



Nation-building Funds Act 2008

No. 154, 2008

**An Act about the Building Australia Fund, the
Education Investment Fund and the Health and
Hospitals Fund, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Nation-building Funds Act 2008

No. 154, 2008

**An Act about the Building Australia Fund, the
Education Investment Fund and the Health and
Hospitals Fund, and for other purposes**

[Assented to 18 December 2008]

The Parliament of Australia enacts:

Nation-building Funds Act 2008 No. 154, 2008 1

Section 1

Chapter 1—Preliminary

1 Short title

This Act may be cited as the *Nation-building Funds Act 2008*.

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
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	18 December 2008
2. Sections 3 to 278	1 January 2009. However, if the <i>Nation-building Funds (Consequential Amendments) Act 2008</i> does not receive the Royal Assent before 1 January 2009, the provision(s) do not commence at all.	1 January 2009

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

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

3 Simplified outline

The following is a simplified outline of this Act:

- | |
|--|
| <ul style="list-style-type: none">• Chapter 2 sets up the Building Australia Fund, which will enhance the Commonwealth's ability:<ul style="list-style-type: none">(a) to make payments in relation to the creation or development of transport infrastructure; and |
| <ul style="list-style-type: none"><ul style="list-style-type: none">(b) to make payments in relation to the creation or development of communications infrastructure; and |
| <ul style="list-style-type: none"><ul style="list-style-type: none">(c) to make payments in relation to eligible national broadband network matters; and |
| <ul style="list-style-type: none"><ul style="list-style-type: none">(d) to make payments in relation to the creation or development of energy infrastructure; and |
| <ul style="list-style-type: none"><ul style="list-style-type: none">(e) to make payments in relation to the creation or development of water infrastructure. |
| <ul style="list-style-type: none">• Chapter 3 sets up the Education Investment Fund, which will enhance the Commonwealth's ability:<ul style="list-style-type: none">(a) to make payments in relation to the creation or development of higher education infrastructure; and |
| <ul style="list-style-type: none"><ul style="list-style-type: none">(b) to make payments in relation to the creation or development of research infrastructure; and |
| <ul style="list-style-type: none"><ul style="list-style-type: none">(c) to make payments in relation to the creation or development of vocational education and training infrastructure; and |

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- (d) to make payments in relation to the creation or development of eligible education infrastructure; and
 - (e) to make transitional HEEF payments.
- Chapter 4 sets up the Health and Hospitals Fund, which will enhance the Commonwealth's ability to make payments in relation to the creation or development of health infrastructure.

4 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 means:

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

BAF Communications Portfolio Special Account means the BAF Communications Portfolio Special Account established by section 68.

BAF Energy Portfolio Special Account means the BAF Energy Portfolio Special Account established by section 75.

BAF evaluation criteria means evaluation criteria under section 120.

BAF Infrastructure Portfolio Special Account means the BAF Infrastructure Portfolio Special Account established by section 61.

BAF Water Portfolio Special Account means the BAF Water Portfolio Special Account established by section 82.

balance of the Building Australia Fund means the sum of:

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

balance of the Education Investment Fund means the sum of:

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

balance of the Health and Hospitals Fund means the sum of:

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

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

Building Australia Fund means the Building Australia Fund established by section 12.

Building Australia Fund investment function of the Future Fund Board means:

- (a) a function or power conferred on the Future Fund Board by section 32, 34, 40, 42, 44 or 45; or
- (b) a right or power conferred on the Future Fund Board in its capacity as the holder of an investment of the Building Australia Fund.

Building Australia Fund Investment Mandate has the meaning given by subsection 35(4).

Building Australia Fund Special Account means the Building Australia Fund Special Account established by section 13.

business entity means:

- (a) a company; or
- (b) a partnership; or

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

carriage service has the same meaning as in the *Telecommunications Act 1997*.

Chair means the Chair of the Future Fund Board.

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

Communications Department means the Department administered by the Communications Minister.

Communications Minister means the Minister who administers the *Telecommunications Act 1997*.

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

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

designated education infrastructure-related matter has the meaning given by section 143.

drawing right means a drawing right issued under section 27 of the *Financial Management and Accountability Act 1997*.

Education Department means the Department administered by the Education Minister.

Education Investment Fund means the Education Investment Fund established by section 131.

Education Investment Fund investment function of the Future Fund Board means:

- (a) a function or power conferred on the Future Fund Board by section 151, 153, 159, 161, 163 or 164; or
- (b) a right or power conferred on the Future Fund Board in its capacity as the holder of an investment of the Education Investment Fund.

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Education Investment Fund Investment Mandate has the meaning given by subsection 154(4).

Education Investment Fund Special Account means the Education Investment Fund Special Account established by section 132.

Education Minister means the Minister who administers Part 2-2 of the *Higher Education Support Act 2003*.

Note: Part 2-2 of the *Higher Education Support Act 2003* deals with the Commonwealth Grant Scheme.

EIF Advisory Board means the Education Investment Fund Advisory Board established under section 170.

EIF designated Ministers means:

- (a) the Education Minister; and
- (b) the Research Minister.

EIF Education Portfolio Special Account means the EIF Education Portfolio Special Account established by section 181.

EIF evaluation criteria means evaluation criteria under section 172.

EIF Research Portfolio Special Account means the EIF Research Portfolio Special Account established by section 188.

eligible national broadband network matter has the meaning given by section 23.

Energy Department means the Department administered by the Energy Minister.

Energy Minister means the Minister who administers the *Australian Energy Market Act 2004*.

Finance Department means the Department administered by the Finance Minister.

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

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financial asset has the meaning given by section 5.

Future Fund Board means the Future Fund Board of Guardians.

Future Fund Board member means a member of the Future Fund Board, and includes the Chair.

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

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

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

GFS system has the same meaning as in GFS Australia.

Health and Hospitals Fund means the Health and Hospitals Fund established by section 214.

Health and Hospitals Fund investment function of the Future Fund Board means:

- (a) a function or power conferred on the Future Fund Board by section 227, 228, 234, 236, 238 or 239; or
- (b) a right or power conferred on the Future Fund Board in its capacity as the holder of an investment of the Health and Hospitals Fund.

Health and Hospitals Fund Investment Mandate has the meaning given by subsection 229(4).

Health and Hospitals Fund Special Account means the Health and Hospitals Fund Special Account established by section 215.

Health Department means the Department administered by the Health Minister.

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Health Minister means the Minister responsible for administering the *Health Insurance Act 1973*.

HHF Advisory Board means the Health and Hospitals Fund Advisory Board established under section 245.

HHF evaluation criteria means evaluation criteria under section 247.

HHF Health Portfolio Special Account means the HHF Health Portfolio Special Account established by section 255.

higher education institution means an institution specified in a legislative instrument made by the EIF designated Ministers for the purposes of this definition.

Infrastructure Department means the Department administered by the Infrastructure Minister.

Infrastructure Minister means the Minister who administers the *Infrastructure Australia Act 2008*.

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

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

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

Section 4

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

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

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

modifications includes additions, omissions and substitutions.

national broadband network means a national telecommunications network for the high-speed carriage of communications. For this purpose, ***carriage, communications*** and ***telecommunications network*** have the same meanings as in the *Telecommunications Act 1997*.

Note: See also subsection 7(2).

payment in relation to the creation or development of communications infrastructure has a meaning affected by section 22.

payment in relation to the creation or development of eligible education infrastructure has the meaning given by section 142.

payment in relation to the creation or development of energy infrastructure has a meaning affected by section 24.

payment in relation to the creation or development of health infrastructure has a meaning affected by section 220.

payment in relation to the creation or development of higher education infrastructure has the meaning given by section 139.

payment in relation to the creation or development of research infrastructure has the meaning given by section 140.

payment in relation to the creation or development of transport infrastructure has a meaning affected by section 21.

Section 4

payment in relation to the creation or development of vocational education and training infrastructure has the meaning given by section 141.

payment in relation to the creation or development of water infrastructure has a meaning affected by section 25.

person (except in Division 2 of Part 3.4 and Division 2 of Part 4.4) includes a partnership.

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

realise includes redeem or dispose of.

Research Department means the Department administered by the Research Minister.

research institution means an institution specified in a legislative instrument made by the EIF designated Ministers for the purposes of this definition.

Research Minister means the Minister who administers the *Australian Research Council Act 2001*.

responsible Ministers means:

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

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

transitional HEEF payment has the meaning given by section 144.

Treasury Department means the Department administered by the Treasurer.

value of an investment of:

- (a) the Building Australia Fund; or
- (b) the Education Investment Fund; or
- (c) the Health and Hospitals Fund;

Section 5

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

vocational education and training provider means a person or body specified in a legislative instrument made by the EIF designated Ministers for the purposes of this definition.

Water Department means the Department administered by the Water Minister.

Water Minister means the Minister who administers the *Water Act 2007*.

5 Financial assets

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

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

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

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

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

- (1) This Act extends to every external Territory.
- (2) However, for the purposes of this Act, it is immaterial whether a national broadband network extends to an external Territory.

8 Extra-territorial application

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

Section 9

Chapter 2—Building Australia Fund

Part 2.1—Introduction

9 Object

The object of this Chapter is to enhance the Commonwealth's ability:

- (a) to make payments in relation to the creation or development of transport infrastructure; and
- (b) to make payments in relation to the creation or development of communications infrastructure; and
- (c) to make payments in relation to eligible national broadband network matters; and
- (d) to make payments in relation to the creation or development of energy infrastructure; and
- (e) to make payments in relation to the creation or development of water infrastructure.

10 Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter sets up the Building Australia Fund, which consists of:
 - (a) the Building Australia Fund Special Account; and
 - (b) the investments of the Building Australia Fund.
- The main purposes of the Building Australia Fund Special Account are:
 - (a) to make payments in relation to the creation or development of transport infrastructure; and

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- (b) to make payments in relation to the creation or development of communications infrastructure; and
 - (c) to make payments in relation to eligible national broadband network matters; and
 - (d) to make payments in relation to the creation or development of energy infrastructure; and
 - (e) to make payments in relation to the creation or development of water infrastructure.
- The Finance Minister is responsible for authorising payments on the recommendation of the Infrastructure Minister, the Communications Minister, the Energy Minister or the Water Minister.
 - If a payment is made by way of a grant of financial assistance, the terms and conditions on which the financial assistance is granted are to be set out in a written agreement between the Commonwealth and the recipient.
 - The Future Fund Board is responsible for deciding how to invest the Building Australia Fund.
 - Investments of the Building Australia Fund will consist of financial assets.
 - The Future Fund Board is bound by a Building Australia Fund Investment Mandate given to it by the responsible Ministers.

Note: The *Future Fund Act 2006* provides that the Future Fund Management Agency is responsible for assisting and advising the Future Fund Board.

Part 2.2—Building Australia Fund

Division 1—Introduction

11 Simplified outline

The following is a simplified outline of this Part:

- This Part sets up the Building Australia Fund.
- The Building Australia Fund consists of:
 - (a) the Building Australia Fund Special Account; and
 - (b) the investments of the Building Australia Fund.
- The balance of the Communications Fund is to be transferred to the Building Australia Fund.
- The balance of the Telstra Sale Special Account is to be transferred to the Building Australia Fund.
- One or more initial amounts are to be credited to the Building Australia Fund Special Account by 30 June 2009. The total of the initial amounts must equal \$7.5 billion.
- The responsible Ministers may determine that additional amounts are to be credited to the Building Australia Fund Special Account.
- Amounts may be debited from the Building Australia Fund Special Account in accordance with the purposes of the Building Australia Fund Special Account.
- The main purposes of the Building Australia Fund Special Account are:

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- (a) to make payments in relation to the creation or development of transport infrastructure; and
- (b) to make payments in relation to the creation or development of communications infrastructure; and
- (c) to make payments in relation to eligible national broadband network matters; and
- (d) to make payments in relation to the creation or development of energy infrastructure; and
- (e) to make payments in relation to the creation or development of water infrastructure.

Note 1: The Communications Fund was established by repealed section 158ZG of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Note 2: The Telstra Sale Special Account was established under subsection 20(1) of the *Financial Management and Accountability Act 1997*.

Section 12

Division 2—Establishment of the Building Australia Fund etc.

12 Establishment of the Building Australia Fund

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

13 Establishment of the Building Australia Fund Special Account

- (1) The Building Australia Fund Special Account is established by this section.
- (2) The Building Australia Fund Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

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 Building Australia Fund

14 Initial credits of amounts to the Building Australia Fund Special Account

- (1) The responsible Ministers may, by writing, determine that:
 - (a) a specified amount is to be credited to the Building Australia Fund Special Account on a specified day; or
 - (b) a specified amount is to be credited to the Building Australia Fund Special Account in specified instalments on specified days.
- (2) The responsible Ministers must ensure that, by the end of 30 June 2009, the total of the amounts credited to the Building Australia Fund Special Account under subsection (1) equals \$7.5 billion.

Note 1: See also section 16 (balance of the Communications Fund to be credited to the Building Australia Fund Special Account).

Note 2: See also section 33 (Building Australia Fund to inherit investments of the Communications Fund).

Note 3: See also section 17 (balance of the Telstra Sale Special Account to be credited to the Building Australia Fund Special Account).
- (3) The responsible Ministers must not make a determination under subsection (1) after 30 June 2009.
- (4) A determination under subsection (1) is irrevocable.
- (5) 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.

15 Subsequent credits of amounts to the Building Australia Fund Special Account—determinations by the responsible Ministers

- (1) The responsible Ministers may, by writing, determine that:

Section 16

- (a) a specified amount is to be credited to the Building Australia Fund Special Account on a specified day; or
- (b) a specified amount is to be credited to the Building Australia Fund Special Account in specified instalments on specified days.

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

- (2) In making a determination under subsection (1), the responsible Ministers must have regard to the object of this Chapter.
- (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.

16 Credit of amount to the Building Australia Fund Special Account—balance of the Communications Fund Special Account

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

Note: The Communications Fund Special Account was established by repealed section 158ZH of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

17 Credit of amount to the Building Australia Fund Special Account—balance of the Telstra Sale Special Account

- (1) The responsible Ministers may, by writing, determine that an amount equal to the balance of the Telstra Sale Special Account as at a specified time is to be:
 - (a) debited from the Telstra Sale Special Account; and
 - (b) credited to the Building Australia Fund Special Account.

Note: The Telstra Sale Special Account was established under subsection 20(1) of the *Financial Management and Accountability Act 1997*.

Section 17

- (2) The responsible Ministers must make a determination under subsection (1) before the end of 30 June 2009.
- (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.

Division 4—Debits of amounts from the Building Australia Fund

18 Purposes of the Building Australia Fund Special Account— payments purposes and purposes related exclusively to the Building Australia Fund

- (1) Each of the following is a purpose of the Building Australia Fund Special Account:
 - (a) making payments in relation to the creation or development of transport infrastructure, so long as the payments are authorised under subsection 51(1);
 - (b) making payments in relation to the creation or development of communications infrastructure, so long as the payments are authorised under subsection 51(2);
 - (c) making payments in relation to eligible national broadband network matters, so long as the payments are authorised under subsection 51(3);
 - (d) making payments in relation to the creation or development of energy infrastructure, so long as the payments are authorised under subsection 51(4);
 - (e) making payments in relation to the creation or development of water infrastructure, so long as the payments are authorised under subsection 51(5);
 - (f) paying the costs of, or incidental to, the acquisition of financial assets under section 32;
 - (g) paying expenses of an investment of the Building Australia Fund;
 - (h) paying the costs of, or incidental to, the acquisition of derivatives under section 42;
 - (i) paying or discharging the costs, expenses and other obligations incurred by the Future Fund Board under a contract between the Future Fund Board and an investment manager engaged under subsection 45(1);
 - (j) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment,

Section 19

maintenance or operation of a bank account of the Future Fund Board, where the bank account relates exclusively to the Building Australia Fund;

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

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

- (2) Paragraphs (1)(b) and (c) do not limit each other.
- (3) A payment under paragraph (1)(a), (b), (c), (d) or (e) may be made:
 - (a) by way of a grant of financial assistance; or
 - (b) otherwise than by way of a grant of financial assistance.

Note 1: Section 63 deals with the channelling of payments through the BAF Infrastructure Portfolio Special Account.

Note 2: Section 70 deals with the channelling of payments through the BAF Communications Portfolio Special Account.

Note 3: Section 77 deals with the channelling of payments through the BAF Energy Portfolio Special Account.

Note 4: Section 84 deals with the channelling of payments through the BAF Water Portfolio Special Account.

Note 5: Sections 89, 94, 99 and 104 deal with the channelling of State/Territory grants payments through the COAG Reform Fund.

19 Purposes of the Building Australia Fund Special Account— transitional

Each of the following is a purpose of the Building Australia Fund Special Account:

- (a) paying the costs of, or incidental to, the acquisition of financial assets under repealed Division 3 of Part 9C of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, where the costs were incurred before the commencement of this section;

Section 20

- (b) paying expenses of an investment of the Building Australia Fund, where:
 - (i) immediately before the commencement of this section, the investment was an investment of the Communications Fund; and
 - (ii) the expense was incurred before the commencement of this section;
- (c) paying the costs of, or incidental to, the acquisition of derivatives under repealed section 158ZQ of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, where the costs were incurred before the commencement of this section;
- (d) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Commonwealth in connection with the Communications Fund, where the costs, expenses, obligations or liabilities were incurred before the commencement of this section.

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

Note 2: The Communications Fund was established by repealed section 158ZG of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**20 Purposes of the Building Australia Fund Special Account—
purposes not related exclusively to the Building Australia Fund**

Each of the following is a purpose of the Building Australia Fund Special Account:

- (a) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Future Fund Board, where those costs, expenses or obligations are not covered by:
 - (i) paragraph 18(1)(j); or
 - (ii) paragraph 136(1)(j); or
 - (iii) paragraph 137(e); or
 - (iv) paragraph 218(1)(f); or

Section 20

- (v) paragraph 2(1)(g) of Schedule 2 to the *Future Fund Act 2006*;
- (b) paying a premium in respect of a contract of insurance entered into by the Future Fund Board, where the premium is not covered by:
 - (i) paragraph 18(1)(k); or
 - (ii) paragraph 136(1)(k); or
 - (iii) paragraph 137(f); or
 - (iv) paragraph 218(1)(g); or
 - (v) paragraph 2(1)(h) of Schedule 2 to the *Future Fund Act 2006*;
- (c) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board, where the costs, expenses, obligations or liabilities are not covered by:
 - (i) a paragraph of subsection 18(1); or
 - (ii) a paragraph of subsection 136(1); or
 - (iii) a paragraph of section 137; or
 - (iv) a paragraph of subsection 218(1); or
 - (v) a paragraph of subclause 2(1) of Schedule 2 to the *Future Fund Act 2006*;
- (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 under a contract entered into under section 78 or 82 of the *Future Fund Act 2006*;
- (g) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in connection with the operation of the Agency.

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

Section 21

21 Extended meaning of *payment in relation to the creation or development of transport infrastructure*

For the purposes of this Act, each of the following payments is taken to be a ***payment in relation to the creation or development of transport infrastructure***:

- (a) a payment in relation to the acquisition of shares in a company that is, or will be, involved in the creation or development of transport infrastructure;
- (b) a payment in relation to the acquisition of debentures of a company that is, or will be, involved in the creation or development of transport infrastructure;
- (c) a payment in relation to the acquisition of units in a unit trust that is, or will be, involved in the creation or development of transport infrastructure;
- (d) a payment in relation to the acquisition of a financial asset in a business entity that is, or will be, involved in the creation or development of transport infrastructure;
- (e) a payment in relation to a matter incidental or ancillary to a matter set out in paragraph (a), (b), (c) or (d).

Note: See section 121.

22 Extended meaning of *payment in relation to the creation or development of communications infrastructure*

For the purposes of this Act, each of the following payments is taken to be a ***payment in relation to the creation or development of communications infrastructure***:

- (a) a payment in relation to the acquisition of shares in a company that is, or will be, involved in the creation or development of communications infrastructure;
- (b) a payment in relation to the acquisition of debentures of a company that is, or will be, involved in the creation or development of communications infrastructure;
- (c) a payment in relation to the acquisition of units in a unit trust that is, or will be, involved in the creation or development of communications infrastructure;

- (d) a payment in relation to the acquisition of any other financial asset in a business entity that is, or will be, involved in the creation or development of communications infrastructure;
- (e) a payment in relation to a matter incidental or ancillary to a matter set out in paragraph (a), (b), (c) or (d).

Note: See section 121.

23 Eligible national broadband network matter

For the purposes of this Act, an *eligible national broadband network matter* is any of the following matters:

- (a) the acquisition of shares in a company that is, or will be, involved in the creation or development of a national broadband network;
- (b) the acquisition of debentures of a company that is, or will be, involved in the creation or development of a national broadband network;
- (c) the acquisition of units in a unit trust that is, or will be, involved in the creation or development of a national broadband network;
- (d) the acquisition of any other financial asset in a business entity that is, or will be, involved in the creation or development of a national broadband network;
- (e) the creation or development of a national broadband network;
- (f) the supply of a broadband carriage service over a national broadband network;
- (g) the acquisition of assets for use in connection with the creation or development of a national broadband network;
- (h) a matter incidental or ancillary to a matter set out in paragraph (a), (b), (c), (d), (e), (f) or (g).

Note: See section 121.

24 Extended meaning of *payment in relation to the creation or development of energy infrastructure*

For the purposes of this Act, each of the following payments is taken to be a *payment in relation to the creation or development of energy infrastructure*:

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- (a) a payment in relation to the acquisition of shares in a company that is, or will be, involved in the creation or development of energy infrastructure;
- (b) a payment in relation to the acquisition of debentures of a company that is, or will be, involved in the creation or development of energy infrastructure;
- (c) a payment in relation to the acquisition of units in a unit trust that is, or will be, involved in the creation or development of energy infrastructure;
- (d) a payment in relation to the acquisition of a financial asset in a business entity that is, or will be, involved in the creation or development of energy infrastructure;
- (e) a payment in relation to a matter incidental or ancillary to a matter set out in paragraph (a), (b), (c) or (d).

Note: See section 121.

25 Extended meaning of *payment in relation to the creation or development of water infrastructure*

For the purposes of this Act, each of the following payments is taken to be a ***payment in relation to the creation or development of water infrastructure***:

- (a) a payment in relation to the acquisition of shares in a company that is, or will be, involved in the creation or development of water infrastructure;
- (b) a payment in relation to the acquisition of debentures of a company that is, or will be, involved in the creation or development of water infrastructure;
- (c) a payment in relation to the acquisition of units in a unit trust that is, or will be, involved in the creation or development of water infrastructure;
- (d) a payment in relation to the acquisition of a financial asset in a business entity that is, or will be, involved in the creation or development of water infrastructure;
- (e) a payment in relation to a matter incidental or ancillary to a matter set out in paragraph (a), (b), (c) or (d).

Note: See section 121.

26 Future Fund Board must ensure that there is sufficient money in the Building Australia Fund Special Account to cover authorised payments etc.

The Future Fund Board must take all reasonable steps to ensure that the amount of money standing to the credit of the Building Australia Fund Special Account is sufficient to cover:

- (a) the debit of amounts for payments authorised, or proposed to be authorised, under subsection 51(1), (2), (3), (4) or (5); and
- (b) amounts debited, or proposed to be debited, under subsection 63(1); and
- (c) amounts debited, or proposed to be debited, under subsection 70(1); and
- (d) amounts debited, or proposed to be debited, under subsection 77(1); and
- (e) amounts debited, or proposed to be debited, under subsection 84(1); and
- (f) amounts debited, or proposed to be debited, under subsection 89(1); and
- (g) amounts debited, or proposed to be debited, under subsection 94(1); and
- (h) amounts debited, or proposed to be debited, under subsection 99(1); and
- (i) amounts debited, or proposed to be debited, under subsection 104(1).

Note: This may require the Future Fund Board to realise an investment of the Building Australia Fund in accordance with section 34.

Division 5—Inter-fund transfers

27 Transfers from the Building Australia 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 a specified amount is to be:
 - (a) debited from the Building Australia Fund Special Account;
and
 - (b) credited to the Future Fund Special Account;
on a specified day.
- (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.

28 Transfers from the Building Australia Fund to the Education Investment Fund

- (1) If an amount is debited from the Education Investment Fund Special Account for a purpose mentioned in section 138, the Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Building Australia Fund Special Account;
and
 - (b) credited to the Education Investment Fund Special Account;
on a specified day.
- (2) The specified amount must not exceed the amount debited from the Education Investment Fund Special Account as mentioned in subsection (1).
- (3) A direction under subsection (1) is not a legislative instrument.

29 Transfers from the Building Australia Fund to the Health and Hospitals Fund

- (1) If an amount is debited from the Health and Hospitals Fund Special Account for a purpose mentioned in section 219, the Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Building Australia Fund Special Account;
and
 - (b) credited to the Health and Hospitals Fund Special Account;
on a specified day.
- (2) The specified amount must not exceed the amount debited from the Health and Hospitals Fund Special Account as mentioned in subsection (1).
- (3) A direction under subsection (1) is not a legislative instrument.

Section 30

Part 2.3—Investment of the Building Australia Fund

30 Simplified outline

The following is a simplified outline of this Part:

- The Future Fund Board is responsible for deciding how to invest the Building Australia Fund.
- Investments of the Building Australia Fund will consist of financial assets.
- Investments of the Building Australia Fund will be held in the name of the Future Fund Board.
- The Future Fund Board is bound by a Building Australia Fund Investment Mandate given to it by the responsible Ministers.

31 Objects of investment of the Building Australia Fund

- (1) The main object of the acquisition by the Future Fund Board of a financial asset as an investment of the Building Australia Fund is to enhance the Commonwealth's ability:
 - (a) to make payments in relation to the creation or development of transport infrastructure; and
 - (b) to make payments in relation to the creation or development of communications infrastructure; and
 - (c) to make payments in relation to eligible national broadband network matters; and
 - (d) to make payments in relation to the creation or development of energy infrastructure; and
 - (e) to make payments in relation to the creation or development of water infrastructure.

Section 32

- (2) The ancillary objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Building Australia Fund are to enhance the ability of the Commonwealth and the Future Fund Board to:
- (a) discharge costs, expenses, obligations and liabilities; and
 - (b) make payments;
- as mentioned in paragraphs 18(1)(f) to (l), 19(a) to (d) and 20(a) to (g).

32 Investment of the Building Australia Fund

- (1) The Future Fund Board may invest amounts standing to the credit of the Building Australia Fund Special Account in any financial assets.
- (2) Investments under subsection (1) are to be made in the name of the Future Fund Board.
- (3) Investments under subsection (1) are taken to be investments of the Building Australia Fund.
- (4) This section does not authorise the acquisition of a derivative.

Note: For acquisition of derivatives, see section 42.

33 Building Australia Fund to inherit investments of the Communications Fund

Scope

- (1) This section applies to a financial asset if:
 - (a) immediately before the commencement of this section, the financial asset was an investment of the Communications Fund; and
 - (b) the financial asset is held by the Commonwealth; and
 - (c) the financial asset has been continuously held by the Commonwealth since the commencement of this section.

Note: The Communications Fund was established by repealed section 158ZG of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Section 34

Investment of the Building Australia Fund

- (2) The financial asset is taken to be an investment of the Building Australia Fund.

Rights and powers

- (3) The Future Fund Board may, on behalf of the Commonwealth, exercise any rights or powers conferred on the Commonwealth in the Commonwealth's capacity as the holder of the financial asset.
- (4) Such a right or power is taken to be a Building Australia Fund investment function of the Future Fund Board.

34 Management of investments of the Building Australia Fund

- (1) Income derived from an investment of the Building Australia Fund is to be credited to the Building Australia Fund Special Account.
- (2) A return of capital, or any other financial distribution, relating to an investment of the Building Australia Fund is to be credited to the Building Australia Fund Special Account.
- (3) The Future Fund Board may realise an investment of the Building Australia Fund.
- (4) Upon realisation of an investment of the Building Australia Fund, the proceeds of the investment are to be credited to the Building Australia Fund Special Account.
- (5) At any time before an investment of the Building Australia 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 Building Australia Fund.
- (6) Section 39 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Building Australia Fund.

35 Building Australia Fund Investment Mandate

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

Note 1: *Building Australia Fund investment function* is defined in section 4.

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

- (2) Subsection (1) has effect subject to section 36.
- (3) In giving a direction under subsection (1), the responsible Ministers must have regard to:
- (a) maximising the return earned on the Building Australia Fund, consistent with international best practice for institutional investment; and
 - (b) enhancing the Commonwealth's ability:
 - (i) to make payments in relation to the creation or development of transport infrastructure; and
 - (ii) to make payments in relation to the creation or development of communications infrastructure; and
 - (iii) to make payments in relation to eligible national broadband network matters; and
 - (iv) to make payments in relation to the creation or development of energy infrastructure; and
 - (v) to make payments in relation to the creation or development of water infrastructure; and
 - (c) such other matters as the responsible Ministers consider relevant.
- (4) Directions under subsection (1) are to be known collectively as the ***Building Australia Fund Investment Mandate***.
- (5) A direction under subsection (1) 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.

Section 35

- (6) Subsection (5) does not limit subsection (1).
- (7) Subsection (5) has effect subject to section 36.
- (8) The Building Australia Fund Investment Mandate prevails over subsection (12) to the extent of any inconsistency.
- (9) The responsible Ministers must not give a direction under subsection (1) that is inconsistent with this Act (other than subsection (12)).
- (10) A direction under subsection (1) must not take effect before the 15th day after the day on which it is given.
- (11) 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.
- (12) In the performance of its Building Australia Fund investment functions, the Future Fund Board must seek to:
 - (a) maximise the return earned on the Building Australia Fund, consistent with international best practice for institutional investment; and
 - (b) enhance the Commonwealth's ability:
 - (i) to make payments in relation to the creation or development of transport infrastructure; and
 - (ii) to make payments in relation to the creation or development of communications infrastructure; and
 - (iii) to make payments in relation to eligible national broadband network matters; and
 - (iv) to make payments in relation to the creation or development of energy infrastructure; and
 - (v) to make payments in relation to the creation or development of water infrastructure.
 - Note: ***Building Australia Fund investment function*** is defined in section 4.
- (13) Subsection (12) has effect subject to:
 - (a) this Act; and

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- (b) a direction under subsection (1).

36 Limitation on Building Australia Fund Investment Mandate

- (1) The responsible Ministers must not give a direction under subsection 35(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 Building Australia 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).

37 Future Fund Board to be consulted on Building Australia Fund Investment Mandate

- (1) Before giving the Future Fund Board a direction under subsection 35(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 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) If:
- (a) the responsible Ministers give the Future Fund Board a direction under subsection 35(1); and
 - (b) the Future Fund Board made a submission to the responsible Ministers on a draft of the direction within the time limit specified by the responsible Ministers;
- the submission is to be tabled in each House of the Parliament with the direction.

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

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

38 Compliance with Building Australia Fund Investment Mandate

- (1) The Future Fund Board must take all reasonable steps to comply with the Building Australia Fund Investment Mandate.
- (2) As soon as practicable after the Future Fund Board becomes aware that it has failed to comply with the Building Australia Fund Investment Mandate, the Future Fund Board must give the responsible Ministers a written statement:
 - (a) informing the responsible Ministers of the failure to comply with the Building Australia Fund Investment Mandate; and
 - (b) setting out the action that the Future Fund Board proposes to take in order to comply with the Building Australia Fund Investment Mandate.
- (3) If the responsible Ministers are satisfied that the Future Fund Board has failed to comply with the Building Australia Fund Investment Mandate, the responsible Ministers may, by written notice given to the Future Fund Board, direct the Future Fund Board:
 - (a) to give the responsible Ministers, within a period specified in the notice, a written explanation for the failure to comply with the Building Australia Fund Investment Mandate; and
 - (b) to take action specified in the notice, within a period specified in the notice, in order to comply with the Building Australia Fund Investment Mandate.
- (4) The Future Fund Board must comply with a direction under subsection (3).
- (5) A failure to comply with:
 - (a) the Building Australia 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.

39 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 Building Australia 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*).

40 Borrowing

- (1) The Future Fund Board must not borrow money for a purpose in connection with the Building Australia 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 Building Australia Fund if:
 - (a) the purpose of the borrowing is to enable the Future Fund 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 Future Fund Board would not exceed 10% of the balance of the Building Australia Fund.
- (3) The Future Fund Board is authorised to borrow money for a purpose in connection with the Building Australia Fund if the borrowing takes place in such circumstances (if any) as are specified in the regulations.

Section 41

41 Building Australia 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 Building Australia Fund:
- (a) the investment strategy for the Building Australia Fund;
 - (b) benchmarks and standards for assessing the performance of the Building Australia Fund;
 - (c) risk management for the Building Australia Fund;
 - (d) a matter relating to international best practice for institutional investment;
 - (e) a matter specified in the regulations.

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 Building Australia Fund Investment Mandate.

Publication of policies

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

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- (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.

42 Derivatives

- (1) The Future Fund Board may acquire a derivative for the purpose of:
- (a) protecting the value of an investment of the Building Australia Fund (other than a derivative); or
 - (b) protecting the return on an investment of the Building Australia Fund (other than a derivative); or
 - (c) achieving indirect exposure to financial assets (other than derivatives) for a purpose in connection with the Building Australia Fund; or
 - (d) achieving transactional efficiency for a purpose in connection with the Building Australia Fund;
- but must not acquire a derivative for the purpose of:
- (e) speculation; or
 - (f) leverage.
- (2) The acquisition of a derivative under subsection (1) must be consistent with the investment strategy embodied in a policy formulated by the Future Fund Board under subsection 41(1).
- (3) A derivative acquired under subsection (1) 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 Building Australia Fund.

43 Additional financial assets

If, as a result of:

- (a) the Future Fund Board's holding of an investment of the Building Australia Fund; or

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- (b) the exercise of any rights or powers conferred on the Future Fund Board in its capacity as the holder of an investment of the Building Australia Fund;
- the Future Fund Board becomes the holder of a financial asset, that financial asset is taken to be an investment of the Building Australia Fund.

44 Securities lending arrangements

- (1) The Future Fund Board may enter into securities lending arrangements for a purpose in connection with the Building Australia 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 Building Australia 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 Building Australia Fund.
- (4) 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 a financial asset, that financial asset is taken to be an investment of the Building Australia Fund.

45 Investment managers

- (1) The Future Fund Board may engage one or more investment managers for purposes in connection with the Building Australia Fund.
- (2) The Future Fund Board must not:
 - (a) invest amounts under subsection 32(1); or
 - (b) acquire derivatives under subsection 42(1); or
 - (c) enter into a securities lending arrangement under subsection 44(1); or
 - (d) realise financial assets that are investments of the Building Australia Fund;unless the Future Fund Board does so:

Section 46

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

46 Custody of securities

Section 40 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Building Australia Fund.

47 Refund of franking credits

If:

- (a) the Future Fund Board receives a refund of a tax offset under the *Income Tax Assessment Act 1997*; and
- (b) the tax offset is attributable to an investment of the Building Australia Fund;

the refund is to be credited to the Building Australia Fund Special Account.

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*.

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48 Realisation of non-financial assets

- (1) If an asset held by the Future Fund Board as an investment of the Building Australia Fund ceases to be a financial asset:
 - (a) the Future Fund Board must realise the asset as soon as practicable after the Future Fund Board becomes aware of the cessation; and
 - (b) 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 remained a financial asset, and an investment of the Building Australia Fund, until the realisation.
- (2) If an asset acquired by the Future Fund Board, purportedly as an investment of the Building Australia Fund, is not a financial asset:
 - (a) the Future Fund Board must realise the asset as soon as practicable after the Future Fund Board becomes aware that the asset is not a financial asset; and
 - (b) 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 Building Australia Fund, from the time of its acquisition by the Future Fund Board until the realisation.

49 Additional function of the Future Fund Board

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

Part 2.4—Payments

Division 1—Introduction

50 Simplified outline

The following is a simplified outline of this Part:

- The Finance Minister may authorise payments in relation to the creation or development of transport infrastructure on the recommendation of the Infrastructure Minister.
- The Infrastructure Minister must obtain advice from Infrastructure Australia before making a recommendation.
- The Finance Minister may authorise:
 - (a) payments in relation to the creation or development of communications infrastructure; and
 - (b) payments in relation to eligible national broadband network matters;on the recommendation of the Communications Minister.
- The Communications Minister must obtain advice from Infrastructure Australia before making a recommendation in relation to communications infrastructure.
- The Finance Minister may authorise payments in relation to the creation or development of energy infrastructure on the recommendation of the Energy Minister.
- The Energy Minister must obtain advice from Infrastructure Australia before making a recommendation.

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- The Finance Minister may authorise payments in relation to the creation or development of water infrastructure on the recommendation of the Water Minister.
- The Water Minister must obtain advice from Infrastructure Australia before making a recommendation.
- If a payment is made by way of a grant of financial assistance, the terms and conditions on which the financial assistance is granted are to be set out in a written agreement between the Commonwealth and the recipient.
- Payments may be channelled through the BAF Infrastructure Portfolio Special Account, the BAF Communications Portfolio Special Account, the BAF Energy Portfolio Special Account or the BAF Water Portfolio Special Account.
- Grants of financial assistance to the States and Territories may be channelled through the COAG Reform Fund.
- The Finance Minister must comply with general drawing rights limits.
- The total amount of payments made in each financial year will depend on the macroeconomic circumstances.

Division 2—Direct payments

51 Authorisation of payments

- (1) The Finance Minister may, by writing, authorise a payment in relation to the creation or development of transport infrastructure.
- (2) The Finance Minister may, by writing, authorise a payment in relation to the creation or development of communications infrastructure.
- (3) The Finance Minister may, by writing, authorise a payment in relation to one or more eligible national broadband network matters.
- (4) The Finance Minister may, by writing, authorise a payment in relation to the creation or development of energy infrastructure.
- (5) The Finance Minister may, by writing, authorise a payment in relation to the creation or development of water infrastructure.
- (6) Subsections (2) and (3) do not limit each other.
- (7) 2 or more authorisations under this section may be set out in the same document.
- (8) An instrument under subsection (1), (2), (3), (4) or (5) is not a legislative instrument.

52 Recommendations about payments

Transport infrastructure

- (1) The Finance Minister must not authorise a payment under subsection 51(1) unless the Infrastructure Minister has recommended the authorisation of the payment.
- (2) The Infrastructure Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 116 that the payment satisfies the relevant BAF evaluation criteria.

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- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Infrastructure Minister must have regard to:
- (a) advice about the payment that was given to the Infrastructure Minister by Infrastructure Australia under section 116; and
 - (b) such other matters (if any) as the Infrastructure Minister considers relevant.

Communications infrastructure

- (4) The Finance Minister must not authorise a payment under subsection 51(2) unless the Communications Minister has recommended the authorisation of the payment.
- (5) The Communications Minister must not make a recommendation under subsection (4) in relation to a payment unless Infrastructure Australia has advised under section 117 that the payment satisfies the relevant BAF evaluation criteria.
- (6) In deciding whether to make a recommendation under subsection (4) in relation to a payment, the Communications Minister must have regard to:
- (a) advice about the payment that was given to the Communications Minister by Infrastructure Australia under section 117; and
 - (b) such other matters (if any) as the Communications Minister considers relevant.

Eligible national broadband network matters

- (7) The Finance Minister must not authorise a payment under subsection 51(3) unless the Communications Minister has recommended the authorisation of the payment.

Energy infrastructure

- (8) The Finance Minister must not authorise a payment under subsection 51(4) unless the Energy Minister has recommended the authorisation of the payment.

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- (9) The Energy Minister must not make a recommendation under subsection (8) in relation to a payment unless Infrastructure Australia has advised under section 118 that the payment satisfies the relevant BAF evaluation criteria.
- (10) In deciding whether to make a recommendation under subsection (8) in relation to a payment, the Energy Minister must have regard to:
 - (a) advice about the payment that was given to the Energy Minister by Infrastructure Australia under section 118; and
 - (b) such other matters (if any) as the Energy Minister considers relevant.

Water infrastructure

- (11) The Finance Minister must not authorise a payment under subsection 51(5) unless the Water Minister has recommended the authorisation of the payment.
- (12) The Water Minister must not make a recommendation under subsection (11) in relation to a payment unless Infrastructure Australia has advised under section 119 that the payment satisfies the relevant BAF evaluation criteria.
- (13) In deciding whether to make a recommendation under subsection (11) in relation to a payment, the Water Minister must have regard to:
 - (a) advice about the payment that was given to the Water Minister by Infrastructure Australia under section 119; and
 - (b) such other matters (if any) as the Water Minister considers relevant.

53 Grant to a State or Territory—transport infrastructure*Scope*

- (1) This section applies if:
 - (a) an amount is to be debited from the Building Australia Fund Special Account for the purpose of making a payment to a State or Territory; and

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- (b) the payment is by way of a grant of financial assistance; and
- (c) the payment is for the purpose mentioned in paragraph 18(1)(a).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Infrastructure Minister on behalf of the Commonwealth.

54 Grant to a State or Territory—communications infrastructure etc.

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the Building Australia Fund Special Account for the purpose of making a payment to a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance; and
 - (c) the payment is for a purpose mentioned in paragraph 18(1)(b) or (c).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Communications Minister on behalf of the Commonwealth.

55 Grant to a State or Territory—energy infrastructure

Scope

- (1) This section applies if:
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- (a) an amount is to be debited from the Building Australia Fund Special Account for the purpose of making a payment to a State or Territory; and
- (b) the payment is by way of a grant of financial assistance; and
- (c) the payment is for the purpose mentioned in paragraph 18(1)(d).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Energy Minister on behalf of the Commonwealth.

56 Grant to a State or Territory—water infrastructure*Scope*

- (1) This section applies if:
 - (a) an amount is to be debited from the Building Australia Fund Special Account for the purpose of making a payment to a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance; and
 - (c) the payment is for the purpose mentioned in paragraph 18(1)(e).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Water Minister on behalf of the Commonwealth.

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57 Grant to a person other than a State or Territory—transport infrastructure

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the Building Australia Fund Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance; and
 - (c) the payment is for the purpose mentioned in paragraph 18(1)(a).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Infrastructure Minister on behalf of the Commonwealth.

58 Grant to a person other than a State or Territory—communications infrastructure etc.

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the Building Australia Fund Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance; and
 - (c) the payment is for a purpose mentioned in paragraph 18(1)(b) or (c).

Terms and conditions

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

- (3) An agreement under subsection (2) may be entered into by the Communications Minister on behalf of the Commonwealth.

59 Grant to a person other than a State or Territory—energy infrastructure

Scope

- (1) This section applies if:
- (a) an amount is to be debited from the Building Australia Fund Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance; and
 - (c) the payment is for the purpose mentioned in paragraph 18(1)(d).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Energy Minister on behalf of the Commonwealth.

60 Grant to a person other than a State or Territory—water infrastructure

Scope

- (1) This section applies if:
- (a) an amount is to be debited from the Building Australia Fund Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance; and
 - (c) the payment is for the purpose mentioned in paragraph 18(1)(e).

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Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Water Minister on behalf of the Commonwealth.

Division 3—Channelling of payments through the BAF Infrastructure Portfolio Special Account

61 Establishment of the BAF Infrastructure Portfolio Special Account

- (1) The BAF Infrastructure Portfolio Special Account is established by this section.
- (2) The BAF Infrastructure Portfolio Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

62 Purpose of the BAF Infrastructure Portfolio Special Account

- (1) The purpose of the BAF Infrastructure Portfolio Special Account is making payments in relation to the creation or development of transport infrastructure, so long as the payments are specified under subsection 63(2).

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

- (2) A payment under subsection (1) may be made:
 - (a) by way of a grant of financial assistance; or
 - (b) otherwise than by way of a grant of financial assistance.

63 Channelling of payments through the BAF Infrastructure Portfolio Special Account

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Building Australia Fund Special Account; and
 - (b) credited to the BAF Infrastructure Portfolio Special Account; on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be debited from the BAF Infrastructure

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Portfolio Special Account for the purpose of making a specified payment in relation to the creation or development of transport infrastructure.

- (3) 2 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 Infrastructure Minister.

64 Recommendations about payments

- (1) A payment in relation to the creation or development of transport infrastructure must not be specified under subsection 63(2) unless the Infrastructure Minister has recommended the specification of the payment.
- (2) The Infrastructure Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 116 that the payment satisfies the relevant BAF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Infrastructure Minister must have regard to:
 - (a) advice about the payment that was given to the Infrastructure Minister by Infrastructure Australia under section 116; and
 - (b) such other matters (if any) as the Infrastructure Minister considers relevant.

65 Payments—debit from the BAF Infrastructure Portfolio Special Account

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 63(1) for a purpose in relation to a payment; and
-

- (b) the amount specified in the direction is credited to the BAF Infrastructure Portfolio Special Account.

Debit from the BAF Infrastructure Portfolio Special Account

- (2) The Infrastructure Minister must ensure that, as soon as practicable after the amount is credited, the BAF Infrastructure Portfolio Special Account is debited for the purposes of making the payment.
- (3) However, if the payment cannot be made, an amount equal to the credited amount is to be:
- (a) debited from the BAF Infrastructure Portfolio Special Account; and
 - (b) credited to the Building Australia Fund Special Account.

66 Grant to a State or Territory—transport infrastructure

Scope

- (1) This section applies if an amount is to be debited from the BAF Infrastructure Portfolio Special Account for the purpose of making a grant of financial assistance to a State or Territory.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Infrastructure Minister on behalf of the Commonwealth.

67 Grant to a person other than a State or Territory—transport infrastructure

Scope

- (1) This section applies if:

Chapter 2 Building Australia Fund

Part 2.4 Payments

Division 3 Channelling of payments through the BAF Infrastructure Portfolio Special Account

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- (a) an amount is to be debited from the BAF Infrastructure Portfolio Special Account for the purpose of making a payment to a person other than a State or Territory; and
- (b) the payment is by way of a grant of financial assistance.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Infrastructure Minister on behalf of the Commonwealth.

Division 4—Channelling of payments through the BAF Communications Portfolio Special Account

68 Establishment of the BAF Communications Portfolio Special Account

- (1) The BAF Communications Portfolio Special Account is established by this section.
- (2) The BAF Communications Portfolio Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

69 Purposes of the BAF Communications Portfolio Special Account

- (1) Each of the following is a purpose of the BAF Communications Portfolio Special Account:
 - (a) making payments in relation to the creation or development of communications infrastructure, so long as the payments are specified under subsection 70(2);
 - (b) making payments in relation to eligible national broadband network matters, so long as the payments are specified under subsection 70(2).

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

- (2) Paragraphs (1)(a) and (b) do not limit each other.
- (3) A payment under paragraph (1)(a) or (b) may be made:
 - (a) by way of a grant of financial assistance; or
 - (b) otherwise than by way of a grant of financial assistance.

70 Channelling of payments through the BAF Communications Portfolio Special Account

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:

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- (a) debited from the Building Australia Fund Special Account; and
 - (b) credited to the BAF Communications Portfolio Special Account;on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be debited from the BAF Communications Portfolio Special Account:
 - (a) for the purpose of making a specified payment in relation to the creation or development of communications infrastructure; or
 - (b) for the purpose of making a specified payment in relation to one or more eligible national broadband network matters.
- (3) Paragraphs (2)(a) and (b) do not limit each other.
- (4) 2 or more directions under subsection (1) may be set out in the same document.
- (5) A direction under subsection (1) is not a legislative instrument.
- (6) The Finance Minister must give a copy of a direction under subsection (1) to the Communications Minister.

71 Recommendations about payments

Communications infrastructure

- (1) A payment in relation to the creation or development of communications infrastructure (other than a payment in relation to an eligible national broadband network matter) must not be specified under subsection 70(2) unless the Communications Minister has recommended the specification of the payment.
- (2) The Communications Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 117 that the payment satisfies the relevant BAF evaluation criteria.

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- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Communications Minister must have regard to:
- (a) advice about the payment that was given to the Communications Minister by Infrastructure Australia under section 117; and
 - (b) such other matters (if any) as the Communications Minister considers relevant.

Eligible national broadband network matters

- (4) A payment in relation to an eligible national broadband network matter must not be specified under subsection 70(2) unless the Communications Minister has recommended the specification of the payment.

72 Payments—debit from the BAF Communications Portfolio Special Account*Scope*

- (1) This section applies if:
- (a) the Finance Minister gives a direction under subsection 70(1) for a purpose in relation to a payment; and
 - (b) the amount specified in the direction is credited to the BAF Communications Portfolio Special Account.

Debit from the BAF Communications Portfolio Special Account

- (2) The Communications Minister must ensure that, as soon as practicable after the amount is credited, the BAF Communications Portfolio Special Account is debited for the purposes of making the payment.
- (3) However, if the payment cannot be made, an amount equal to the credited amount is to be:
- (a) debited from the BAF Communications Portfolio Special Account; and
 - (b) credited to the Building Australia Fund Special Account.

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73 Grant to a State or Territory—communications infrastructure etc.

Scope

- (1) This section applies if an amount is to be debited from the BAF Communications Portfolio Special Account for the purpose of making a grant of financial assistance to a State or Territory.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Communications Minister on behalf of the Commonwealth.

74 Grant to a person other than a State or Territory—communications infrastructure etc.

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the BAF Communications Portfolio Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Communications Minister on behalf of the Commonwealth.

Division 5—Channelling of payments through the BAF Energy Portfolio Special Account

75 Establishment of the BAF Energy Portfolio Special Account

- (1) The BAF Energy Portfolio Special Account is established by this section.
- (2) The BAF Energy Portfolio Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

76 Purpose of the BAF Energy Portfolio Special Account

- (1) The purpose of the BAF Energy Portfolio Special Account is making payments in relation to the creation or development of energy infrastructure, so long as the payments are specified under subsection 77(2).

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

- (2) A payment under subsection (1) may be made:
 - (a) by way of a grant of financial assistance; or
 - (b) otherwise than by way of a grant of financial assistance.

77 Channelling of payments through the BAF Energy Portfolio Special Account

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Building Australia Fund Special Account;
and
 - (b) credited to the BAF Energy Portfolio Special Account;
on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be debited from the BAF Energy Portfolio

Section 78

Special Account for the purpose of making a specified payment in relation to the creation or development of energy infrastructure.

- (3) 2 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 Energy Minister.

78 Recommendations about payments

- (1) A payment in relation to the creation or development of energy infrastructure must not be specified under subsection 77(2) unless the Energy Minister has recommended the specification of the payment.
- (2) The Energy Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 118 that the payment satisfies the relevant BAF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Energy Minister must have regard to:
 - (a) advice about the payment that was given to the Energy Minister by Infrastructure Australia under section 118; and
 - (b) such other matters (if any) as the Energy Minister considers relevant.

79 Payments—debit from the BAF Energy Portfolio Special Account

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 77(1) for a purpose in relation to a payment; and
 - (b) the amount specified in the direction is credited to the BAF Energy Portfolio Special Account.

Section 80

Debit from the BAF Energy Portfolio Special Account

- (2) The Energy Minister must ensure that, as soon as practicable after the amount is credited, the BAF Energy Portfolio Special Account is debited for the purposes of making the payment.
- (3) However, if the payment cannot be made, an amount equal to the credited amount is to be:
 - (a) debited from the BAF Energy Portfolio Special Account; and
 - (b) credited to the Building Australia Fund Special Account.

80 Grant to a State or Territory—energy infrastructure

Scope

- (1) This section applies if an amount is to be debited from the BAF Energy Portfolio Special Account for the purpose of making a grant of financial assistance to a State or Territory.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Energy Minister on behalf of the Commonwealth.

81 Grant to a person other than a State or Territory—energy infrastructure

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the BAF Energy Portfolio Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance.

Chapter 2 Building Australia Fund

Part 2.4 Payments

Division 5 Channelling of payments through the BAF Energy Portfolio Special Account

Section 81

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Energy Minister on behalf of the Commonwealth.

Division 6—Channelling of payments through the BAF Water Portfolio Special Account

82 Establishment of the BAF Water Portfolio Special Account

- (1) The BAF Water Portfolio Special Account is established by this section.
- (2) The BAF Water Portfolio Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

83 Purpose of the BAF Water Portfolio Special Account

- (1) The purpose of the BAF Water Portfolio Special Account is making payments in relation to the creation or development of water infrastructure, so long as the payments are specified under subsection 84(2).

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

- (2) A payment under subsection (1) may be made:
 - (a) by way of a grant of financial assistance; or
 - (b) otherwise than by way of a grant of financial assistance.

84 Channelling of payments through the BAF Water Portfolio Special Account

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Building Australia Fund Special Account; and
 - (b) credited to the BAF Water Portfolio Special Account;on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be debited from the BAF Water Portfolio

Section 85

Special Account for the purpose of making a specified payment in relation to the creation or development of water infrastructure.

- (3) 2 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 Water Minister.

85 Recommendations about payments

- (1) A payment in relation to the creation or development of water infrastructure must not be specified under subsection 84(2) unless the Water Minister has recommended the specification of the payment.
- (2) The Water Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 119 that the payment satisfies the relevant BAF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Water Minister must have regard to:
 - (a) advice about the payment that was given to the Water Minister by Infrastructure Australia under section 119; and
 - (b) such other matters (if any) as the Water Minister considers relevant.

86 Payments—debit from the BAF Water Portfolio Special Account

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 84(1) for a purpose in relation to a payment; and
 - (b) the amount specified in the direction is credited to the BAF Water Portfolio Special Account.

Section 87*Debit from the BAF Water Portfolio Special Account*

- (2) The Water Minister must ensure that, as soon as practicable after the amount is credited, the BAF Water Portfolio Special Account is debited for the purposes of making the payment.
- (3) However, if the payment cannot be made, an amount equal to the credited amount is to be:
 - (a) debited from the BAF Water Portfolio Special Account; and
 - (b) credited to the Building Australia Fund Special Account.

87 Grant to a State or Territory—water infrastructure*Scope*

- (1) This section applies if an amount is to be debited from the BAF Water Portfolio Special Account for the purpose of making a grant of financial assistance to a State or Territory.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Water Minister on behalf of the Commonwealth.

88 Grant to a person other than a State or Territory—water infrastructure*Scope*

- (1) This section applies if:
 - (a) an amount is to be debited from the BAF Water Portfolio Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance.

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Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Water Minister on behalf of the Commonwealth.

**Division 7—Channelling of State/Territory grants
payments through the COAG Reform Fund**

Subdivision A—Channelling of transport infrastructure grants

**89 Channelling of State/Territory grants payments through the
COAG Reform Fund**

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Building Australia Fund Special Account;
and
 - (b) credited to the BAF Infrastructure Portfolio Special Account;
on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be:
 - (a) transferred from the BAF Infrastructure Portfolio Special Account to the COAG Reform Fund; and
 - (b) debited from the COAG Reform Fund for the purpose of making a specified grant of financial assistance to a State or Territory.
- (3) A grant specified under subsection (2) must be a grant of financial assistance in relation to transport infrastructure.
- (4) 2 or more directions under subsection (1) may be set out in the same document.
- (5) A direction under subsection (1) is not a legislative instrument.
- (6) The Finance Minister must give a copy of a direction under subsection (1) to the Treasurer and the Infrastructure Minister.

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90 Recommendations about grants payments—transport infrastructure

- (1) A grant must not be specified under subsection 89(2) unless the Infrastructure Minister has recommended the specification of the grant.
- (2) The Infrastructure Minister must not make a recommendation under subsection (1) in relation to a grant unless Infrastructure Australia has advised under section 116 that the grant satisfies the relevant BAF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a grant, the Infrastructure Minister must have regard to:
 - (a) advice about the grant that was given to the Infrastructure Minister by Infrastructure Australia under section 116; and
 - (b) such other matters (if any) as the Infrastructure Minister considers relevant.

91 Transfers from the BAF Infrastructure Portfolio Special Account to the COAG Reform Fund

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 89(1) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the BAF Infrastructure Portfolio Special Account.

Transfer direction

- (2) As soon as practicable after the amount is credited, the Infrastructure Minister must, by writing, direct that the amount is to be:
 - (a) debited from the BAF Infrastructure Portfolio Special Account; and
 - (b) credited to the COAG Reform Fund;

on a specified day.

- (3) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- (4) 2 or more directions under subsection (2) may be set out in the same document.
- (5) A direction under subsection (2) is not a legislative instrument.
- (6) The Infrastructure Minister must give a copy of a direction under subsection (2) to the Treasurer.

92 Grants payments—debit from the COAG Reform Fund

Scope

- (1) This section applies if:
 - (a) the Infrastructure Minister gives a direction under subsection 91(2) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the COAG Reform Fund.

Debit from the COAG Reform Fund

- (2) The Treasurer must ensure that, as soon as practicable after the amount is credited, the COAG Reform Fund is debited for the purposes of making the grant.

93 Grant to a State or Territory—transport infrastructure

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the COAG Reform Fund for the purpose of making a grant of financial assistance to a State or Territory; and
 - (b) the grant is a grant of financial assistance in relation to transport infrastructure; and

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(c) the grant is covered by subsection 92(2).

Note: Subsection 92(2) deals with grants channelled through the COAG Reform Fund.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Infrastructure Minister on behalf of the Commonwealth.

Subdivision B—Channelling of communications infrastructure grants

94 Channelling of State/Territory grants payments through the COAG Reform Fund

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Building Australia Fund Special Account; and
 - (b) credited to the BAF Communications Portfolio Special Account;on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be:
 - (a) transferred from the BAF Communications Portfolio Special Account to the COAG Reform Fund; and
 - (b) debited from the COAG Reform Fund for the purpose of making a specified grant of financial assistance to a State or Territory.
- (3) A grant specified under subsection (2) must be a grant of financial assistance in relation to communications infrastructure.
- (4) 2 or more directions under subsection (1) may be set out in the same document.

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- (5) A direction under subsection (1) is not a legislative instrument.
- (6) The Finance Minister must give a copy of a direction under subsection (1) to the Treasurer and the Communications Minister.

95 Recommendations about grants payments—communications infrastructure

- (1) A grant must not be specified under subsection 94(2) unless the Communications Minister has recommended the specification of the grant.
- (2) The Communications Minister must not make a recommendation under subsection (1) in relation to a grant unless Infrastructure Australia has advised under section 117 that the grant satisfies the relevant BAF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a grant, the Communications Minister must have regard to:
 - (a) advice about the grant that was given to the Communications Minister by Infrastructure Australia under section 117; and
 - (b) such other matters (if any) as the Communications Minister considers relevant.

96 Transfers from the BAF Communications Portfolio Special Account to the COAG Reform Fund

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 94(1) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the BAF Communications Portfolio Special Account.

Section 97

Transfer direction

- (2) As soon as practicable after the amount is credited, the Communications Minister must, by writing, direct that the amount is to be:
 - (a) debited from the BAF Communications Portfolio Special Account; and
 - (b) credited to the COAG Reform Fund;on a specified day.
- (3) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- (4) 2 or more directions under subsection (2) may be set out in the same document.
- (5) A direction under subsection (2) is not a legislative instrument.
- (6) The Communications Minister must give a copy of a direction under subsection (2) to the Treasurer.

97 Grants payments—debit from the COAG Reform Fund

Scope

- (1) This section applies if:
 - (a) the Communications Minister gives a direction under subsection 96(2) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the COAG Reform Fund.

Debit from the COAG Reform Fund

- (2) The Treasurer must ensure that, as soon as practicable after the amount is credited, the COAG Reform Fund is debited for the purposes of making the grant.

98 Grant to a State or Territory—communications infrastructure

Scope

- (1) This section applies if:
- (a) an amount is to be debited from the COAG Reform Fund for the purpose of making a grant of financial assistance to a State or Territory; and
 - (b) the grant is a grant of financial assistance in relation to communications infrastructure; and
 - (c) the grant is covered by subsection 97(2).

Note: Subsection 97(2) deals with grants channelled through the COAG Reform Fund.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Communications Minister on behalf of the Commonwealth.

Subdivision C—Channelling of energy infrastructure grants

99 Channelling of State/Territory grants payments through the COAG Reform Fund

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
- (a) debited from the Building Australia Fund Special Account; and
 - (b) credited to the BAF Energy Portfolio Special Account; on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be:
- (a) transferred from the BAF Energy Portfolio Special Account to the COAG Reform Fund; and

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- (b) debited from the COAG Reform Fund for the purpose of making a specified grant of financial assistance to a State or Territory.
- (3) A grant specified under subsection (2) must be a grant of financial assistance in relation to energy infrastructure.
- (4) 2 or more directions under subsection (1) may be set out in the same document.
- (5) A direction under subsection (1) is not a legislative instrument.
- (6) The Finance Minister must give a copy of a direction under subsection (1) to the Treasurer and the Energy Minister.

100 Recommendations about grants payments—energy infrastructure

- (1) A grant must not be specified under subsection 99(2) unless the Energy Minister has recommended the specification of the grant.
- (2) The Energy Minister must not make a recommendation under subsection (1) in relation to a grant unless Infrastructure Australia has advised under section 118 that the grant satisfies the relevant BAF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a grant, the Energy Minister must have regard to:
 - (a) advice about the grant that was given to the Energy Minister by Infrastructure Australia under section 118; and
 - (b) such other matters (if any) as the Energy Minister considers relevant.

101 Transfers from the BAF Energy Portfolio Special Account to the COAG Reform Fund

Scope

- (1) This section applies if:
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Section 102

- (a) the Finance Minister gives a direction under subsection 99(1) for a purpose in relation to a grant of financial assistance to a State or Territory; and
- (b) the amount specified in the direction is credited to the BAF Energy Portfolio Special Account.

Transfer direction

- (2) As soon as practicable after the amount is credited, the Energy Minister must, by writing, direct that the amount is to be:
 - (a) debited from the BAF Energy Portfolio Special Account; and
 - (b) credited to the COAG Reform Fund;on a specified day.
- (3) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- (4) 2 or more directions under subsection (2) may be set out in the same document.
- (5) A direction under subsection (2) is not a legislative instrument.
- (6) The Energy Minister must give a copy of a direction under subsection (2) to the Treasurer.

102 Grants payments—debit from the COAG Reform Fund

Scope

- (1) This section applies if:
 - (a) the Energy Minister gives a direction under subsection 101(2) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the COAG Reform Fund.

Section 103

Debit from the COAG Reform Fund

- (2) The Treasurer must ensure that, as soon as practicable after the amount is credited, the COAG Reform Fund is debited for the purposes of making the grant.

103 Grant to a State or Territory—energy infrastructure

Scope

- (1) This section applies if:
- (a) an amount is to be debited from the COAG Reform Fund for the purpose of making a grant of financial assistance to a State or Territory; and
 - (b) the grant is a grant of financial assistance in relation to energy infrastructure; and
 - (c) the grant is covered by subsection 102(2).

Note: Subsection 102(2) deals with grants channelled through the COAG Reform Fund.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Energy Minister on behalf of the Commonwealth.

Subdivision D—Channelling of water infrastructure grants

104 Channelling of State/Territory grants payments through the COAG Reform Fund

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
- (a) debited from the Building Australia Fund Special Account; and
 - (b) credited to the BAF Water Portfolio Special Account;
- on a specified day.
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Section 105

- (2) The direction must be expressed to be given in order to enable the specified amount to be:
 - (a) transferred from the BAF Water Portfolio Special Account to the COAG Reform Fund; and
 - (b) debited from the COAG Reform Fund for the purpose of making a specified grant of financial assistance to a State or Territory.
- (3) A grant specified under subsection (2) must be a grant of financial assistance in relation to water infrastructure.
- (4) 2 or more directions under subsection (1) may be set out in the same document.
- (5) A direction under subsection (1) is not a legislative instrument.
- (6) The Finance Minister must give a copy of a direction under subsection (1) to the Treasurer and the Water Minister.

105 Recommendations about grants payments—water infrastructure

- (1) A grant must not be specified under subsection 104(2) unless the Water Minister has recommended the specification of the grant.
- (2) The Water Minister must not make a recommendation under subsection (1) in relation to a grant unless Infrastructure Australia has advised under section 119 that the grant satisfies the relevant BAF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a grant, the Water Minister must have regard to:
 - (a) advice about the grant that was given to the Water Minister by Infrastructure Australia under section 119; and
 - (b) such other matters (if any) as the Water Minister considers relevant.

Section 106

106 Transfers from the BAF Water Portfolio Special Account to the COAG Reform Fund

Scope

- (1) This section applies if:
- (a) the Finance Minister gives a direction under subsection 104(1) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the BAF Water Portfolio Special Account.

Transfer direction

- (2) As soon as practicable after the amount is credited, the Water Minister must, by writing, direct that the amount is to be:
- (a) debited from the BAF Water Portfolio Special Account; and
 - (b) credited to the COAG Reform Fund;
- on a specified day.
- (3) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- (4) 2 or more directions under subsection (2) may be set out in the same document.
- (5) A direction under subsection (2) is not a legislative instrument.
- (6) The Water Minister must give a copy of a direction under subsection (2) to the Treasurer.

107 Grants payments—debit from the COAG Reform Fund

Scope

- (1) This section applies if:
- (a) the Water Minister gives a direction under subsection 106(2) for a purpose in relation to a grant of financial assistance to a State or Territory; and

Section 108

- (b) the amount specified in the direction is credited to the COAG Reform Fund.

Debit from the COAG Reform Fund

- (2) The Treasurer must ensure that, as soon as practicable after the amount is credited, the COAG Reform Fund is debited for the purposes of making the grant.

108 Grant to a State or Territory—water infrastructure

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the COAG Reform Fund for the purpose of making a grant of financial assistance to a State or Territory; and
 - (b) the grant is a grant of financial assistance in relation to water infrastructure; and
 - (c) the grant is covered by subsection 107(2).

Note: Subsection 107(2) deals with grants channelled through the COAG Reform Fund.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Water Minister on behalf of the Commonwealth.

Division 8—Total payments for a financial year

109 General drawing rights limit in relation to a financial year

Scope

- (1) This section applies to a financial year if:
- (a) in the case of the financial year ending on 30 June 2009—the Finance Minister declares in writing that a specified amount is the ***general drawing rights limit*** in relation to the financial year for the purposes of this section; or
 - (b) in the case of a later financial year—an Appropriation Act relating to the financial year declares that a specified amount is the ***general drawing rights limit*** in relation to the financial year for the purposes of this section.

Issue of drawing rights

- (2) The total amount covered by drawing rights authorising the following debits in the financial year:
- (a) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(a);
 - (b) the debit of an amount from the BAF Infrastructure Portfolio Special Account (other than a debit under section 91);
 - (c) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(b);
 - (d) the debit of an amount from the BAF Communications Portfolio Special Account for the purpose of making a payment in relation to the creation or development of communications infrastructure, other than:
 - (i) a debit for the purpose of making a payment in relation to an eligible national broadband network matter; or
 - (ii) a debit under section 96;

Section 110

- (e) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(d);
 - (f) the debit of an amount from the BAF Energy Portfolio Special Account (other than a debit under section 101);
 - (g) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(e);
 - (h) the debit of an amount from the BAF Water Portfolio Special Account (other than a debit under section 106);
 - (i) the debit of an amount from the COAG Reform Fund in accordance with subsection 92(2);
 - (j) the debit of an amount from the COAG Reform Fund in accordance with subsection 97(2);
 - (k) the debit of an amount from the COAG Reform Fund in accordance with subsection 102(2);
 - (l) the debit of an amount from the COAG Reform Fund in accordance with subsection 107(2);
- must not exceed the general drawing rights limit for the financial year.

Declaration

- (3) A declaration under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the declaration.

110 Drawing rights in relation to other financial years

The application of section 109 to a particular financial year does not limit the drawing rights that may be issued in relation to any other financial year.

111 No drawing rights to be issued if there is no general drawing rights limit in relation to a financial year

Scope

- (1) This section applies to a financial year if:

Section 111

- (a) in the case of the financial year ending on 30 June 2009—no declaration is in force under paragraph 109(1)(a); or
- (b) in the case of a later financial year—no Appropriation Act relating to the financial year declares that a specified amount is the ***general drawing rights limit*** in relation to the financial year for the purposes of section 109.

No drawing rights to be issued

- (2) Drawing rights authorising any of the following debits in the financial year must not be issued:
 - (a) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(a);
 - (b) the debit of an amount from the BAF Infrastructure Portfolio Special Account (other than a debit under section 91);
 - (c) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(b);
 - (d) the debit of an amount from the BAF Communications Portfolio Special Account for the purpose of making a payment in relation to the creation or development of communications infrastructure, other than:
 - (i) a debit for the purpose of making a payment in relation to an eligible national broadband network matter; or
 - (ii) a debit under section 96;
 - (e) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(d);
 - (f) the debit of an amount from the BAF Energy Portfolio Special Account (other than a debit under section 101);
 - (g) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(e);
 - (h) the debit of an amount from the BAF Water Portfolio Special Account (other than a debit under section 106);
 - (i) the debit of an amount from the COAG Reform Fund in accordance with subsection 92(2);

- (j) the debit of an amount from the COAG Reform Fund in accordance with subsection 97(2);
- (k) the debit of an amount from the COAG Reform Fund in accordance with subsection 102(2);
- (l) the debit of an amount from the COAG Reform Fund in accordance with subsection 107(2).

112 Total payments to depend primarily on the macroeconomic circumstances

Scope

- (1) This section applies to the following decisions:
 - (a) a decision to authorise a payment under section 51, where the authorisation will result in a debit from the Building Australia Fund Special Account in a financial year;
 - (b) a decision to give a direction under subsection 63(1), where the direction will result in a debit from the BAF Infrastructure Portfolio Special Account in a financial year in accordance with subsection 65(2);
 - (c) a decision to give a direction under subsection 70(1), where the direction will result in a debit from the BAF Communications Portfolio Special Account in a financial year in accordance with subsection 72(2);
 - (d) a decision to give a direction under subsection 77(1), where the direction will result in a debit from the BAF Energy Portfolio Special Account in a financial year in accordance with subsection 79(2);
 - (e) a decision to give a direction under subsection 84(1), where the direction will result in a debit from the BAF Water Portfolio Special Account in a financial year in accordance with subsection 86(2);
 - (f) a decision to give a direction under subsection 89(1), where the direction will result in a debit from the COAG Reform Fund in a financial year in accordance with subsection 92(2);
 - (g) a decision to give a direction under subsection 94(1), where the direction will result in a debit from the COAG Reform Fund in a financial year in accordance with subsection 97(2);

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- (h) a decision to give a direction under subsection 99(1), where the direction will result in a debit from the COAG Reform Fund in a financial year in accordance with subsection 102(2);
- (i) a decision to give a direction under subsection 104(1), where the direction will result in a debit from the COAG Reform Fund in a financial year in accordance with subsection 107(2).

Macroeconomic circumstances

- (2) In making the decision, the Finance Minister must have regard to the principle that the total of the following debits in the financial year:
 - (a) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(a);
 - (b) the debit of an amount from the BAF Infrastructure Portfolio Special Account (other than a debit under section 91);
 - (c) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(b);
 - (d) the debit of an amount from the BAF Communications Portfolio Special Account for the purpose of making a payment in relation to the creation or development of communications infrastructure, other than:
 - (i) a debit for the purpose of making a payment in relation to an eligible national broadband network matter; or
 - (ii) a debit under section 96;
 - (e) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(d);
 - (f) the debit of an amount from the BAF Energy Portfolio Special Account (other than a debit under section 101);
 - (g) the debit of an amount from the Building Australia Fund Special Account for the purpose mentioned in paragraph 18(1)(e);

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- (h) the debit of an amount from the BAF Water Portfolio Special Account (other than a debit under section 106);
 - (i) the debit of an amount from the COAG Reform Fund in accordance with subsection 92(2);
 - (j) the debit of an amount from the COAG Reform Fund in accordance with subsection 97(2);
 - (k) the debit of an amount from the COAG Reform Fund in accordance with subsection 102(2);
 - (l) the debit of an amount from the COAG Reform Fund in accordance with subsection 107(2);
- should depend primarily on the macroeconomic circumstances.

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Part 2.5—Reporting obligations etc.

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

Reports

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

Information

- (2) The Finance Minister may, by written notice given to the Future Fund Board, require the Future Fund Board to:
 - (a) prepare a document setting out specified information relating to the performance of the Future Fund Board's functions under this Chapter; and
 - (b) give copies of the document to the Finance Minister within the period specified in the notice.

Compliance

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

Publication of reports and documents

- (4) The Finance Minister may cause to be published (whether on the internet or otherwise):
 - (a) a report under subsection (1); or
 - (b) a document under subsection (2).

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Reports and documents

- (5) A report under subsection (1) is not a legislative instrument.
- (6) A document under subsection (2) is not a legislative instrument.

114 Keeping the responsible Ministers informed etc.

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

115 Finance Minister may give reports to other Ministers etc.

The Finance Minister may give:

- (a) the Treasurer; or
- (b) the Infrastructure Minister; or
- (c) the Communications Minister; or
- (d) the Energy Minister; or
- (e) the Water Minister;

any of the following:

- (f) a report under subsection 113(1) or 114(2);
- (g) a document under subsection 113(2) or 114(2);
- (h) any other information or document obtained by the Finance Minister under this Chapter.

Part 2.6—Miscellaneous

116 Infrastructure Australia to advise Infrastructure Minister about transport infrastructure

- (1) It is a function of Infrastructure Australia to advise the Infrastructure Minister about matters that:
 - (a) are referred to it by the Infrastructure Minister; and
 - (b) relate to the making of payments in relation to the creation or development of transport infrastructure.
- (2) In giving advice under subsection (1), Infrastructure Australia must apply the BAF evaluation criteria.
- (3) The function conferred on Infrastructure Australia by subsection (1) is in addition to the functions conferred on Infrastructure Australia by the *Infrastructure Australia Act 2008*.

117 Infrastructure Australia to advise Communications Minister about communications infrastructure

- (1) It is a function of Infrastructure Australia to advise the Communications Minister about matters that:
 - (a) are referred to it by the Communications Minister; and
 - (b) relate to the making of payments in relation to the creation or development of communications infrastructure.
- (2) In giving advice under subsection (1), Infrastructure Australia must apply the BAF evaluation criteria.
- (3) The function conferred on Infrastructure Australia by subsection (1) is in addition to the functions conferred on Infrastructure Australia by the *Infrastructure Australia Act 2008*.
- (4) All communications by Infrastructure Australia to the Communications Minister are to be made through the Infrastructure Minister.

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- (5) All communications by the Communications Minister to Infrastructure Australia are to be made through the Infrastructure Minister.

118 Infrastructure Australia to advise Energy Minister about energy infrastructure

- (1) It is a function of Infrastructure Australia to advise the Energy Minister about matters that:
 - (a) are referred to it by the Energy Minister; and
 - (b) relate to the making of payments in relation to the creation or development of energy infrastructure.
- (2) In giving advice under subsection (1), Infrastructure Australia must apply the BAF evaluation criteria.
- (3) The function conferred on Infrastructure Australia by subsection (1) is in addition to the functions conferred on Infrastructure Australia by the *Infrastructure Australia Act 2008*.
- (4) All communications by Infrastructure Australia to the Energy Minister are to be made through the Infrastructure Minister.
- (5) All communications by the Energy Minister to Infrastructure Australia are to be made through the Infrastructure Minister.

119 Infrastructure Australia to advise Water Minister about water infrastructure

- (1) It is a function of Infrastructure Australia to advise the Water Minister about matters that:
 - (a) are referred to it by the Water Minister; and
 - (b) relate to the making of payments in relation to the creation or development of water infrastructure.
- (2) In giving advice under subsection (1), Infrastructure Australia must apply the BAF evaluation criteria.
- (3) The function conferred on Infrastructure Australia by subsection (1) is in addition to the functions conferred on Infrastructure Australia by the *Infrastructure Australia Act 2008*.

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- (4) All communications by Infrastructure Australia to the Water Minister are to be made through the Infrastructure Minister.
- (5) All communications by the Water Minister to Infrastructure Australia are to be made through the Infrastructure Minister.

120 BAF evaluation criteria

- (1) The Infrastructure Minister may, by legislative instrument, formulate criteria (***BAF evaluation criteria***) to be applied by Infrastructure Australia in giving advice under subsection 116(1), 117(1), 118(1) or 119(1).
- (2) The BAF evaluation criteria may provide that the criteria covered by any of the following paragraphs may be different to the criteria covered by any other of the following paragraphs:
 - (a) the criteria to be applied by Infrastructure Australia in giving advice under subsection 116(1);
 - (b) the criteria to be applied by Infrastructure Australia in giving advice under subsection 117(1);
 - (c) the criteria to be applied by Infrastructure Australia in giving advice under subsection 118(1);
 - (d) the criteria to be applied by Infrastructure Australia in giving advice under subsection 119(1).
- (3) Before formulating BAF evaluation criteria, the Infrastructure Minister must consult:
 - (a) the Communications Minister; and
 - (b) the Energy Minister; and
 - (c) the Water Minister; and
 - (d) the responsible Ministers.
- (4) The Infrastructure Minister must ensure that BAF evaluation criteria are in force at all times after the commencement of this section.

121 Investment provisions do not apply to certain assets

Scope

- (1) This section applies to an asset if:
 - (a) the asset is:
 - (i) a share; or
 - (ii) a debenture; or
 - (iii) a unit in a unit trust; or
 - (iv) any other financial asset; and
 - (b) the asset is held by the Commonwealth; and
 - (c) the asset was acquired:
 - (i) using money debited from the Building Australia Fund Special Account for a purpose mentioned in paragraph 18(1)(a), (b), (c), (d) or (e); or
 - (ii) using money debited from the BAF Infrastructure Portfolio Special Account; or
 - (iii) using money debited from the BAF Communications Portfolio Special Account; or
 - (iv) using money debited from the BAF Energy Portfolio Special Account; or
 - (v) using money debited from the BAF Water Portfolio Special Account.

Investment provisions do not apply

- (2) Part 2.3 does not apply in relation to the asset.
- (3) Section 39 of the *Financial Management and Accountability Act 1997* does not apply in relation to the asset.

122 Delegation by the Finance Minister

Department

- (1) The Finance Minister may, by writing, delegate any or all of his or her powers under section 27, 28, 29, 51, 63, 70, 77, 84, 89, 94, 99 or 104 to:
 - (a) the Secretary of the Finance Department; or

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- (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 17AA of the *Acts Interpretation Act 1901*.

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

Agency

- (3) The Finance Minister may, by writing, delegate any or all of his or her powers under section 27, 28 or 29 to:
 - (a) the Chair; or
 - (b) an SES employee, or acting SES employee, in the Agency.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

123 Delegation by the Treasurer

The Treasurer may, by writing, delegate any or all of his or her functions under subsection 92(2), 97(2), 102(2) or 107(2) 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 17AA of the *Acts Interpretation Act 1901*.

124 Delegation by the Infrastructure Minister

- (1) The Infrastructure Minister may, by writing, delegate any or all of his or her functions or powers under section 53, 57, 65, 66, 67, 91 or 93 to:
 - (a) the Secretary of the Infrastructure Department; or
 - (b) an SES employee, or acting SES employee, in the Infrastructure Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

125 Delegation by the Communications Minister

- (1) The Communications Minister may, by writing, delegate any or all of his or her functions or powers under section 54, 58, 72, 73, 74, 96 or 98 to:
- (a) the Secretary of the Communications Department; or
 - (b) an SES employee, or acting SES employee, in the Communications Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

126 Delegation by the Energy Minister

- (1) The Energy Minister may, by writing, delegate any or all of his or her functions or powers under section 55, 59, 79, 80, 81, 101 or 103 to:
- (a) the Secretary of the Energy Department; or
 - (b) an SES employee, or acting SES employee, in the Energy Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

127 Delegation by the Water Minister

- (1) The Water Minister may, by writing, delegate any or all of his or her functions or powers under section 56, 60, 86, 87, 88, 106 or 108 to:
- (a) the Secretary of the Water Department; or
 - (b) an SES employee, or acting SES employee, in the Water Department.

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Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

Chapter 3—Education Investment Fund

Part 3.1—Introduction

128 Object

The object of this Chapter is to enhance the Commonwealth's ability:

- (a) to make payments in relation to the creation or development of higher education infrastructure; and
- (b) to make payments in relation to the creation or development of research infrastructure; and
- (c) to make payments in relation to the creation or development of vocational education and training infrastructure; and
- (d) to make payments in relation to the creation or development of eligible education infrastructure; and
- (e) to make transitional HEEF payments.

129 Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter sets up the Education Investment Fund, which consists of:
 - (a) the Education Investment Fund Special Account; and
 - (b) the investments of the Education Investment Fund.
- The main purposes of the Education Investment Fund Special Account are:
 - (a) to make payments in relation to the creation or development of higher education infrastructure; and

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- (b) to make payments in relation to the creation or development of research infrastructure; and
 - (c) to make payments in relation to the creation or development of vocational education and training infrastructure; and
 - (d) to make payments in relation to the creation or development of eligible education infrastructure; and
 - (e) to make transitional HEEF payments.
- The Finance Minister is responsible for authorising payments on the recommendation of the Education Minister, the Research Minister or the EIF designated Ministers.
 - If a payment is made by way of a grant of financial assistance, the terms and conditions on which the financial assistance is granted are to be set out in a written agreement between the Commonwealth and the recipient.
 - The Future Fund Board is responsible for deciding how to invest the Education Investment Fund.
 - Investments of the Education Investment Fund will consist of financial assets.
 - The Future Fund Board is bound by an Education Investment Fund Investment Mandate given to it by the responsible Ministers.

Note: The *Future Fund Act 2006* provides that the Future Fund Management Agency is responsible for assisting and advising the Future Fund Board.

Part 3.2—Education Investment Fund

Division 1—Introduction

130 Simplified outline

The following is a simplified outline of this Part:

- This Part sets up the Education Investment Fund.
- The Education Investment Fund consists of:
 - (a) the Education Investment Fund Special Account;
and
 - (b) the investments of the Education Investment Fund.
- The balance of the Higher Education Endowment Fund is to be transferred to the Education Investment Fund.
- One or more initial amounts are to be credited to the Education Investment Fund Special Account by 30 June 2009. The total of the initial amounts must equal \$2.5 billion.
- The responsible Ministers may determine that additional amounts are to be credited to the Education Investment Fund Special Account.
- Amounts may be debited from the Education Investment Fund Special Account in accordance with the purposes of the Education Investment Fund Special Account.
- The main purposes of the Education Investment Fund Special Account are:

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- (a) to make payments in relation to the creation or development of higher education infrastructure; and
- (b) to make payments in relation to the creation or development of research infrastructure; and
- (c) to make payments in relation to the creation or development of vocational education and training infrastructure; and
- (d) to make payments in relation to the creation or development of eligible education infrastructure; and
- (e) to make transitional HEEF payments.

Note: The Higher Education Endowment Fund was established by section 11 of the repealed *Higher Education Endowment Fund Act 2007*.

Division 2—Establishment of the Education Investment Fund etc.

131 Establishment of the Education Investment Fund

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

132 Establishment of the Education Investment Fund Special Account

- (1) The Education Investment Fund Special Account is established by this section.
- (2) The Education Investment Fund Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

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 Education Investment Fund

133 Initial credits of amounts to the Education Investment Fund Special Account

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

- (2) The responsible Ministers must ensure that, by the end of 30 June 2009, the total of the amounts credited to the Education Investment Fund Special Account under subsection (1) equals \$2.5 billion.

Note 1: See also section 135 (balance of the Higher Education Endowment Fund to be credited to the Education Investment Fund Special Account).

Note 2: See also section 152 (Education Investment Fund to inherit investments of the Higher Education Endowment Fund).

- (3) The responsible Ministers must not make a determination under subsection (1) after 30 June 2009.
- (4) A determination under subsection (1) is irrevocable.
- (5) 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.

134 Subsequent credits of amounts to the Education Investment Fund Special Account—determinations by the responsible Ministers

- (1) The responsible Ministers may, by writing, determine that:
 - (a) a specified amount is to be credited to the Education Investment Fund Special Account on a specified day; or

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- (b) a specified amount is to be credited to the Education Investment Fund Special Account in specified instalments on specified days.

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

- (2) In making a determination under subsection (1), the responsible Ministers must have regard to the object of this Chapter.
- (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.

135 Credit of amount to the Education Investment Fund Special Account—balance of the Higher Education Endowment Fund Special Account

Immediately after the commencement of this section, there is to be credited to the Education Investment Fund Special Account an amount equal to the balance of the Higher Education Endowment Fund Special Account as at immediately before the commencement of this section.

Note: The Higher Education Endowment Fund Special Account was established by section 11 of the repealed *Higher Education Endowment Fund Act 2007*.

Division 4—Debits of amounts from the Education Investment Fund

136 Purposes of the Education Investment Fund Special Account—payments purposes and purposes related exclusively to the Education Investment Fund

- (1) Each of the following is a purpose of the Education Investment Fund Special Account:
 - (a) making payments in relation to the creation or development of higher education infrastructure, so long as the payments are authorised under subsection 176(1);
 - (b) making payments in relation to the creation or development of research infrastructure, so long as the payments are authorised under subsection 176(2);
 - (c) making payments in relation to the creation or development of vocational education and training infrastructure, so long as the payments are authorised under subsection 176(3);
 - (d) making payments in relation to the creation or development of eligible education infrastructure, so long as the payments are authorised under subsection 176(4);
 - (e) making transitional HEEF payments, so long as the payments are authorised under subsection 176(5);
 - (f) paying the costs of, or incidental to, the acquisition of financial assets under section 151;
 - (g) paying expenses of an investment of the Education Investment Fund;
 - (h) paying the costs of, or incidental to, the acquisition of derivatives under section 161;
 - (i) paying or discharging the costs, expenses and other obligations incurred by the Future Fund Board under a contract between the Future Fund Board and an investment manager engaged under subsection 164(1);
 - (j) 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

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Fund Board, where the bank account relates exclusively to the Education Investment Fund;

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

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

- (2) Paragraphs (1)(a), (b), (c), (d) and (e) do not limit each other.
- (3) A payment under paragraph (1)(a), (b), (c) or (d) may be made:
 - (a) by way of a grant of financial assistance; or
 - (b) otherwise than by way of a grant of financial assistance.

Note 1: Section 183 deals with the channelling of payments through the EIF Education Portfolio Special Account.

Note 2: Section 190 deals with the channelling of payments through the EIF Research Portfolio Special Account.

Note 3: Section 194 deals with the channelling of State/Territory grants payments through the COAG Reform Fund.

137 Purposes of the Education Investment Fund Special Account—transitional

Each of the following is a purpose of the Education Investment Fund Special Account:

- (a) paying the costs of, or incidental to, the acquisition of financial assets under Part 3 of the repealed *Higher Education Endowment Fund Act 2007*, where the costs were incurred before the commencement of this section;
- (b) paying expenses of an investment of the Education Investment Fund, where:
 - (i) immediately before the commencement of this section, the investment was an investment of the Higher Education Endowment Fund; and
 - (ii) the expense was incurred before the commencement of this section;

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- (c) paying the costs of, or incidental to, the acquisition of derivatives under section 31 of the repealed *Higher Education Endowment Fund Act 2007*, where the costs were incurred before the commencement of this section;
- (d) paying or discharging the costs, expenses and other obligations incurred by the Future Fund Board under a contract between the Future Fund Board and an investment manager engaged under subsection 34(1) of the repealed *Higher Education Endowment Fund Act 2007*, where the costs, expenses or obligations were incurred before the commencement of this section;
- (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, where:
 - (i) the bank account relates exclusively to the Higher Education Endowment Fund; and
 - (ii) the costs, expenses or obligations were incurred before the commencement of this section;
- (f) paying a premium in respect of a contract of insurance entered into by the Future Fund Board exclusively in connection with the Higher Education Endowment Fund, where the liability to pay the premium was incurred before the commencement of this section;
- (g) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Commonwealth exclusively in connection with the Higher Education Endowment Fund, where the costs, expenses, obligations or liabilities were incurred before the commencement of this section.

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

Note 2: The Higher Education Endowment Fund was established by the repealed *Higher Education Endowment Fund 2007*.

**138 Purposes of the Education Investment Fund Special Account—
purposes not related exclusively to the Education
Investment Fund**

Each of the following is a purpose of the Education Investment Fund Special Account:

- (a) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Future Fund Board, where those costs, expenses or obligations are not covered by:
 - (i) paragraph 18(1)(j); or
 - (ii) paragraph 136(1)(j); or
 - (iii) paragraph 137(e); or
 - (iv) paragraph 218(1)(f); or
 - (v) paragraph 2(1)(g) of Schedule 2 to the *Future Fund Act 2006*;
- (b) paying a premium in respect of a contract of insurance entered into by the Future Fund Board, where the premium is not covered by:
 - (i) paragraph 18(1)(k); or
 - (ii) paragraph 136(1)(k); or
 - (iii) paragraph 137(f); or
 - (iv) paragraph 218(1)(g); or
 - (v) paragraph 2(1)(h) of Schedule 2 to the *Future Fund Act 2006*;
- (c) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board, where the costs, expenses, obligations or liabilities are not covered by:
 - (i) a paragraph of subsection 18(1); or
 - (ii) a paragraph of subsection 136(1); or
 - (iii) a paragraph of section 137; or
 - (iv) a paragraph of subsection 218(1); or
 - (v) a paragraph of subclause 2(1) of Schedule 2 to the *Future Fund Act 2006*;
- (d) paying remuneration and allowances of Future Fund Board members;

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- (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 under a contract entered into under section 78 or 82 of the *Future Fund Act 2006*;
- (g) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in connection with the operation of the Agency.

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

139 Payments in relation to the creation or development of higher education infrastructure

For the purposes of this Act, a *payment in relation to the creation or development of higher education infrastructure* is:

- (a) a payment to a higher education institution in relation to the creation or development of education infrastructure; or
- (b) any of the following payments:
 - (i) a payment in relation to the acquisition of shares in a company that is, or will be, involved in the creation or development of education infrastructure;
 - (ii) a payment in relation to the acquisition of debentures of a company that is, or will be, involved in the creation or development of education infrastructure;
 - (iii) a payment in relation to the acquisition of units in a unit trust that is, or will be, involved in the creation or development of education infrastructure;
 - (iv) a payment in relation to the acquisition of any other financial asset in a business entity that is, or will be, involved in the creation or development of education infrastructure;
 - (v) a payment in relation to a matter incidental or ancillary to a matter set out in subparagraph (i), (ii), (iii) or (iv); where the education infrastructure relates to the higher education sector.

Note: See section 206.

140 Payments in relation to the creation or development of research infrastructure

For the purposes of this Act, a *payment in relation to the creation or development of research infrastructure* is:

- (a) a payment to a research institution in relation to the creation or development of research infrastructure; or
- (b) any of the following payments:
 - (i) a payment in relation to the acquisition of shares in a company that is, or will be, involved in the creation or development of research infrastructure;
 - (ii) a payment in relation to the acquisition of debentures of a company that is, or will be, involved in the creation or development of research infrastructure;
 - (iii) a payment in relation to the acquisition of units in a unit trust that is, or will be, involved in the creation or development of research infrastructure;
 - (iv) a payment in relation to the acquisition of any other financial asset in a business entity that is, or will be, involved in the creation or development of research infrastructure;
 - (v) a payment in relation to a matter incidental or ancillary to a matter set out in subparagraph (i), (ii), (iii) or (iv).

Note: See section 206.

141 Payments in relation to the creation or development of vocational education and training infrastructure

For the purposes of this Act, a *payment in relation to the creation or development of vocational education and training infrastructure* is:

- (a) a payment to a vocational education and training provider in relation to the creation or development of education infrastructure; or
- (b) any of the following payments:

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- (i) a payment in relation to the acquisition of shares in a company that is, or will be, involved in the creation or development of education infrastructure;
 - (ii) a payment in relation to the acquisition of debentures of a company that is, or will be, involved in the creation or development of education infrastructure;
 - (iii) a payment in relation to the acquisition of units in a unit trust that is, or will be, involved in the creation or development of education infrastructure;
 - (iv) a payment in relation to the acquisition of any other financial asset in a business entity that is, or will be, involved in the creation or development of education infrastructure;
 - (v) a payment in relation to a matter incidental or ancillary to a matter set out in subparagraph (i), (ii), (iii) or (iv);
- where the education infrastructure relates to the vocational education and training sector.

Note: See section 206.

142 Payments in relation to the creation or development of eligible education infrastructure

For the purposes of this Act, a *payment in relation to the creation or development of eligible education infrastructure* is:

- (a) a payment in relation to one or more designated education infrastructure-related matters; or
- (b) any of the following payments:
 - (i) a payment in relation to the acquisition of shares in a company that is, or will be, involved in the creation or development of education infrastructure;
 - (ii) a payment in relation to the acquisition of debentures of a company that is, or will be, involved in the creation or development of education infrastructure;
 - (iii) a payment in relation to the acquisition of units in a unit trust that is, or will be, involved in the creation or development of education infrastructure;
 - (iv) a payment in relation to the acquisition of any other financial asset in a business entity that is, or will be,

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involved in the creation or development of education infrastructure;

- (v) a payment in relation to a matter incidental or ancillary to a matter set out in subparagraph (i), (ii), (iii) or (iv); where the education infrastructure relates to education specified in a legislative instrument made by the EIF designated Ministers for the purposes of this paragraph.

Note: See section 206.

143 Designated education infrastructure-related matters

- (1) The EIF designated Ministers may, by legislative instrument, determine that, for the purposes of this Act, a specified matter is a ***designated education infrastructure-related matter***.

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

- (2) The EIF designated Ministers must not specify a matter under subsection (1) unless the matter relates to the creation or development of education infrastructure.

144 Transitional HEEF payments

- (1) For the purposes of this Act, a ***transitional HEEF payment*** is:
- (a) a grant of financial assistance to an eligible higher education institution in relation to capital expenditure; or
 - (b) a grant of financial assistance to an eligible higher education institution in relation to research facilities.

Note: A transitional HEEF payment requires a pre-1 July 2009 recommendation of the EIF designated Ministers—see subsections 177(7), 184(4) and 191(4).

- (2) An expression used in paragraph (1)(a) or (b) has the same meaning as it had in the *Higher Education Endowment Fund Act 2007* as in force immediately before the commencement of this section.

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145 Future Fund Board must ensure that there is sufficient money in the Education Investment Fund Special Account to cover authorised payments etc.

The Future Fund Board must take all reasonable steps to ensure that the amount of money standing to the credit of the Education Investment Fund Special Account is sufficient to cover:

- (a) the debit of amounts for payments authorised, or proposed to be authorised, under subsection 176(1), (2), (3), (4) or (5); and
- (b) amounts debited, or proposed to be debited, under subsection 183(1); and
- (c) amounts debited, or proposed to be debited, under subsection 190(1); and
- (d) amounts debited, or proposed to be debited, under subsection 194(1).

Note: This may require the Future Fund Board to realise an investment of the Education Investment Fund in accordance with section 153.

Division 5—Inter-fund transfers

146 Transfers from the Education Investment 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 a specified amount is to be:
 - (a) debited from the Education Investment Fund Special Account; and
 - (b) credited to the Future Fund Special Account; on a specified day.
- (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.

147 Transfers from the Education Investment Fund to the Building Australia Fund

- (1) If an amount is debited from the Building Australia Fund Special Account for a purpose mentioned in section 20, the Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Education Investment Fund Special Account; and
 - (b) credited to the Building Australia Fund Special Account; on a specified day.
- (2) The specified amount must not exceed the amount debited from the Building Australia Fund Special Account as mentioned in subsection (1).
- (3) A direction under subsection (1) is not a legislative instrument.

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148 Transfers from the Education Investment Fund to the Health and Hospitals Fund

- (1) If an amount is debited from the Health and Hospitals Fund Special Account for a purpose mentioned in section 219, the Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Education Investment Fund Special Account; and
 - (b) credited to the Health and Hospitals Fund Special Account; on a specified day.
- (2) The specified amount must not exceed the amount debited from the Health and Hospitals Fund Special Account as mentioned in subsection (1).
- (3) A direction under subsection (1) is not a legislative instrument.

Part 3.3—Investment of the Education Investment Fund

149 Simplified outline

The following is a simplified outline of this Part:

- The Future Fund Board is responsible for deciding how to invest the Education Investment Fund.
- Investments of the Education Investment Fund will consist of financial assets.
- Investments of the Education Investment Fund will be held in the name of the Future Fund Board.
- The Future Fund Board is bound by an Education Investment Fund Investment Mandate given to it by the responsible Ministers.

150 Objects of investment of the Education Investment Fund

- (1) The main object of the acquisition by the Future Fund Board of a financial asset as an investment of the Education Investment Fund is to enhance the Commonwealth's ability:
 - (a) to make payments in relation to the creation or development of higher education infrastructure; and
 - (b) to make payments in relation to the creation or development of research infrastructure; and
 - (c) to make payments in relation to the creation or development of vocational education and training infrastructure; and
 - (d) to make payments in relation to the creation or development of eligible education infrastructure; and
 - (e) to make transitional HEEF payments.

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- (2) The ancillary objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Education Investment Fund are to enhance the ability of the Commonwealth and the Future Fund Board to:
- (a) discharge costs, expenses, obligations and liabilities; and
 - (b) make payments;
- as mentioned in paragraphs 136(1)(f) to (l), 137(a) to (g) and 138(a) to (g).

151 Investment of the Education Investment Fund

- (1) The Future Fund Board may invest amounts standing to the credit of the Education Investment Fund Special Account in any financial assets.
- (2) Investments under subsection (1) are to be made in the name of the Future Fund Board.
- (3) Investments under subsection (1) are taken to be investments of the Education Investment Fund.
- (4) This section does not authorise the acquisition of a derivative.

Note: For acquisition of derivatives, see section 161.

152 Education Investment Fund to inherit investments of the Higher Education Endowment Fund

Scope

- (1) This section applies to a financial asset if:
 - (a) immediately before the commencement of this section, the financial asset was an investment of the Higher Education Endowment Fund; and
 - (b) the financial asset is held by the Future Fund Board; and
 - (c) the financial asset has been continuously held by the Future Fund Board since the commencement of this section.

Note: The Higher Education Endowment Fund was established by section 11 of the repealed *Higher Education Endowment Fund Act 2007*.

Investment of the Education Investment Fund

- (2) The financial asset is taken to be an investment of the Education Investment Fund.

153 Management of investments of the Education Investment Fund

- (1) Income derived from an investment of the Education Investment Fund is to be credited to the Education Investment Fund Special Account.
- (2) A return of capital, or any other financial distribution, relating to an investment of the Education Investment Fund is to be credited to the Education Investment Fund Special Account.
- (3) The Future Fund Board may realise an investment of the Education Investment Fund.
- (4) Upon realisation of an investment of the Education Investment Fund, the proceeds of the investment are to be credited to the Education Investment Fund Special Account.
- (5) At any time before an investment of the Education Investment 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 Education Investment Fund.
- (6) Section 39 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Education Investment Fund.

154 Education Investment Fund Investment Mandate

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

Note 1: *Education Investment Fund investment function* is defined in section 4.

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

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- (2) Subsection (1) has effect subject to section 155.
- (3) In giving a direction under subsection (1), the responsible Ministers must have regard to:
 - (a) maximising the return earned on the Education Investment Fund, consistent with international best practice for institutional investment; and
 - (b) enhancing the Commonwealth's ability:
 - (i) to make payments in relation to the creation or development of higher education infrastructure; and
 - (ii) to make payments in relation to the creation or development of research infrastructure; and
 - (iii) to make payments in relation to the creation or development of vocational education and training infrastructure; and
 - (iv) to make payments in relation to the creation or development of eligible education infrastructure; and
 - (v) to make transitional HEEF payments; and
 - (c) such other matters as the responsible Ministers consider relevant.
- (4) Directions under subsection (1) are to be known collectively as the ***Education Investment Fund Investment Mandate***.
- (5) A direction under subsection (1) 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.
- (6) Subsection (5) does not limit subsection (1).
- (7) Subsection (5) has effect subject to section 155.
- (8) The Education Investment Fund Investment Mandate prevails over subsection (12) to the extent of any inconsistency.

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- (9) The responsible Ministers must not give a direction under subsection (1) that is inconsistent with this Act (other than subsection (12)).
- (10) A direction under subsection (1) must not take effect before the 15th day after the day on which it is given.
- (11) 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.
- (12) In the performance of its Education Investment Fund investment functions, the Future Fund Board must seek to:
- (a) maximise the return earned on the Education Investment Fund, consistent with international best practice for institutional investment; and
 - (b) enhance the Commonwealth's ability:
 - (i) to make payments in relation to the creation or development of higher education infrastructure; and
 - (ii) to make payments in relation to the creation or development of research infrastructure; and
 - (iii) to make payments in relation to the creation or development of vocational education and training infrastructure; and
 - (iv) to make payments in relation to the creation or development of eligible education infrastructure; and
 - (v) to make transitional HEEF payments.
- Note: *Education Investment Fund investment function* is defined in section 4.
- (13) Subsection (12) has effect subject to:
- (a) this Act; and
 - (b) a direction under subsection (1).

155 Limitation on Education Investment Fund Investment Mandate

- (1) The responsible Ministers must not give a direction under subsection 154(1) that has the purpose, or has or is likely to have
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the effect, of directly or indirectly requiring the Future Fund Board to:

- (a) invest an amount standing to the credit of the Education Investment 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).

156 Future Fund Board to be consulted on Education Investment Fund Investment Mandate

- (1) Before giving the Future Fund Board a direction under subsection 154(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 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) If:
- (a) the responsible Ministers give the Future Fund Board a direction under subsection 154(1); and
 - (b) the Future Fund Board made a submission to the responsible Ministers on a draft of the direction within the time limit specified by the responsible Ministers;
- the submission is to be tabled in each House of the Parliament with the direction.

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

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

157 Compliance with Education Investment Fund Investment Mandate

- (1) The Future Fund Board must take all reasonable steps to comply with the Education Investment Fund Investment Mandate.
- (2) As soon as practicable after the Future Fund Board becomes aware that it has failed to comply with the Education Investment Fund Investment Mandate, the Future Fund Board must give the responsible Ministers a written statement:
 - (a) informing the responsible Ministers of the failure to comply with the Education Investment Fund Investment Mandate; and
 - (b) setting out the action that the Future Fund Board proposes to take in order to comply with the Education Investment Fund Investment Mandate.
- (3) If the responsible Ministers are satisfied that the Future Fund Board has failed to comply with the Education Investment Fund Investment Mandate, the responsible Ministers may, by written notice given to the Future Fund Board, direct the Future Fund Board:
 - (a) to give the responsible Ministers, within a period specified in the notice, a written explanation for the failure to comply with the Education Investment Fund Investment Mandate; and
 - (b) to take action specified in the notice, within a period specified in the notice, in order to comply with the Education Investment Fund Investment Mandate.
- (4) The Future Fund Board must comply with a direction under subsection (3).
- (5) A failure to comply with:
 - (a) the Education Investment 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.

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158 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 Education Investment 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*).

159 Borrowing

- (1) The Future Fund Board must not borrow money for a purpose in connection with the Education Investment 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 Education Investment Fund if:
 - (a) the purpose of the borrowing is to enable the Future Fund 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 Future Fund Board would not exceed 10% of the balance of the Education Investment Fund.
- (3) The Future Fund Board is authorised to borrow money for a purpose in connection with the Education Investment Fund if the borrowing takes place in such circumstances (if any) as are specified in the regulations.

160 Education Investment 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 Education Investment Fund:
- (a) the investment strategy for the Education Investment Fund;
 - (b) benchmarks and standards for assessing the performance of the Education Investment Fund;
 - (c) risk management for the Education Investment Fund;
 - (d) a matter relating to international best practice for institutional investment;
 - (e) a matter specified in the regulations.

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 Education Investment Fund Investment Mandate.

Publication of policies

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

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- (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.

161 Derivatives

- (1) The Future Fund Board may acquire a derivative for the purpose of:
- (a) protecting the value of an investment of the Education Investment Fund (other than a derivative); or
 - (b) protecting the return on an investment of the Education Investment Fund (other than a derivative); or
 - (c) achieving indirect exposure to financial assets (other than derivatives) for a purpose in connection with the Education Investment Fund; or
 - (d) achieving transactional efficiency for a purpose in connection with the Education Investment Fund;
- but must not acquire a derivative for the purpose of:
- (e) speculation; or
 - (f) leverage.
- (2) The acquisition of a derivative under subsection (1) must be consistent with the investment strategy embodied in a policy formulated by the Future Fund Board under subsection 160(1).
- (3) A derivative acquired under subsection (1) 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 Education Investment Fund.

162 Additional financial assets

- (1) If, as a result of:
- (a) the Future Fund Board's holding of an investment of the Education Investment Fund; or

- (b) the exercise of any rights or powers conferred on the Future Fund Board in its capacity as the holder of an investment of the Education Investment Fund;

the Future Fund Board becomes the holder of a financial asset, that financial asset is taken to be an investment of the Education Investment Fund.

Transitional—Higher Education Endowment Fund

- (2) If, as a result of:
 - (a) the Future Fund Board's holding of an investment of the Higher Education Endowment Fund at a time before the commencement of this section; or
 - (b) the exercise of any rights or powers conferred on the Future Fund Board in its capacity as the holder of an investment of the Higher Education Endowment Fund at a time before the commencement of this section;the Future Fund Board becomes the holder of a financial asset at a time after the commencement of this section, that financial asset is taken to be an investment of the Education Investment Fund.

163 Securities lending arrangements

- (1) The Future Fund Board may enter into securities lending arrangements for a purpose in connection with the Education Investment 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 Education Investment 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 Education Investment Fund.
- (4) 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 a financial asset, that financial asset is taken to be an investment of the Education Investment Fund.

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164 Investment managers

- (1) The Future Fund Board may engage one or more investment managers for purposes in connection with the Education Investment Fund.
- (2) The Future Fund Board must not:
 - (a) invest amounts under subsection 151(1); or
 - (b) acquire derivatives under subsection 161(1); or
 - (c) enter into a securities lending arrangement under subsection 163(1); or
 - (d) realise financial assets that are investments of the Education Investment Fund;unless the Future Fund Board does so:
 - (e) through an investment manager engaged by the Future Fund Board under subsection (1) of this section; or
 - (f) in a manner approved, in writing, by the responsible Ministers.
- (3) The Future Fund Board must ensure that any investment manager engaged by the Future Fund Board under subsection (1) operates within this Act.
- (4) The Future Fund Board must ensure that any investment manager engaged by the Future Fund Board under subsection (1) reports to:
 - (a) the Future Fund Board; and
 - (b) the Agency;on the state of the investments of the Education Investment Fund at such times and in such manner as the Future Fund Board determines.

165 Custody of securities

Section 40 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Education Investment Fund.

166 Refund of franking credits

If:

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- (a) the Future Fund Board receives a refund of a tax offset under the *Income Tax Assessment Act 1997*; and
 - (b) the tax offset is attributable to an investment of the Education Investment Fund;
- the refund is to be credited to the Education Investment Fund Special Account.

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*.

167 Realisation of non-financial assets

- (1) If an asset held by the Future Fund Board as an investment of the Education Investment Fund ceases to be a financial asset:
 - (a) the Future Fund Board must realise the asset as soon as practicable after the Future Fund Board becomes aware of the cessation; and
 - (b) 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 remained a financial asset, and an investment of the Education Investment Fund, until the realisation.
- (2) If an asset acquired by the Future Fund Board, purportedly as an investment of the Education Investment Fund, is not a financial asset:
 - (a) the Future Fund Board must realise the asset as soon as practicable after the Future Fund Board becomes aware that the asset is not a financial asset; and
 - (b) 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 Education Investment Fund, from the time of its acquisition by the Future Fund Board until the realisation.

168 Additional function of the Future Fund Board

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

Part 3.4—Payments

Division 1—Introduction

169 Simplified outline

The following is a simplified outline of this Part:

- The Education Investment Fund Advisory Board is established.
- The Education Investment Fund Advisory Board is to advise the Education Minister about the following matters:
 - (a) the making of payments in relation to the creation or development of higher education infrastructure;
 - (b) the making of payments in relation to the creation or development of vocational education and training infrastructure;
 - (c) the making of payments in relation to the creation or development of eligible education infrastructure.
- The Education Investment Fund Advisory Board is to advise the Research Minister about the making of payments in relation to the creation or development of research infrastructure.
- The Education Investment Fund Advisory Board is to advise the EIF designated Ministers about the making of transitional HEEF payments.
- The Finance Minister may authorise:

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- (a) payments in relation to the creation or development of higher education infrastructure; and
- (b) payments in relation to the creation or development of vocational education and training infrastructure; and
- (c) payments in relation to the creation or development of eligible education infrastructure;

on the recommendation of the Education Minister.

- The Finance Minister may authorise payments in relation to the creation or development of research infrastructure on the recommendation of the Research Minister.
- The Finance Minister may authorise transitional HEEF payments on the recommendation of the EIF designated Ministers.
- If a payment is made by way of a grant of financial assistance, the terms and conditions on which the financial assistance is granted are to be set out in a written agreement between the Commonwealth and the recipient.
- Payments may be channelled through the EIF Education Portfolio Special Account or the EIF Research Portfolio Special Account.
- Grants of financial assistance to the States and Territories may be channelled through the COAG Reform Fund.
- The Finance Minister must comply with general drawing rights limits.
- The total amount of payments made in each financial year will depend on the macroeconomic circumstances.

Division 2—Education Investment Fund Advisory Board

170 Education Investment Fund Advisory Board

- (1) The Education Investment Fund Advisory Board is established.
- (2) The EIF Advisory Board consists of such persons as the EIF designated Ministers from time to time appoint, by writing, to the EIF Advisory Board.

Note: **EIF Advisory Board** means the Education Investment Fund Advisory Board—see section 4.

- (3) A member of the EIF Advisory Board holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

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

- (4) A person is not eligible for appointment to the EIF Advisory Board unless the EIF designated Ministers are satisfied that the person has substantial experience or knowledge in a field relevant to one or more of the EIF Advisory Board's functions.
- (5) The EIF designated Ministers may terminate a person's appointment to the EIF Advisory Board.
- (6) The EIF designated Ministers may give the EIF Advisory Board written directions as to:
 - (a) the way in which the EIF Advisory Board is to carry out its functions; and
 - (b) procedures to be followed in relation to meetings.
- (7) A direction under subsection (6) is not a legislative instrument.

171 Functions of the EIF Advisory Board

General functions

- (1) The EIF Advisory Board has the following functions:

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- (a) to advise the Education Minister about matters referred to it by the Education Minister; and
 - (b) to advise the Research Minister about matters referred to it by the Research Minister; and
 - (c) to advise the EIF designated Ministers about matters referred to it by the EIF designated Ministers.
- (2) Each matter referred to the EIF Advisory Board under paragraph (1)(a) must be a matter that relates to:
 - (a) the making of payments in relation to the creation or development of higher education infrastructure; or
 - (b) the making of payments in relation to the creation or development of vocational education and training infrastructure; or
 - (c) the making of payments in relation to the creation or development of eligible education infrastructure.
- (3) Each matter referred to the EIF Advisory Board under paragraph (1)(b) must be a matter that relates to the making of payments in relation to the creation or development of research infrastructure.
- (4) In giving advice under paragraph (1)(a) or (b), the EIF Advisory Board must apply the EIF evaluation criteria.
- (5) Each matter referred to the EIF Advisory Board under paragraph (1)(c) must be a matter that:
 - (a) relates to the object or operation of this Chapter; and
 - (b) does not relate to the making of a particular payment.

Functions relating to transitional HEEF payments

- (6) The EIF Advisory Board also has the function of advising the EIF designated Ministers about matters that:
 - (a) are referred to it by the EIF designated Ministers before 1 July 2009; and
 - (b) relate to the making of transitional HEEF payments.
- (7) In giving advice under subsection (6), the EIF Advisory Board must apply the provisions of the document that:

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- (a) is entitled “Higher Education Endowment Fund (HEEF) Application and Assessment Procedures for the 2009 Funding Round”; and
- (b) was attached to the *Higher Education Endowment Fund Advisory Board Directions No. 1 of 2008* as in force immediately before the commencement of this section; subject to such modifications as are specified in the regulations.

172 EIF evaluation criteria

- (1) The EIF designated Ministers may, by legislative instrument, formulate criteria (*EIF evaluation criteria*) to be applied by the EIF Advisory Board in giving advice under paragraph 171(1)(a) or (b).
- (2) The EIF evaluation criteria may provide that the criteria to be applied by the EIF Advisory Board in giving advice under paragraph 171(1)(a) may be different to the criteria to be applied by the EIF Advisory Board in giving advice under paragraph 171(1)(b).
- (3) Before formulating EIF evaluation criteria, the EIF designated Ministers must consult the responsible Ministers.
- (4) The EIF designated Ministers must ensure that EIF evaluation criteria are in force at all times after the commencement of this section.

173 Remuneration and allowances

- (1) A member of the EIF Advisory Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is determined by the EIF designated Ministers.
- (2) A member of the EIF Advisory Board is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

174 Disclosure of interests

- (1) This section applies to a member of the EIF Advisory Board who has a material personal interest in a matter being considered, or about to be considered, by the EIF Advisory Board.
- (2) The member must, as soon possible after the relevant facts have come to the member's knowledge:
 - (a) disclose the nature of the interest at a meeting of the EIF Advisory Board; and
 - (b) disclose the nature of the interest to the EIF designated Ministers.
- (3) A disclosure under paragraph (2)(a) must be recorded in the minutes of the meeting.
- (4) The EIF designated Ministers must terminate the appointment of a member of the EIF Advisory Board if the member fails, without reasonable excuse, to comply with subsection (2).
- (5) Subsection (4) does not limit subsection 170(5).

175 Resignation

- (1) A member of the EIF Advisory Board may resign his or her appointment by giving a written resignation to:
 - (a) the Education Minister; or
 - (b) the Research Minister.
- (2) The resignation takes effect on the day it is received by the Minister concerned or, if a later day is specified in the resignation, on that later day.

Division 3—Direct payments

176 Authorisation of payments

- (1) The Finance Minister may, by writing, authorise a payment in relation to the creation or development of higher education infrastructure.
- (2) The Finance Minister may, by writing, authorise a payment in relation to the creation or development of research infrastructure.
- (3) The Finance Minister may, by writing, authorise a payment in relation to the creation or development of vocational education and training infrastructure.
- (4) The Finance Minister may, by writing, authorise a payment in relation to the creation or development of eligible education infrastructure.
- (5) The Finance Minister may, by writing, authorise a transitional HEEF payment.
- (6) Subsections (1), (2), (3), (4) and (5) do not limit each other.
- (7) 2 or more authorisations under this section may be set out in the same document.
- (8) An instrument under subsection (1), (2), (3), (4) or (5) is not a legislative instrument.

177 Recommendations about payments

Education infrastructure

- (1) The Finance Minister must not authorise a payment under subsection 176(1), (3) or (4) unless the Education Minister has recommended the authorisation of the payment.
- (2) The Education Minister must not make a recommendation under subsection (1) in relation to a payment unless the EIF Advisory

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Board has advised under paragraph 171(1)(a) that the payment satisfies the relevant EIF evaluation criteria.

- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Education Minister must have regard to:
- (a) advice about the payment that was given to the Education Minister by the EIF Advisory Board under paragraph 171(1)(a); and
 - (b) such other matters (if any) as the Education Minister considers relevant.

Research infrastructure

- (4) The Finance Minister must not authorise a payment under subsection 176(2) unless the Research Minister has recommended the authorisation of the payment.
- (5) The Research Minister must not make a recommendation under subsection (4) in relation to a payment unless the EIF Advisory Board has advised under paragraph 171(1)(b) that the payment satisfies the relevant EIF evaluation criteria.
- (6) In deciding whether to make a recommendation under subsection (4) in relation to a payment, the Research Minister must have regard to:
- (a) advice about the payment that was given to the Research Minister by the EIF Advisory Board under paragraph 171(1)(b); and
 - (b) such other matters (if any) as the Research Minister considers relevant.

Transitional HEEF payments

- (7) The Finance Minister must not authorise a payment under subsection 176(5) unless the EIF designated Ministers have, before 1 July 2009, recommended the authorisation of the payment.
- (8) The EIF designated Ministers must not make a recommendation under subsection (7) in relation to a payment unless the EIF

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Advisory Board has given advice under subsection 171(6) about the payment.

- (9) In deciding whether to make a recommendation under subsection (7) in relation to a payment, the EIF designated Ministers must have regard to:
- (a) advice about the payment that was given to the EIF designated Ministers by the EIF Advisory Board under subsection 171(6); and
 - (b) such other matters (if any) as the EIF designated Ministers consider relevant.

178 Grant to a State or Territory—education infrastructure etc.

Scope

- (1) This section applies if:
- (a) an amount is to be debited from the Education Investment Fund Special Account for the purpose of making a payment to a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance; and
 - (c) the payment is for a purpose mentioned in paragraph 136(1)(c) or (d).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Education Minister on behalf of the Commonwealth.

179 Grant to a person other than a State or Territory—education infrastructure etc.

Scope

- (1) This section applies if:

Section 180

- (a) an amount is to be debited from the Education Investment Fund Special Account for the purpose of making a payment to a person other than a State or Territory; and
- (b) the payment is by way of a grant of financial assistance; and
- (c) the payment is for a purpose mentioned in paragraph 136(1)(a), (c), (d) or (e).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Education Minister on behalf of the Commonwealth.

180 Grant to a person other than a State or Territory—research infrastructure*Scope*

- (1) This section applies if:
 - (a) an amount is to be debited from the Education Investment Fund Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance; and
 - (c) the payment is for the purpose mentioned in paragraph 136(1)(b).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Research Minister on behalf of the Commonwealth.

Division 4—Channelling of payments through the EIF Education Portfolio Special Account

181 Establishment of the EIF Education Portfolio Special Account

- (1) The EIF Education Portfolio Special Account is established by this section.
- (2) The EIF Education Portfolio Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

182 Purposes of the EIF Education Portfolio Special Account

- (1) Each of the following is a purpose of the EIF Education Portfolio Special Account:
 - (a) making payments in relation to the creation or development of higher education infrastructure, so long as the payments are specified under subsection 183(2);
 - (b) making payments in relation to the creation or development of vocational education and training infrastructure, so long as the payments are specified under subsection 183(2);
 - (c) making payments in relation to the creation or development of eligible education infrastructure, so long as the payments are specified under subsection 183(2);
 - (d) making transitional HEEF payments, so long as the payments are specified under subsection 183(2).

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

- (2) Paragraphs (1)(a), (b), (c) and (d) do not limit each other.
- (3) A payment under paragraph (1)(a), (b), (c) or (d) may be made:
 - (a) by way of a grant of financial assistance; or
 - (b) otherwise than by way of a grant of financial assistance.

183 Channelling of payments through the EIF Education Portfolio Special Account

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Education Investment Fund Special Account; and
 - (b) credited to the EIF Education Portfolio Special Account; on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be debited from the EIF Education Portfolio Special Account:
 - (a) for the purpose of making a specified payment in relation to the creation or development of higher education infrastructure; or
 - (b) for the purpose of making a specified payment in relation to the creation or development of vocational education and training infrastructure; or
 - (c) for the purpose of making a specified payment in relation to the creation or development of eligible education infrastructure; or
 - (d) for the purpose of making a specified transitional HEEF payment.
- (3) Paragraphs (2)(a), (b), (c) and (d) do not limit each other.
- (4) 2 or more directions under subsection (1) may be set out in the same document.
- (5) A direction under subsection (1) is not a legislative instrument.
- (6) The Finance Minister must give a copy of a direction under subsection (1) to the Education Minister.

184 Recommendations about payments—education infrastructure

Education infrastructure

- (1) The following payments:

Section 184

- (a) a payment in relation to the creation or development of higher education infrastructure;
 - (b) a payment in relation to the creation or development of vocational education and training infrastructure;
 - (c) a payment in relation to the creation or development of eligible education infrastructure;must not be specified under subsection 183(2) unless the Education Minister has recommended the specification of the payment.
- (2) The Education Minister must not make a recommendation under subsection (1) in relation to a payment unless the EIF Advisory Board has advised under paragraph 171(1)(a) that the payment satisfies the relevant EIF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Education Minister must have regard to:
 - (a) advice about the payment that was given to the Education Minister by the EIF Advisory Board under paragraph 171(1)(a); and
 - (b) such other matters (if any) as the Education Minister considers relevant.

Transitional HEEF payments

- (4) A transitional HEEF payment must not be specified under subsection 183(2) unless the EIF designated Ministers have, before 1 July 2009, recommended the specification of the payment.
- (5) The EIF designated Ministers must not make a recommendation under subsection (4) in relation to a payment unless the EIF Advisory Board has given advice under subsection 171(6) about the payment.
- (6) In deciding whether to make a recommendation under subsection (4) in relation to a payment, the EIF designated Ministers must have regard to:
 - (a) advice about the payment that was given to the EIF designated Ministers by the EIF Advisory Board under subsection 171(6); and

- (b) such other matters (if any) as the EIF designated Ministers consider relevant.

185 Payments—debit from the EIF Education Portfolio Special Account

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 183(1) for a purpose in relation to a payment; and
 - (b) the amount specified in the direction is credited to the EIF Education Portfolio Special Account.

Debit from the EIF Education Portfolio Special Account

- (2) The Education Minister must ensure that, as soon as practicable after the amount is credited, the EIF Education Portfolio Special Account is debited for the purposes of making the payment.
- (3) However, if the payment cannot be made, an amount equal to the credited amount is to be:
 - (a) debited from the EIF Education Portfolio Special Account; and
 - (b) credited to the Education Investment Fund Special Account.

186 Grant to a State or Territory—education infrastructure etc.

Scope

- (1) This section applies if an amount is to be debited from the EIF Education Portfolio Special Account for the purpose of making a grant of financial assistance to a State or Territory.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.

Section 187

- (3) An agreement under subsection (2) may be entered into by the Education Minister on behalf of the Commonwealth.

187 Grant to a person other than a State or Territory—education infrastructure etc.

Scope

- (1) This section applies if:
- (a) an amount is to be debited from the EIF Education Portfolio Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Education Minister on behalf of the Commonwealth.

Division 5—Channelling of payments through the EIF Research Portfolio Special Account

188 Establishment of the EIF Research Portfolio Special Account

- (1) The EIF Research Portfolio Special Account is established by this section.
- (2) The EIF Research Portfolio Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

189 Purposes of the EIF Research Portfolio Special Account

- (1) Each of the following is a purpose of the EIF Research Portfolio Special Account:
 - (a) making payments in relation to the creation or development of research infrastructure, so long as the payments are specified under subsection 190(2);
 - (b) making transitional HEEF payments, so long as the payments are specified under subsection 190(2).

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

- (2) Paragraphs (1)(a) and (b) do not limit each other.
- (3) A payment under paragraph (1)(a) or (b) may be made:
 - (a) by way of a grant of financial assistance; or
 - (b) otherwise than by way of a grant of financial assistance.

190 Channelling of payments through the EIF Research Portfolio Special Account

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Education Investment Fund Special Account; and
 - (b) credited to the EIF Research Portfolio Special Account;

Section 191

on a specified day.

- (2) The direction must be expressed to be given in order to enable the specified amount to be debited from the EIF Research Portfolio Special Account:
 - (a) for the purpose of making a specified payment in relation to the creation or development of research infrastructure; or
 - (b) for the purpose of making a specified transitional HEEF payment.
- (3) Paragraphs (2)(a) and (b) do not limit each other.
- (4) 2 or more directions under subsection (1) may be set out in the same document.
- (5) A direction under subsection (1) is not a legislative instrument.
- (6) The Finance Minister must give a copy of a direction under subsection (1) to the Research Minister.

191 Recommendations about payments—research infrastructure and transitional HEEF payments

Research infrastructure

- (1) A payment in relation to the creation or development of research infrastructure must not be specified under subsection 190(2) unless the Research Minister has recommended the specification of the payment.
- (2) The Research Minister must not make a recommendation under subsection (1) in relation to a payment unless the EIF Advisory Board has advised under paragraph 171(1)(b) that the payment satisfies the relevant EIF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Research Minister must have regard to:
 - (a) advice about the payment that was given to the Research Minister by the EIF Advisory Board under paragraph 171(1)(b); and

Section 192

- (b) such other matters (if any) as the Research Minister considers relevant.

Transitional HEEF payments

- (4) A transitional HEEF payment must not be specified under subsection 190(2) unless the EIF designated Ministers have, before 1 July 2009, recommended the specification of the payment.
- (5) The EIF designated Ministers must not make a recommendation under subsection (4) in relation to a payment unless the EIF Advisory Board has given advice under subsection 171(6) about the payment.
- (6) In deciding whether to make a recommendation under subsection (4) in relation to a payment, the EIF designated Ministers must have regard to:
 - (a) advice about the payment that was given to the EIF designated Ministers by the EIF Advisory Board under subsection 171(6); and
 - (b) such other matters (if any) as the EIF designated Ministers consider relevant.

192 Payments—debit from the EIF Research Portfolio Special Account

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 190(1) for a purpose in relation to a payment; and
 - (b) the amount specified in the direction is credited to the EIF Research Portfolio Special Account.

Debit from the EIF Research Portfolio Special Account

- (2) The Research Minister must ensure that, as soon as practicable after the amount is credited, the EIF Research Portfolio Special Account is debited for the purposes of making the payment.

Section 193

- (3) However, if the payment cannot be made, an amount equal to the credited amount is to be:
 - (a) debited from the EIF Research Portfolio Special Account;
and
 - (b) credited to the Education Investment Fund Special Account.

193 Grant to a person other than a State or Territory—research infrastructure

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the EIF Research Portfolio Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Research Minister on behalf of the Commonwealth.

**Division 6—Channelling of State/Territory grants
payments through the COAG Reform Fund**

**194 Channelling of State/Territory grants payments through the
COAG Reform Fund**

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Education Investment Fund Special Account; and
 - (b) credited to the EIF Education Portfolio Special Account; on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be:
 - (a) transferred from the EIF Education Portfolio Special Account to the COAG Reform Fund; and
 - (b) debited from the COAG Reform Fund for the purpose of making a specified grant of financial assistance to a State or Territory.
- (3) A grant specified under subsection (2) must be:
 - (a) a grant of financial assistance to a vocational education and training provider in relation to education infrastructure; or
 - (b) a grant of financial assistance in relation to a designated education infrastructure-related matter.
- (4) 2 or more directions under subsection (1) may be set out in the same document.
- (5) A direction under subsection (1) is not a legislative instrument.
- (6) The Finance Minister must give a copy of a direction under subsection (1) to the Treasurer and the Education Minister.

Section 195

195 Recommendations about grants payments

- (1) A grant must not be specified under subsection 194(2) unless the Education Minister has recommended the specification of the grant.
- (2) The Education Minister must not make a recommendation under subsection (1) in relation to a grant unless the EIF Advisory Board has advised under paragraph 171(1)(a) that the grant satisfies the relevant EIF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a grant, the Education Minister must have regard to:
 - (a) advice about the grant that was given to the Education Minister by the EIF Advisory Board Australia under paragraph 171(1)(a); and
 - (b) such other matters (if any) as the Education Minister considers relevant.

196 Transfers from the EIF Education Portfolio Special Account to the COAG Reform Fund

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 194(1) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the EIF Education Portfolio Special Account.

Transfer direction

- (2) As soon as practicable after the amount is credited, the Education Minister must, by writing, direct that the amount is to be:
 - (a) debited from the EIF Education Portfolio Special Account; and
 - (b) credited to the COAG Reform Fund;on a specified day.

Section 197

- (3) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- (4) 2 or more directions under subsection (2) may be set out in the same document.
- (5) A direction under subsection (2) is not a legislative instrument.
- (6) The Education Minister must give a copy of a direction under subsection (2) to the Treasurer.

197 Grants payments—debit from the COAG Reform Fund

Scope

- (1) This section applies if:
 - (a) the Education Minister gives a direction under subsection 196(2) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the COAG Reform Fund.

Debit from the COAG Reform Fund

- (2) The Treasurer must ensure that, as soon as practicable after the amount is credited, the COAG Reform Fund is debited for the purposes of making the grant.

198 Grant to a State or Territory—education infrastructure

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the COAG Reform Fund for the purpose of making a grant of financial assistance to a State or Territory; and
 - (b) the grant is covered by subsection 197(2).

Note: Subsection 197(2) deals with grants channelled through the COAG Reform Fund.

Chapter 3 Education Investment Fund

Part 3.4 Payments

Division 6 Channelling of State/Territory grants payments through the COAG Reform Fund

Section 198

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Education Minister on behalf of the Commonwealth.

Division 7—Total payments for a financial year

199 General drawing rights limit in relation to a financial year

Scope

- (1) This section applies to a financial year if:
- (a) in the case of the financial year ending on 30 June 2009—the Finance Minister declares in writing that a specified amount is the ***general drawing rights limit*** in relation to the financial year for the purposes of this section; or
 - (b) in the case of a later financial year—an Appropriation Act relating to the financial year declares that a specified amount is the ***general drawing rights limit*** in relation to the financial year for the purposes of this section.

Issue of drawing rights

- (2) The total amount covered by drawing rights authorising the following debits in the financial year:
- (a) the debit of an amount from the Education Investment Fund Special Account for a purpose mentioned in paragraph 136(1)(a), (b), (c), (d) or (e);
 - (b) the debit of an amount from the EIF Education Portfolio Special Account (other than a debit under section 196);
 - (c) the debit of an amount from the EIF Research Portfolio Special Account;
 - (d) the debit of an amount from the COAG Reform Fund in accordance with subsection 197(2);
- must not exceed the general drawing rights limit for the financial year.

Declaration

- (3) A declaration under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the declaration.

Section 200

200 Drawing rights in relation to other financial years

The application of section 199 to a particular financial year does not limit the drawing rights that may be issued in relation to any other financial year.

201 No drawing rights to be issued if there is no general drawing rights limit in relation to a financial year

Scope

- (1) This section applies to a financial year if:
- (a) in the case of the financial year ending on 30 June 2009—no declaration is in force under paragraph 199(1)(a); or
 - (b) in the case of a later financial year—no Appropriation Act relating to the financial year declares that a specified amount is the **general drawing rights limit** in relation to the financial year for the purposes of section 199.

No drawing rights to be issued

- (2) Drawing rights authorising any of the following debits in the financial year must not be issued:
- (a) the debit of an amount from the Education Investment Fund Special Account for a purpose mentioned in paragraph 136(1)(a), (b), (c), (d) or (e);
 - (b) the debit of an amount from the EIF Education Portfolio Special Account (other than a debit under section 196);
 - (c) the debit of an amount from the EIF Research Portfolio Special Account;
 - (d) the debit of an amount from the COAG Reform Fund in accordance with subsection 197(2).

202 Total payments to depend primarily on the macroeconomic circumstances

Scope

- (1) This section applies to the following decisions:

- (a) a decision to authorise a payment under section 176, where the authorisation will result in a debit from the Education Investment Fund Special Account in a financial year;
- (b) a decision to give a direction under subsection 183(1), where the direction will result in a debit from the EIF Education Portfolio Fund in a financial year in accordance with subsection 185(2);
- (c) a decision to give a direction under subsection 190(1), where the direction will result in a debit from the EIF Research Portfolio Fund in a financial year in accordance with subsection 192(2);
- (d) a decision to give a direction under subsection 194(1), where the direction will result in a debit from the COAG Reform Fund in a financial year in accordance with subsection 197(2).

Macroeconomic circumstances

- (2) In making the decision, the Finance Minister must have regard to the principle that the total of the following debits in the financial year:
 - (a) the debit of an amount from the Education Investment Fund Special Account for a purpose mentioned in paragraph 136(1)(a), (b), (c), (d) or (e);
 - (b) the debit of an amount from the EIF Education Portfolio Special Account (other than a debit under section 196);
 - (c) the debit of an amount from the EIF Research Portfolio Special Account;
 - (d) the debit of an amount from the COAG Reform Fund in accordance with subsection 197(2);should depend primarily on the macroeconomic circumstances.

Part 3.5—Reporting obligations etc.

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

Reports

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

Information

- (2) The Finance Minister may, by written notice given to the Future Fund Board, require the Future Fund Board to:
 - (a) prepare a document setting out specified information relating to the performance of the Future Fund Board's functions under this Chapter; and
 - (b) give copies of the document to the Finance Minister within the period specified in the notice.

Compliance

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

Publication of reports and documents

- (4) The Finance Minister may cause to be published (whether on the internet or otherwise):
 - (a) a report under subsection (1); or
 - (b) a document under subsection (2).

Section 204

Reports and documents

- (5) A report under subsection (1) is not a legislative instrument.
- (6) A document under subsection (2) is not a legislative instrument.

204 Keeping the responsible Ministers informed etc.

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

205 Finance Minister may give reports to other Ministers etc.

The Finance Minister may give:

- (a) the Treasurer; or
- (b) the Education Minister; or
- (c) the Research Minister;

any of the following:

- (d) a report under subsection 203(1) or 204(2);
- (e) a document under subsection 203(2) or 204(2);
- (f) any other information or document obtained by the Finance Minister under this Chapter.

Section 206

Part 3.6—Miscellaneous

206 Investment provisions do not apply to certain assets

Scope

- (1) This section applies to an asset if:
 - (a) the asset is:
 - (i) a share; or
 - (ii) a debenture; or
 - (iii) a unit in a unit trust; or
 - (iv) any other financial asset; and
 - (b) the asset is held by the Commonwealth; and
 - (c) the asset was acquired:
 - (i) using money debited from the Education Investment Fund Special Account for the purpose mentioned in paragraph 136(1)(a), (b), (c) or (d); or
 - (ii) using money debited from the EIF Education Portfolio Special Account; or
 - (iii) using money debited from the EIF Research Portfolio Special Account.

Investment provisions do not apply

- (2) Part 3.3 does not apply in relation to the asset.
- (3) Section 39 of the *Financial Management and Accountability Act 1997* does not apply in relation to the asset.

207 Delegation by the Finance Minister

Department

- (1) The Finance Minister may, by writing, delegate any or all of his or her functions or powers under section 146, 147, 148, 176, 183, 190 or 194 to:

Section 208

- (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 17AA of the *Acts Interpretation Act 1901*.

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

Agency

- (3) The Finance Minister may, by writing, delegate any or all of his or her powers under section 146, 147 or 148 to:
 - (a) the Chair; or
 - (b) an SES employee, or acting SES employee, in the Agency.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

208 Delegation by the Treasurer

The Treasurer may, by writing, delegate any or all of his or her functions under subsection 197(2) 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 17AA of the *Acts Interpretation Act 1901*.

209 Delegation by the Education Minister

- (1) The Education Minister may, by writing, delegate any or all of his or her functions or powers under section 178, 179, 185, 186, 187, 196 or 198 to:
 - (a) the Secretary of the Education Department; or
 - (b) an SES employee, or acting SES employee, in the Education Department.

Section 210

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

210 Delegation by the Research Minister

- (1) The Research Minister may, by writing, delegate any or all of his or her functions or powers under section 180, 192 or 193 to:
 - (a) the Secretary of the Research Department; or
 - (b) an SES employee, or acting SES employee, in the Research Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

Chapter 4—Health and Hospitals Fund

Part 4.1—Introduction

211 Object

The object of this Chapter is to enhance the Commonwealth's ability to make payments in relation to the creation or development of health infrastructure.

212 Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter sets up the Health and Hospitals Fund, which consists of:
 - (a) the Health and Hospitals Fund Special Account; and
 - (b) the investments of the Health and Hospitals Fund.
- The main purpose of the Health and Hospitals Fund Special Account is to make payments in relation to the creation or development of health infrastructure.
- The Finance Minister is responsible for authorising payments on the recommendation of the Health Minister.
- If a payment is made by way of a grant of financial assistance, the terms and conditions on which the financial assistance is granted are to be set out in a written agreement between the Commonwealth and the recipient.
- The Future Fund Board is responsible for deciding how to invest the Health and Hospitals Fund.

Section 212

- Investments of the Health and Hospitals Fund will consist of financial assets.
- The Future Fund Board is bound by a Health and Hospitals Fund Investment Mandate given to it by the responsible Ministers.

Note: The *Future Fund Act 2006* provides that the Future Fund Management Agency is responsible for assisting and advising the Future Fund Board.

Part 4.2—Health and Hospitals Fund

Division 1—Introduction

213 Simplified outline

The following is a simplified outline of this Part:

- This Part sets up the Health and Hospitals Fund.
- The Health and Hospitals Fund consists of:
 - (a) the Health and Hospitals Fund Special Account;
and
 - (b) the investments of the Health and Hospitals Fund.
- One or more initial amounts are to be credited to the Health and Hospitals Fund Special Account by 30 June 2009. The total of the initial amounts must equal \$5 billion.
- The responsible Ministers may determine that additional amounts are to be credited to the Health and Hospitals Fund Special Account.
- Amounts may be debited from the Health and Hospitals Fund Special Account in accordance with the purposes of the Health and Hospitals Fund Special Account.
- The main purpose of the Health and Hospitals Fund Special Account is to make payments in relation to the creation or development of health infrastructure.

Division 2—Establishment of the Health and Hospitals Fund etc.

214 Establishment of the Health and Hospitals Fund

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

215 Establishment of the Health and Hospitals Fund Special Account

- (1) The Health and Hospitals Fund Special Account is established by this section.
- (2) The Health and Hospitals Fund Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

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 Health and Hospitals Fund

216 Initial credits of amounts to the Health and Hospitals Fund Special Account

- (1) The responsible Ministers may, by writing, determine that:
 - (a) a specified amount is to be credited to the Health and Hospitals Fund Special Account on a specified day; or
 - (b) a specified amount is to be credited to the Health and Hospitals Fund Special Account in specified instalments on specified days.
- (2) The responsible Ministers must ensure that, by the end of 30 June 2009, the total of the amounts credited to the Health and Hospitals Fund Special Account under subsection (1) equals \$5 billion.
- (3) The responsible Ministers must not make a determination under subsection (1) after 30 June 2009.
- (4) A determination under subsection (1) is irrevocable.
- (5) 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.

217 Subsequent credits of amounts to the Health and Hospitals Fund Special Account—determinations by the responsible Ministers

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

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

Chapter 4 Health and Hospitals Fund

Part 4.2 Health and Hospitals Fund

Division 3 Credits of amounts to the Health and Hospitals Fund

Section 217

- (2) In making a determination under subsection (1), the responsible Ministers must have regard to the object of this Chapter.
- (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.

Division 4—Debits of amounts from the Health and Hospitals Fund

218 Purposes of the Health and Hospitals Fund Special Account—payments purposes and purposes related exclusively to the Health and Hospitals Fund

- (1) Each of the following is a purpose of the Health and Hospitals Fund Special Account:
- (a) making payments in relation to the creation or development of health infrastructure, so long as the payments are authorised under subsection 251(1);
 - (b) paying the costs of, or incidental to, the acquisition of financial assets under section 227;
 - (c) paying expenses of an investment of the Health and Hospitals Fund;
 - (d) paying the costs of, or incidental to, the acquisition of derivatives under section 236;
 - (e) paying or discharging the costs, expenses and other obligations incurred by the Future Fund Board under a contract between the Future Fund Board and an investment manager engaged under subsection 239(1);
 - (f) 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, where the bank account relates exclusively to the Health and Hospitals Fund;
 - (g) paying a premium in respect of a contract of insurance entered into by the Future Fund Board exclusively in connection with the Health and Hospitals Fund;
 - (h) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board exclusively in connection with the Health and Hospitals Fund.

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

- (2) A payment under paragraph (1)(a) may be made:
-

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- (a) by way of a grant of financial assistance; or
- (b) otherwise than by way of a grant of financial assistance.

Note 1: Section 257 deals with the channelling of payments through the HHF Health Portfolio Special Account.

Note 2: Section 262 deals with channelling of State/Territory grants payments through the COAG Reform Fund.

**219 Purposes of the Health and Hospitals Fund Special Account—
purposes not related exclusively to the Health and
Hospitals Fund**

Each of the following is a purpose of the Health and Hospitals Fund Special Account:

- (a) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Future Fund Board, where those costs, expenses or obligations are not covered by:
 - (i) paragraph 18(1)(j); or
 - (ii) paragraph 136(1)(j); or
 - (iii) paragraph 137(e); or
 - (iv) paragraph 218(1)(f); or
 - (v) paragraph 2(1)(g) of Schedule 2 to the *Future Fund Act 2006*;
- (b) paying a premium in respect of a contract of insurance entered into by the Future Fund Board, where the premium is not covered by:
 - (i) paragraph 18(1)(k); or
 - (ii) paragraph 136(1)(k); or
 - (iii) paragraph 137(f); or
 - (iv) paragraph 218(1)(g); or
 - (v) paragraph 2(1)(h) of Schedule 2 to the *Future Fund Act 2006*;
- (c) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board, where the costs, expenses, obligations or liabilities are not covered by:
 - (i) a paragraph of subsection 18(1); or

- (ii) a paragraph of subsection 136(1); or
- (iii) a paragraph of section 137; or
- (iv) a paragraph of subsection 218(1); or
- (v) a paragraph of subclause 2(1) of Schedule 2 to the *Future Fund Act 2006*;
- (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 under a contract entered into under section 78 or 82 of the *Future Fund Act 2006*;
- (g) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in connection with the operation of the Agency.

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

220 Extended meaning of *payment in relation to the creation or development of health infrastructure*

For the purposes of this Act, each of the following payments is taken to be a ***payment in relation to the creation or development of health infrastructure***:

- (a) a payment in relation to the acquisition of shares in a company that is, or will be, involved in the creation or development of health infrastructure;
- (b) a payment in relation to the acquisition of debentures of a company that is, or will be, involved in the creation or development of health infrastructure;
- (c) a payment in relation to the acquisition of units in a unit trust that is, or will be, involved in the creation or development of health infrastructure;
- (d) a payment in relation to the acquisition of any other financial asset in a business entity that is, or will be, involved in the creation or development of health infrastructure;

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- (e) a payment in relation to a matter incidental or ancillary to a matter set out in paragraph (a), (b), (c) or (d).

Note: See section 274.

221 Future Fund Board must ensure that there is sufficient money in the Health and Hospitals Fund Special Account to cover authorised payments etc.

The Future Fund Board must take all reasonable steps to ensure that the amount of money standing to the credit of the Health and Hospitals Fund Special Account is sufficient to cover:

- (a) the debit of amounts for payments authorised, or proposed to be authorised, under subsection 251(1); and
- (b) amounts debited, or proposed to be debited, under subsection 257(1); and
- (c) amounts debited, or proposed to be debited, under subsection 262(1).

Note: This may require the Future Fund Board to realise an investment of the Health and Hospitals Fund in accordance with section 228.

Division 5—Inter-fund transfers

222 Transfers from the Health and Hospitals 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 a specified amount is to be:
 - (a) debited from the Health and Hospitals Fund Special Account;
and
 - (b) credited to the Future Fund Special Account;
on a specified day.
- (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.

223 Transfers from the Health and Hospitals Fund to the Building Australia Fund

- (1) If an amount is debited from the Building Australia Fund Special Account for a purpose mentioned in section 20, the Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Health and Hospitals Fund Special Account;
and
 - (b) credited to the Building Australia Fund Special Account;
on a specified day.
- (2) The specified amount must not exceed the amount debited from the Building Australia Fund Special Account as mentioned in subsection (1).
- (3) A direction under subsection (1) is not a legislative instrument.

Section 224

224 Transfers from the Health and Hospitals Fund to the Education Investment Fund

- (1) If an amount is debited from the Education Investment Fund Special Account for a purpose mentioned in section 138, the Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Health and Hospitals Fund Special Account; and
 - (b) credited to the Education Investment Fund Special Account; on a specified day.
- (2) The specified amount must not exceed the amount debited from the Education Investment Fund Special Account as mentioned in subsection (1).
- (3) A direction under subsection (1) is not a legislative instrument.

Part 4.3—Investment of the Health and Hospitals Fund

225 Simplified outline

The following is a simplified outline of this Part:

- The Future Fund Board is responsible for deciding how to invest the Health and Hospitals Fund.
- Investments of the Health and Hospitals Fund will consist of financial assets.
- Investments of the Health and Hospitals Fund will be held in the name of the Future Fund Board.
- The Future Fund Board is bound by a Health and Hospitals Fund Investment Mandate given to it by the responsible Ministers.

226 Objects of investment of the Health and Hospitals Fund

- (1) The main object of the acquisition by the Future Fund Board of a financial asset as an investment of the Health and Hospitals Fund is to enhance the Commonwealth's ability to make payments in relation to the creation or development of health infrastructure.
- (2) The ancillary objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Health and Hospitals Fund are to enhance the ability of the Commonwealth and the Future Fund Board to:
 - (a) discharge costs, expenses, obligations and liabilities; and
 - (b) make payments;as mentioned in paragraphs 218(1)(b) to (h) and 219(a) to (g).

Section 227

227 Investment of the Health and Hospitals Fund

- (1) The Future Fund Board may invest amounts standing to the credit of the Health and Hospitals Fund Special Account in any financial assets.
- (2) Investments under subsection (1) are to be made in the name of the Future Fund Board.
- (3) Investments under subsection (1) are taken to be investments of the Health and Hospitals Fund.
- (4) This section does not authorise the acquisition of a derivative.

Note: For acquisition of derivatives, see section 236.

228 Management of investments of the Health and Hospitals Fund

- (1) Income derived from an investment of the Health and Hospitals Fund is to be credited to the Health and Hospitals Fund Special Account.
- (2) A return of capital, or any other financial distribution, relating to an investment of the Health and Hospitals Fund is to be credited to the Health and Hospitals Fund Special Account.
- (3) The Future Fund Board may realise an investment of the Health and Hospitals Fund.
- (4) Upon realisation of an investment of the Health and Hospitals Fund, the proceeds of the investment are to be credited to the Health and Hospitals Fund Special Account.
- (5) At any time before an investment of the Health and Hospitals 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 Health and Hospitals Fund.
- (6) Section 39 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Health and Hospitals Fund.

229 Health and Hospitals Fund Investment Mandate

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

Note 1: ***Health and Hospitals Fund investment function*** is defined in section 4.

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

- (2) Subsection (1) has effect subject to section 230.
- (3) In giving a direction under subsection (1), the responsible Ministers must have regard to:
- (a) maximising the return earned on the Health and Hospitals Fund, consistent with international best practice for institutional investment; and
 - (b) enhancing the Commonwealth's ability to make payments in relation to the creation or development of health infrastructure; and
 - (c) such other matters as the responsible Ministers consider relevant.
- (4) Directions under subsection (1) are to be known collectively as the ***Health and Hospitals Fund Investment Mandate***.
- (5) A direction under subsection (1) 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.
- (6) Subsection (5) does not limit subsection (1).
- (7) Subsection (5) has effect subject to section 230.
- (8) The Health and Hospitals Fund Investment Mandate prevails over subsection (12) to the extent of any inconsistency.

Section 230

- (9) The responsible Ministers must not give a direction under subsection (1) that is inconsistent with this Act (other than subsection (12)).
- (10) A direction under subsection (1) must not take effect before the 15th day after the day on which it is given.
- (11) 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.
- (12) In the performance of its Health and Hospitals Fund investment functions, the Future Fund Board must seek to:
 - (a) maximise the return earned on the Health and Hospitals Fund, consistent with international best practice for institutional investment; and
 - (b) enhance the Commonwealth's ability to make payments in relation to the creation or development of health infrastructure.
 - Note: **Health and Hospitals Fund investment function** is defined in section 4.
- (13) Subsection (12) has effect subject to:
 - (a) this Act; and
 - (b) a direction under subsection (1).

230 Limitation on Health and Hospitals Fund Investment Mandate

- (1) The responsible Ministers must not give a direction under subsection 229(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 Health and Hospitals 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

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- (ii) a particular activity; or
- (iii) a particular business.

(2) Paragraphs (1)(a) and (b) do not limit paragraph (1)(c).

231 Future Fund Board to be consulted on Health and Hospitals Fund Investment Mandate

- (1) Before giving the Future Fund Board a direction under subsection 229(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 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) If:
 - (a) the responsible Ministers give the Future Fund Board a direction under subsection 229(1); and
 - (b) the Future Fund Board made a submission to the responsible Ministers on a draft of the direction within the time limit specified by the responsible Ministers;the submission is to be tabled in each House of the Parliament with the direction.

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

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

232 Compliance with Health and Hospitals Fund Investment Mandate

- (1) The Future Fund Board must take all reasonable steps to comply with the Health and Hospitals Fund Investment Mandate.
- (2) As soon as practicable after the Future Fund Board becomes aware that it has failed to comply with the Health and Hospitals Fund Investment Mandate, the Future Fund Board must give the responsible Ministers a written statement:

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- (a) informing the responsible Ministers of the failure to comply with the Health and Hospitals Fund Investment Mandate; and
 - (b) setting out the action that the Future Fund Board proposes to take in order to comply with the Health and Hospitals Fund Investment Mandate.
- (3) If the responsible Ministers are satisfied that the Future Fund Board has failed to comply with the Health and Hospitals Fund Investment Mandate, the responsible Ministers may, by written notice given to the Future Fund Board, direct the Future Fund Board:
 - (a) to give the responsible Ministers, within a period specified in the notice, a written explanation for the failure to comply with the Health and Hospitals Fund Investment Mandate; and
 - (b) to take action specified in the notice, within a period specified in the notice, in order to comply with the Health and Hospitals Fund Investment Mandate.
- (4) The Future Fund Board must comply with a direction under subsection (3).
- (5) A failure to comply with:
 - (a) the Health and Hospitals 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.

233 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 Health and Hospitals 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*).

234 Borrowing

- (1) The Future Fund Board must not borrow money for a purpose in connection with the Health and Hospitals 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 Health and Hospitals Fund if:
 - (a) the purpose of the borrowing is to enable the Future Fund 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 Future Fund Board would not exceed 10% of the balance of the Health and Hospitals Fund.
- (3) The Future Fund Board is authorised to borrow money for a purpose in connection with the Health and Hospitals Fund if the borrowing takes place in such circumstances (if any) as are specified in the regulations.

235 Health and Hospitals 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 Health and Hospitals Fund:
 - (a) the investment strategy for the Health and Hospitals Fund;
 - (b) benchmarks and standards for assessing the performance of the Health and Hospitals Fund;
 - (c) risk management for the Health and Hospitals Fund;
 - (d) a matter relating to international best practice for institutional investment;
 - (e) a matter specified in the regulations.

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

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

Publication of policies

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

236 Derivatives

- (1) The Future Fund Board may acquire a derivative for the purpose of:
- (a) protecting the value of an investment of the Health and Hospitals Fund (other than a derivative); or

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- (b) protecting the return on an investment of the Health and Hospitals Fund (other than a derivative); or
 - (c) achieving indirect exposure to financial assets (other than derivatives) for a purpose in connection with the Health and Hospitals Fund; or
 - (d) achieving transactional efficiency for a purpose in connection with the Health and Hospitals Fund;
- but must not acquire a derivative for the purpose of:
- (e) speculation; or
 - (f) leverage.
- (2) The acquisition of a derivative under subsection (1) must be consistent with the investment strategy embodied in a policy formulated by the Future Fund Board under subsection 235(1).
 - (3) A derivative acquired under subsection (1) 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 Health and Hospitals Fund.

237 Additional financial assets

If, as a result of:

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

the Future Fund Board becomes the holder of a financial asset, that financial asset is taken to be an investment of the Health and Hospitals Fund.

238 Securities lending arrangements

- (1) The Future Fund Board may enter into securities lending arrangements for a purpose in connection with the Health and Hospitals Fund.

Section 239

- (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 Health and Hospitals 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 Health and Hospitals Fund.
- (4) 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 a financial asset, that financial asset is taken to be an investment of the Health and Hospitals Fund.

239 Investment managers

- (1) The Future Fund Board may engage one or more investment managers for purposes in connection with the Health and Hospitals Fund.
- (2) The Future Fund Board must not:
 - (a) invest amounts under subsection 227(1); or
 - (b) acquire derivatives under subsection 236(1); or
 - (c) enter into a securities lending arrangement under subsection 238(1); or
 - (d) realise financial assets that are investments of the Health and Hospitals Fund;unless the Future Fund Board does so:
 - (e) through an investment manager engaged by the Future Fund Board under subsection (1) of this section; or
 - (f) in a manner approved, in writing, by the responsible Ministers.
- (3) The Future Fund Board must ensure that any investment manager engaged by the Future Fund Board under subsection (1) operates within this Act.
- (4) The Future Fund Board must ensure that any investment manager engaged by the Future Fund Board under subsection (1) reports to:
 - (a) the Future Fund Board; and
 - (b) the Agency;

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on the state of the investments of the Health and Hospitals Fund at such times and in such manner as the Future Fund Board determines.

240 Custody of securities

Section 40 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Health and Hospitals Fund.

241 Refund of franking credits

If:

- (a) the Future Fund Board receives a refund of a tax offset under the *Income Tax Assessment Act 1997*; and
- (b) the tax offset is attributable to an investment of the Health and Hospitals Fund;

the refund is to be credited to the Health and Hospitals Fund Special Account.

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*.

242 Realisation of non-financial assets

- (1) If an asset held by the Future Fund Board as an investment of the Health and Hospitals Fund ceases to be a financial asset:
 - (a) the Future Fund Board must realise the asset as soon as practicable after the Future Fund Board becomes aware of the cessation; and
 - (b) 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 remained a financial asset, and an investment of the Health and Hospitals Fund, until the realisation.
- (2) If an asset acquired by the Future Fund Board, purportedly as an investment of the Health and Hospitals Fund, is not a financial asset:

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- (a) the Future Fund Board must realise the asset as soon as practicable after the Future Fund Board becomes aware that the asset is not a financial asset; and
- (b) 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 Health and Hospitals Fund, from the time of its acquisition by the Future Fund Board until the realisation.

243 Additional function of the Future Fund Board

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

Part 4.4—Payments

Division 1—Introduction

244 Simplified outline

The following is a simplified outline of this Part:

- The Health and Hospitals Fund Advisory Board is established.
- The function of the Health and Hospitals Fund Advisory Board is to advise the Health Minister about the making of payments in relation to the creation or development of health infrastructure.
- The Finance Minister may authorise payments in relation to the creation or development of health infrastructure on the recommendation of the Health Minister.
- If a payment is made by way of a grant of financial assistance, the terms and conditions on which the financial assistance is granted are to be set out in a written agreement between the Commonwealth and the recipient.
- Payments may be channelled through the HHF Health Portfolio Special Account.
- Grants of financial assistance to the States and Territories may be channelled through the COAG Reform Fund.
- The Finance Minister must comply with general drawing rights limits.
- The total amount of payments made in each financial year will depend on the macroeconomic circumstances.

Division 2—Health and Hospitals Fund Advisory Board

245 Health and Hospitals Fund Advisory Board

- (1) The Health and Hospitals Fund Advisory Board is established.
- (2) The HHF Advisory Board consists of such persons as the Health Minister from time to time appoints, by writing, to the HHF Advisory Board.

Note: **HHF Advisory Board** means the Health and Hospitals Fund Advisory Board—see section 4.

- (3) A member of the HHF Advisory Board holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

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

- (4) A person is not eligible for appointment to the HHF Advisory Board unless the Health Minister is satisfied that the person has substantial experience or knowledge in a field relevant to the HHF Advisory Board's function.
- (5) The Health Minister may terminate a person's appointment to the HHF Advisory Board.
- (6) The Health Minister may give the HHF Advisory Board written directions as to:
 - (a) the way in which the HHF Advisory Board is to carry out its functions; and
 - (b) procedures to be followed in relation to meetings.
- (7) A direction under subsection (6) is not a legislative instrument.

246 Functions of the HHF Advisory Board

- (1) The functions of the HHF Advisory Board are:
 - (a) to advise the Health Minister about matters that:
 - (i) are referred to it by the Health Minister; and

- (ii) relate to the making of payments in relation to the creation or development of health infrastructure; and
- (b) to advise the Health Minister about matters that:
 - (i) are referred to it by the Health Minister; and
 - (ii) relate to the object or operation of this Chapter; and
 - (iii) do not relate to the making of particular payments.
- (2) In giving advice under paragraph (1)(a), the HHF Advisory Board must apply the HHF evaluation criteria.

247 HHF evaluation criteria

- (1) The Health Minister may, by legislative instrument, formulate criteria (***HHF evaluation criteria***) to be applied by the HHF Advisory Board in giving advice under paragraph 246(1)(a).
- (2) Before formulating HHF evaluation criteria, the Health Minister must consult the responsible Ministers.
- (3) The Health Minister must ensure that HHF evaluation criteria are in force at all times after the commencement of this section.

248 Remuneration and allowances

- (1) A member of the HHF Advisory Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is determined by the Health Minister.
- (2) A member of the HHF Advisory Board is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

249 Disclosure of interests

- (1) This section applies to a member of the HHF Advisory Board who has a material personal interest in a matter being considered, or about to be considered, by the HHF Advisory Board.

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- (2) The member must, as soon possible after the relevant facts have come to the member's knowledge:
 - (a) disclose the nature of the interest at a meeting of the HHF Advisory Board; and
 - (b) disclose the nature of the interest to the Health Minister.
- (3) A disclosure under paragraph (2)(a) must be recorded in the minutes of the meeting.
- (4) The Health Minister must terminate the appointment of a member of the HHF Advisory Board if the member fails, without reasonable excuse, to comply with subsection (2).
- (5) Subsection (4) does not limit subsection 245(5).

250 Resignation

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

Division 3—Direct payments

251 Authorisation of payments

- (1) The Finance Minister may, by writing, authorise a payment in relation to the creation or development of health infrastructure.
- (2) 2 or more authorisations under subsection (1) may be set out in the same document.
- (3) An instrument under subsection (1) is not a legislative instrument.

252 Recommendations about payments

- (1) The Finance Minister must not authorise a payment under subsection 251(1) unless the Health Minister has recommended the authorisation of the payment.
- (2) The Health Minister must not make a recommendation under subsection (1) in relation to a payment unless the HHF Advisory Board has advised under paragraph 246(1)(a) that the payment satisfies the HHF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Health Minister must have regard to:
 - (a) advice about the payment that was given to the Health Minister by the HHF Advisory Board under paragraph 246(1)(a); and
 - (b) such other matters (if any) as the Health Minister considers relevant.

253 Grant to a State or Territory

Scope

- (1) This section applies if:

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- (a) an amount is to be debited from the Health and Hospitals Fund Special Account for the purpose of making a payment to a State or Territory; and
- (b) the payment is by way of a grant of financial assistance; and
- (c) the payment is for the purpose mentioned in paragraph 218(1)(a).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Health Minister on behalf of the Commonwealth.

254 Grant to a person other than a State or Territory

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the Health and Hospitals Fund Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance; and
 - (c) the payment is for the purpose mentioned in paragraph 218(1)(a).

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Health Minister on behalf of the Commonwealth.

Division 4—Channelling of payments through the HHF Health Portfolio Special Account

255 Establishment of the HHF Health Portfolio Special Account

- (1) The HHF Health Portfolio Special Account is established by this section.
- (2) The HHF Health Portfolio Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

256 Purpose of the HHF Health Portfolio Special Account

- (1) The purpose of the HHF Health Portfolio Special Account is making payments in relation to the creation or development of health infrastructure, so long as the payments are specified under subsection 257(2).

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

- (2) A payment under subsection (1) may be made:
 - (a) by way of a grant of financial assistance; or
 - (b) otherwise than by way of a grant of financial assistance.

257 Channelling of payments through the HHF Health Portfolio Special Account

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Health and Hospitals Fund Special Account; and
 - (b) credited to the HHF Health Portfolio Special Account;on a specified day.
- (2) The direction must be expressed to be given in order to enable the specified amount to be debited from the HHF Health Portfolio

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Special Account for the purpose of making a specified payment in relation to the creation or development of health infrastructure.

- (3) 2 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 Health Minister.

258 Recommendations about payments

- (1) A payment must not be specified under subsection 257(2) unless the Health Minister has recommended the specification of the payment.
- (2) The Health Minister must not make a recommendation under subsection (1) in relation to a payment unless the HHF Advisory Board has advised under paragraph 246(1)(a) that the payment satisfies the HHF evaluation criteria.
- (3) In deciding whether to make a recommendation under subsection (1) in relation to a payment, the Health Minister must have regard to:
 - (a) advice about the payment that was given to the Health Minister by the HHF Advisory Board under paragraph 246(1)(a); and
 - (b) such other matters (if any) as the Health Minister considers relevant.

259 Payments—debit from the HHF Health Portfolio Special Account

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 257(1) for a purpose in relation to a payment; and
 - (b) the amount specified in the direction is credited to the HHF Health Portfolio Special Account.
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Section 260

Debit from the HHF Health Portfolio Special Account

- (2) The Health Minister must ensure that, as soon as practicable after the amount is credited, the HHF Health Portfolio Special Account is debited for the purposes of making the payment.
- (3) However, if the payment cannot be made, an amount equal to the credited amount is to be:
 - (a) debited from the HHF Health Portfolio Special Account; and
 - (b) credited to the Health and Hospitals Fund Special Account.

260 Grant to a State or Territory

Scope

- (1) This section applies if an amount is to be debited from the HHF Health Portfolio Special Account for the purpose of making a grant of financial assistance to a State or Territory.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Health Minister on behalf of the Commonwealth.

261 Grant to a person other than a State or Territory

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the HHF Health Portfolio Special Account for the purpose of making a payment to a person other than a State or Territory; and
 - (b) the payment is by way of a grant of financial assistance.

Chapter 4 Health and Hospitals Fund

Part 4.4 Payments

Division 4 Channelling of payments through the HHF Health Portfolio Special Account

Section 261

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.
- (3) An agreement under subsection (2) may be entered into by the Health Minister on behalf of the Commonwealth.

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

262 Channelling of State/Territory grants payments through the COAG Reform Fund

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

263 Recommendations about grants payments

- (1) A grant must not be specified under subsection 262(2) unless the Health Minister has recommended the specification of the grant.
- (2) The Health Minister must not make a recommendation under subsection (1) in relation to a grant unless the HHF Advisory

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Board has advised under paragraph 246(1)(a) that the grant satisfies the HHF evaluation criteria.

- (3) In deciding whether to make a recommendation under subsection (1) in relation to a grant, the Health Minister must have regard to:
- (a) advice about the grant that was given to the Health Minister by the HHF Advisory Board under paragraph 246(1)(a); and
 - (b) such other matters (if any) as the Health Minister considers relevant.

264 Transfers from the HHF Health Portfolio Special Account to the COAG Reform Fund

Scope

- (1) This section applies if:
- (a) the Finance Minister gives a direction under subsection 262(1) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the HHF Health Portfolio Special Account.

Transfer direction

- (2) As soon as practicable after the amount is credited, the Health Minister must, by writing, direct that the amount is to be:
- (a) debited from the HHF Health Portfolio Special Account; and
 - (b) credited to the COAG Reform Fund;
- on a specified day.
- (3) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- (4) 2 or more directions under subsection (2) may be set out in the same document.
- (5) A direction under subsection (2) is not a legislative instrument.

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- (6) The Health Minister must give a copy of a direction under subsection (2) to the Treasurer.

265 Grants payments—debit from the COAG Reform Fund

Scope

- (1) This section applies if:
- (a) the Health Minister gives a direction under subsection 264(2) for a purpose in relation to a grant of financial assistance to a State or Territory; and
 - (b) the amount specified in the direction is credited to the COAG Reform Fund.

Debit from the COAG Reform Fund

- (2) The Treasurer must ensure that, as soon as practicable after the amount is credited, the COAG Reform Fund is debited for the purposes of making the grant.

266 Grant to a State or Territory

Scope

- (1) This section applies if:
- (a) an amount is to be debited from the COAG Reform Fund for the purpose of making a grant of financial assistance to a State or Territory; and
 - (b) the grant is covered by subsection 265(2).

Note: Subsection 265(2) deals with grants channelled through the COAG Reform Fund.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (3) An agreement under subsection (2) may be entered into by the Health Minister on behalf of the Commonwealth.

Division 6—Total payments for a financial year

267 General drawing rights limit in relation to a financial year

Scope

- (1) This section applies to a financial year if:
 - (a) in the case of the financial year ending on 30 June 2009—the Finance Minister declares in writing that a specified amount is the ***general drawing rights limit*** in relation to the financial year for the purposes of this section; or
 - (b) in the case of a later financial year—an Appropriation Act relating to the financial year declares that a specified amount is the ***general drawing rights limit*** in relation to the financial year for the purposes of this section.

Issue of drawing rights

- (2) The total amount covered by drawing rights authorising the following debits in the financial year:
 - (a) the debit of an amount from the Health and Hospitals Fund Special Account for the purpose mentioned in paragraph 218(1)(a);
 - (b) the debit of an amount from the HHF Health Portfolio Special Account (other than a debit under section 264);
 - (c) the debit of an amount from the COAG Reform Fund in accordance with subsection 265(2);must not exceed the general drawing rights limit for the financial year.

Declaration

- (3) A declaration under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the declaration.

268 Drawing rights in relation to other financial years

The application of section 267 to a particular financial year does not limit the drawing rights that may be issued in relation to any other financial year.

269 No drawing rights to be issued if there is no general drawing rights limit in relation to a financial year

Scope

- (1) This section applies to a financial year if:
 - (a) in the case of the financial year ending on 30 June 2009—no declaration is in force under paragraph 267(1)(a); or
 - (b) in the case of a later financial year—no Appropriation Act relating to the financial year declares that a specified amount is the **general drawing rights limit** in relation to the financial year for the purposes of section 267.

No drawing rights to be issued

- (2) Drawing rights authorising any of the following debits in the financial year must not be issued:
 - (a) the debit of an amount from the Health and Hospitals Fund Special Account for the purpose mentioned in paragraph 218(1)(a);
 - (b) the debit of an amount from the HHF Health Portfolio Special Account (other than a debit under section 264);
 - (c) the debit of an amount from the COAG Reform Fund in accordance with subsection 265(2).

270 Total payments to depend primarily on the macroeconomic circumstances

Scope

- (1) This section applies to the following decisions:
 - (a) a decision to authorise a payment under section 251, where the authorisation will result in a debit from the Health and Hospitals Fund Special Account in a financial year;

Section 270

- (b) a decision to give a direction under subsection 257(1), where the direction will result in a debit from the HHF Health Portfolio Special Account in a financial year in accordance with subsection 259(2);
- (c) a decision to give a direction under subsection 262(1), where the direction will result in a debit from the COAG Reform Fund in a financial year in accordance with subsection 265(2).

Macroeconomic circumstances

- (2) In making the decision, the Finance Minister must have regard to the principle that the total of the following debits in the financial year:
 - (a) the debit of an amount from the Health and Hospitals Fund Special Account for the purpose mentioned in paragraph 218(1)(a);
 - (b) the debit of an amount from the HHF Health Portfolio Special Account (other than a debit under section 264);
 - (c) the debit of an amount from the COAG Reform Fund in accordance with subsection 265(2);should depend primarily on the macroeconomic circumstances.

Part 4.5—Reporting obligations etc.

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

Reports

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

Information

- (2) The Finance Minister may, by written notice given to the Future Fund Board, require the Future Fund Board to:
 - (a) prepare a document setting out specified information relating to the performance of the Future Fund Board's functions under this Chapter; and
 - (b) give copies of the document to the Finance Minister within the period specified in the notice.

Compliance

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

Publication of reports and documents

- (4) The Finance Minister may cause to be published (whether on the internet or otherwise):
 - (a) a report under subsection (1); or
 - (b) a document under subsection (2).

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Reports and documents

- (5) A report under subsection (1) is not a legislative instrument.
- (6) A document under subsection (2) is not a legislative instrument.

272 Keeping the responsible Ministers informed etc.

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

273 Finance Minister may give reports to other Ministers etc.

The Finance Minister may give:

- (a) the Treasurer; or
- (b) the Health Minister;

any of the following:

- (c) a report under subsection 271(1) or 272(2); or
- (d) a document under subsection 271(2) or 272(2); or
- (e) any other information or document obtained by the Finance Minister under this Chapter.

Part 4.6—Miscellaneous

274 Investment provisions do not apply to certain assets

Scope

- (1) This section applies to an asset if:
 - (a) the asset is:
 - (i) a share; or
 - (ii) a debenture; or
 - (iii) a unit in a unit trust; or
 - (iv) any other financial asset; and
 - (b) the asset is held by the Commonwealth; and
 - (c) the asset was acquired:
 - (i) using money debited from the Health and Hospitals Fund Special Account for the purpose mentioned in paragraph 218(1)(a); or
 - (ii) using money debited from the HHF Health Portfolio Special Account.

Investment provisions do not apply

- (2) Part 4.3 does not apply in relation to the asset.
- (3) Section 39 of the *Financial Management and Accountability Act 1997* does not apply in relation to the asset.

275 Delegation by the Finance Minister

Department

- (1) The Finance Minister may, by writing, delegate any or all of his or her powers under section 222, 223, 224, 251, 257 or 262 to:
 - (a) the Secretary of the Finance Department; or
 - (b) an SES employee, or acting SES employee, in the Finance Department.

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Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

Agency

- (3) The Finance Minister may, by writing, delegate any or all of his or her powers under section 222, 223 or 224 to:

- (a) the Chair; or
- (b) an SES employee, or acting SES employee, in the Agency.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

276 Delegation by the Treasurer

The Treasurer may, by writing, delegate any or all of his or her functions under subsection 265(2) 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 17AA of the *Acts Interpretation Act 1901*.

277 Delegation by the Health Minister

- (1) The Health Minister may, by writing, delegate any or all of his or her functions or powers under section 253, 254, 259, 260, 261, 264 or 266 to:

- (a) the Secretary of the Health Department; or
- (b) an SES employee, or acting SES employee, in the Health Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

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

Chapter 5—Regulations

278 Regulations

The Governor-General may make regulations prescribing matters:

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

*[Minister's second reading speech made in—
House of Representatives on 13 November 2008
Senate on 3 December 2008]*

(211/08)
