the grant has been specified under subsection 25(2).

## **25 Channelling grants through the MRFF Health Special Account**

- (1) The Finance Minister may, by writing, direct that, on a specified day, a specified amount is to be:
  - (a) debited from the Medical Research Future Fund Special Account; and
  - (b) credited to the MRFF Health Special Account.
- (2) The direction must be expressed to be given in order to enable the specified amount to be debited from the MRFF Health Special Account for the purpose of making a grant to a specified body of a kind referred to in section 24.
- (3) Two or more directions under subsection (1) may be set out in the same document.
- (4) A direction under subsection (1) is not a legislative instrument.
- (5) The Finance Minister must give a copy of a direction under subsection (1) to the Treasurer and the Health Minister.

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**26 Debits from the MRFF Health Special Account**

- (1) As soon as practicable after an amount has been credited to the MRFF Health Special Account under paragraph 25(1)(b) for the purposes of making a specified grant, the Health Minister must ensure that the MRFF Health Special Account is debited for the purposes of making the grant.

Note: The Health Minister must publish on the internet information about the grant to which the debit relates—see section 58.

- (2) However, if the grant cannot be made, an amount equal to the credited amount is to be:
  - (a) debited from the MRFF Health Special Account; and
  - (b) credited to the Medical Research Future Fund Special Account.

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

- (1) The terms and conditions on which a grant referred to in subsection 25(2) is made are to be set out in a written agreement between the Commonwealth and the person who is to receive the grant under the agreement.
- (2) The person must comply with the terms and conditions.
- (3) The agreement may be entered into by the Health Minister on behalf of the Commonwealth.

**28 Delegation by the Health Minister**

- (1) The Health Minister may, by writing, delegate any or all of his or her powers under section 26 or 27 to:
  - (a) the Secretary of the Health Department; or
  - (b) an SES employee, or acting SES employee, in the Health Department; or
  - (c) the CEO (within the meaning of section 4 of the *National Health and Medical Research Council Act 1992*) of the NHMRC; or
  - (d) an SES employee, or acting SES employee, of the NHMRC.

Note 1: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: This section allows the Health Minister to delegate powers to the CEO, or an SES employee or acting SES employee, of the NHMRC. This allows the Minister to benefit from the NHMRC's expertise in funding medical research and to allow the NHMRC to manage distributions from the MRFF Health Special Account (for example, for payments in relation to competitive grants or other programs administered by the NHMRC).

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

### **Subdivision E—Making payments directly to corporate Commonwealth entities**

#### **29 Making payments directly to corporate Commonwealth entities**

- (1) The Finance Minister may, by writing, direct that, on a specified day, a specified amount is to be debited from the Medical Research Future Fund Special Account to make a grant to a corporate Commonwealth entity for the purposes of supporting medical research and medical innovation.
- (2) Two or more directions under subsection (1) may be set out in the same document.
- (3) A direction under subsection (1) is not a legislative instrument.
- (4) The Finance Minister must give a copy of a direction under subsection (1) to the Treasurer and the Health Minister.

#### **30 Terms and conditions of grants to corporate Commonwealth entities**

- (1) The terms and conditions on which a grant referred to in subsection 29(1) is made to a corporate Commonwealth entity are to be set out in a written agreement between the Commonwealth and the entity.
- (2) The entity must comply with the terms and conditions.

**Part 2** Medical Research Future Fund

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

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- (3) The agreement may be entered into by a Minister on behalf of the Commonwealth.

**Subdivision F—Obligation to ensure sufficient money**

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

The Future Fund Board must take all reasonable steps to ensure that the amount of money standing to the credit of the Medical Research Future Fund Special Account is sufficient to cover the debit of amounts specified, or proposed to be specified, under this Division.

Note: This may require the Future Fund Board to realise an investment of the Medical Research Future Fund in accordance with section 38.

## **Division 5—Inter-fund transfers**

### **32 Transfers from the Medical Research Future Fund to the Future Fund**

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

**Part 3** Maximum annual distributions

**Division 1** Introduction

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**Part 3—Maximum annual distributions**

**Division 1—Introduction**

**33 Simplified outline of this Part**

There is a limit on the amount that can be debited from the Medical Research Future Fund Special Account each financial year. The limit, which is called the maximum annual distribution, is determined under this Part by the Future Fund Board for each financial year. The determination is given to the Finance Minister.



## **Division 2—Maximum annual distributions**

### **34 Maximum annual distributions**

- (1) The Future Fund Board must determine, in writing, the maximum annual distribution for each financial year.

*When maximum annual distribution determination must be given*

- (2) The Finance Minister may give the Future Fund Board a notice specifying a single day, or a day in each year, by which the Board must give the Finance Minister the determination of the maximum annual distribution for the next financial year.
- (3) The Finance Minister must give the notice to the Future Fund Board at least 90 days before the specified day.

*Matters to be taken into account*

- (4) In determining the maximum annual distribution for a financial year, the Future Fund Board must take into account the following:
  - (a) the principle that the following amounts (in nominal terms) should be preserved over the long-term:
    - (i) the amount determined under subsection 12(1);
    - (ii) the total amount that has been credited to the Medical Research Future Fund Special Account under section 15;
  - (b) the principle that the volatility of the maximum annual distributions be moderated from financial year to financial year (to the extent possible);
  - (c) the requirement to maintain the Future Fund Board's ability to comply with the Medical Research Future Fund Investment Mandate;
  - (d) any costs, expenses, obligations or liabilities likely to be incurred by the Future Fund Board in respect of the financial year for the purposes of section 18 or 19;
  - (e) any additional matters specified for the financial year under subsection (5).

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*Additional matters to be taken into account*

- (5) Subject to subsection (6), the Finance Minister may (whether in the notice given under subsection (2) or otherwise) specify, in writing, additional matters that the Future Fund Board must take into account in determining the maximum annual distribution for one or more financial years.
- (6) The additional matters must not be inconsistent with:
  - (a) the matters to be taken into account under subsection (4); or
  - (b) the Medical Research Future Fund Investment Mandate; or
  - (c) any other provision of this Act.
- (7) The Finance Minister must specify the additional matters at least 90 days before the day the Future Fund Board is required to determine the maximum annual distribution for the next financial year.

*Requirement of Future Fund Board to give determination*

- (8) The Future Fund Board must:
  - (a) give a determination under subsection (1) for a financial year to the Finance Minister by the day specified under subsection (2); and
  - (b) ensure that, in addition to specifying the amount of the maximum annual distribution for the financial year, the determination describes:
    - (i) the method used for working out that amount; and
    - (ii) the considerations taken into account in working out that amount.

*Publishing the determination*

- (9) The Finance Minister may publish a determination under subsection (1) on the internet.

*Determination and notice are not legislative instruments*

- (10) A determination under subsection (1), and a notice under subsection (2), are not legislative instruments.

## **Part 4—Investment of the Medical Research Future Fund**

### **35 Simplified outline of this Part**

The Future Fund Board is responsible for deciding how to invest the Medical Research Future Fund.

Investments of the Medical Research Future Fund consist of financial assets, and are held in the name of the Future Fund Board.

The Future Fund Board is bound by a Medical Research Future Fund Investment Mandate given to it by the responsible Ministers.

### **36 Objects of investment of the Medical Research Future Fund**

- (1) The main objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Medical Research Future Fund are to enhance the Commonwealth's ability to transfer amounts in accordance with section 17.
- (2) The ancillary objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Medical Research Future Fund are to enhance the ability of the Commonwealth and the Future Fund Board to discharge the costs, expenses, obligations and liabilities mentioned in sections 18 and 19.

### **37 Investment of the Medical Research Future Fund**

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

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- (3) Investments under subsection (1) are taken to be investments of the Medical Research Future Fund.
- (4) This section does not authorise the acquisition of a derivative.

Note: For acquisition of derivatives, see section 47.

**38 Management of investments of the Medical Research Future Fund**

- (1) Income derived from an investment of the Medical Research Future Fund is to be credited to the Medical Research Future Fund Special Account.
- (2) A return of capital, or any other financial distribution, relating to an investment of the Medical Research Future Fund is to be credited to the Medical Research Future Fund Special Account.
- (3) The Future Fund Board may realise an investment of the Medical Research Future Fund.
- (4) Upon realisation of an investment of the Medical Research Future Fund, the proceeds of the investment are to be credited to the Medical Research Future Fund Special Account.
- (5) At any time before an investment of the Medical Research Future Fund matures, the Future Fund Board may authorise the re-investment of the proceeds upon maturity in a financial asset investment with the same entity. The new investment is taken to be an investment of the Medical Research Future Fund.
- (6) Section 58 of the *Public Governance, Performance and Accountability Act 2013* (which deals with investment by the Commonwealth) does not apply to an investment of the Medical Research Future Fund.

**39 Medical Research Future Fund Investment Mandate**

- (1) The responsible Ministers may (subject to section 41) give the Future Fund Board written directions about the performance of its Medical Research Future Fund investment functions, and must give at least one such direction.

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

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) In giving a direction under subsection (1), the responsible Ministers must have regard to:
- (a) the need to maximise the return earned on the Medical Research Future Fund over the long term, consistent with international best practice for institutional investment; and
  - (b) the need to enhance the Commonwealth's ability to provide grants of financial assistance to support medical research and medical innovation; and
  - (c) such other matters as the responsible Ministers consider relevant.
- (3) Directions under subsection (1) are to be known collectively as the ***Medical Research Future Fund Investment Mandate***.
- (4) Without limiting subsection (1), a direction under that subsection may set out the policies to be pursued by the Future Fund Board in relation to:
- (a) matters of risk and return; and
  - (b) the allocation of financial assets.

A policy relating to the allocation of financial assets must not be inconsistent with a policy relating to matters of risk and return.

*Relationship between directions and other provisions of this Act*

- (5) A direction under subsection (1):
- (a) prevails over section 40 to the extent of any inconsistency; and
  - (b) must not otherwise be inconsistent with this Act.

*When direction takes effect*

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

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*Direction is a legislative instrument*

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

Note 1: Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 44 of that Act.

Note 2: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 54 of that Act.

**40 Obligation on Future Fund Board in performing investment functions**

In performing its Medical Research Future Fund investment function, the Future Fund Board must (subject to this Act and a direction under subsection 39(1)) seek to:

- (a) maximise the return earned on the Medical Research Future Fund over the long term, consistent with international best practice for institutional investment; and
- (b) enhance the Commonwealth's ability to provide grants of financial assistance to support medical research and medical innovation.

**41 Limitation on Medical Research Future Fund Investment Mandate**

- (1) The responsible Ministers must not give a direction under subsection 39(1) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring the Future Fund Board to:
  - (a) invest an amount standing to the credit of the Medical Research Future Fund Special Account in a particular financial asset; or
  - (b) acquire a particular derivative; or
  - (c) allocate financial assets to:
    - (i) a particular business entity; or
    - (ii) a particular activity; or
    - (iii) a particular business.
- (2) Paragraphs (1)(a) and (b) do not limit paragraph (1)(c).

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

- (1) Before giving the Future Fund Board a direction under subsection 39(1), the responsible Ministers must:
  - (a) send a draft of the direction to the Future Fund Board; and
  - (b) invite the Future Fund Board to make a submission to the responsible Ministers on the draft direction within a reasonable time limit specified by the responsible Ministers; and
  - (c) consider any submission that is received from the Future Fund Board within that time limit.
- (2) Any submission made by the Future Fund Board on a draft direction in accordance with paragraph (1)(b) must be tabled in each House of the Parliament with the direction.

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

**43 Compliance with Medical Research Future Fund Investment Mandate**

- (1) The Future Fund Board must take all reasonable steps to comply with the Medical Research Future Fund Investment Mandate.
- (2) If the Future Fund Board becomes aware that it has failed to comply with the Medical Research Future Fund Investment Mandate, the Board must give the responsible Ministers a written statement, as soon as practicable after becoming so aware:
  - (a) informing the responsible Ministers of the failure to comply with the Investment Mandate; and
  - (b) setting out the action that the Board proposes to take in order to comply with the Investment Mandate.
- (3) If the responsible Ministers are satisfied that the Future Fund Board has failed to comply with the Medical Research Future Fund Investment Mandate, the responsible Ministers may, by written notice given to the Board, direct the Board:

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- (a) to give the responsible Ministers, within a period specified in the notice, a written explanation for the failure to comply with the Investment Mandate; and
  - (b) to take action specified in the notice, within a period specified in the notice, in order to comply with the Investment Mandate.
- (4) The Future Fund Board must comply with a direction under subsection (3).
- (5) A failure to comply with:
- (a) the Medical Research Future Fund Investment Mandate; or
  - (b) a direction under subsection (3);
- does not affect the validity of any transaction.
- (6) A direction under subsection (3) is not a legislative instrument.

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

- (1) Subsections 606(1A) and (2A) and section 611 of the *Corporations Act 2001* do not apply to an acquisition by the Future Fund Board if the acquisition is the result of the performance by the Future Fund Board of its Medical Research Future Fund investment functions.
- (2) A failure by the Future Fund Board to comply with section 606 of the *Corporations Act 2001* (as modified by this section) does not affect the validity of any transaction.

Note: See also section 39 of the *Future Fund Act 2006* (application of the *Corporations Act 2001*).

**45 Borrowing**

- (1) The Future Fund Board must not borrow money for a purpose in connection with the Medical Research Future Fund unless the borrowing is authorised by subsection (2) or (3).
- (2) The Future Fund Board is authorised to borrow money for a purpose in connection with the Medical Research Future Fund if:
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- (a) the purpose of the borrowing is to enable the Board to cover settlement of a transaction for the acquisition of one or more financial assets; and
  - (b) at the time the relevant acquisition decision was made, it was likely that the borrowing would not be needed; and
  - (c) the period of the borrowing does not exceed 7 days; and
  - (d) if the borrowing were to take place, the total amount borrowed by the Board would not exceed 10% of the balance of the Fund.
- (3) The Future Fund Board is authorised to borrow money for a purpose in connection with the Medical Research Future Fund if the borrowing takes place in such circumstances (if any) as are specified in the rules.

#### **46 Medical Research Future Fund investment policies**

- (1) The Future Fund Board must formulate written policies to be complied with by it in relation to the following matters in connection with the Medical Research Future Fund:
- (a) the investment strategy for the Fund;
  - (b) benchmarks and standards for assessing the performance of the Fund;
  - (c) risk management for the Fund;
  - (d) a matter relating to international best practice for institutional investment;
  - (e) a matter specified in the rules.

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

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

##### *Publication of policies*

- (3) The Future Fund Board must cause copies of policies formulated under subsection (1) to be published on the internet.

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- (4) The Future Fund Board must ensure that a copy of the first set of policies formulated under subsection (1) is published on the internet as soon as practicable after the commencement of this section.

*Review of policies*

- (5) The Future Fund Board must conduct periodic reviews of policies formulated under subsection (1).
- (6) If there is a change in the Medical Research Future Fund Investment Mandate, the Future Fund Board must review any relevant policies formulated under subsection (1).

*Compliance with policies*

- (7) The Future Fund Board must take all reasonable steps to comply with policies formulated under subsection (1).
- (8) A failure to comply with a policy formulated under subsection (1) does not affect the validity of any transaction.

*Policies*

- (9) A policy formulated under subsection (1) is not a legislative instrument.

**47 Derivatives**

- (1) The Future Fund Board may acquire a derivative for the purpose of:
- (a) protecting the value of an investment of the Medical Research Future Fund (other than a derivative); or
  - (b) protecting the return on an investment of the Medical Research Future Fund (other than a derivative); or
  - (c) achieving indirect exposure to financial assets (other than derivatives) for a purpose in connection with the Medical Research Future Fund; or
  - (d) achieving transactional efficiency for a purpose in connection with the Medical Research Future Fund;

but must not acquire a derivative for the purpose of speculation or leverage.

- (2) The acquisition of a derivative under subsection (1) of this section must be consistent with the investment strategy embodied in a policy formulated by the Future Fund Board under subsection 46(1).
- (3) A derivative acquired under subsection (1) of this section is to be held in the name of the Future Fund Board.
- (4) A derivative acquired under subsection (1) is taken to be an investment of the Medical Research Future Fund.

#### **48 Additional financial assets**

An asset is taken to be an investment of the Medical Research Future Fund if the Future Fund Board becomes the holder of the financial asset as a result of:

- (a) the Board's holding of an investment of the Fund; or
- (b) the exercise of any rights or powers conferred on the Board in its capacity as the holder of an investment of the Fund.

#### **49 Securities lending arrangements**

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

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**50 Investment managers**

- (1) The Future Fund Board may engage one or more investment managers for purposes in connection with the Medical Research Future Fund.
- (2) The Future Fund Board must not:
  - (a) invest amounts under subsection 37(1); or
  - (b) acquire derivatives under subsection 47(1); or
  - (c) enter into a securities lending arrangement under subsection 49(1); or
  - (d) realise financial assets that are investments of the Medical Research Future Fund;unless the Board does so:
  - (e) through an investment manager engaged by the Board under subsection (1); or
  - (f) in a manner approved, in writing, by the responsible Ministers.
- (3) The Future Fund Board must ensure that any investment manager engaged by the Board under subsection (1) operates within this Act.
- (4) The Future Fund Board must ensure that any investment manager engaged by the Board under subsection (1) reports to the Board and the Agency on the state of the investments of the Medical Research Future Fund at such times and in such manner as the Board determines.

**51 Refund of franking credits**

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

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

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

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

### **52 Realisation of non-financial assets**

- (1) This section applies if the Future Fund Board becomes aware of the fact that:
  - (a) an asset held by the Board as an investment of the Medical Research Future Fund has ceased to be a financial asset; or
  - (b) an asset acquired by the Board, purportedly as an investment of the Medical Research Future Fund, is not a financial asset.
- (2) The Future Fund Board must realise the asset as soon as practicable after the Board becomes aware of the fact.
- (3) This Act (other than this section) applies in relation to the asset (including in relation to the realisation of the asset) as if the asset had been a financial asset, and an investment of the Medical Research Future Fund, from the time of its acquisition by the Future Fund Board until the realisation.

### **53 Additional function of the Future Fund Board**

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

## Part 5—Reporting obligations etc.

### 54 Simplified outline of this Part

The Finance Minister may provide reports, documents and other information to Ministers.

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

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

#### *Reports and information*

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

#### *Compliance*

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

#### *Publication of reports and documents*

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

*Reports and documents*

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

**56 Keeping the responsible Ministers informed etc.**

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

**57 Finance Minister may give reports to other Ministers etc.**

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

- (a) a report or document under subsection 55(1) or 56(2);
- (b) any other information or document obtained by the Finance Minister under this Act.

**58 Health Minister must publish information**

As soon as practicable after an amount has been debited from the MRFF Health Special Account under subsection 26(1), the Health Minister must publish on the internet information about the grant to which the debit relates.

## Part 6—Miscellaneous

### 59 Simplified outline of this Part

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

### 60 Delegation by the Finance Minister

- (1) The Finance Minister may, by writing, delegate any or all of his or her powers under section 15, 20, 25 or 29 to:
  - (a) the Secretary of the Finance Department; or
  - (b) an SES employee, or acting SES employee, in the Finance Department.

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

- (2) The Finance Minister may, by writing, delegate any or all of his or her powers under section 32 to:
  - (a) the Secretary of the Finance Department; or
  - (b) an SES employee, or acting SES employee, in the Finance Department; or
  - (c) the Chair (within the meaning of section 5 of the *Future Fund Act 2006*); or
  - (d) an SES employee, or acting SES employee, in the Agency.

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

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

### 61 Delegation by the Treasurer

- (1) The Treasurer may, by writing, delegate any or all of his or her functions under section 15 or subsection 21(1) to:
  - (a) the Secretary of the Treasury Department; or



- (b) an SES employee, or acting SES employee, in the Treasury Department.

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

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

## **62 Review of operation of Act**

The responsible Ministers must cause a review of the operation of this Act to be undertaken before:

- (a) unless paragraph (b) applies—30 June 2023; or
- (b) if the responsible Ministers consider that another date is appropriate—that date.

## **63 Rules**

The Finance Minister may, by legislative instrument, make rules prescribing matters:

- (a) required or permitted by this Act to be prescribed by the rules; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.