



# **Emergency Response Fund Act 2019**

**No. 90, 2019**

**An Act to establish the Emergency Response Fund,  
and for other purposes**

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



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# Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Short title .....	1
2 Commencement .....	2
3 Simplified outline of this Act .....	2
4 Definitions .....	4
5 Crown to be bound .....	8
6 Extension to external Territories .....	8
7 Extra-territorial application .....	8
<b>Part 2—Emergency Response Fund</b>	<b>9</b>
<b>Division 1—Introduction</b>	<b>9</b>
8 Simplified outline of this Part .....	9
<b>Division 2—Establishment of the Emergency Response Fund and the Emergency Response Fund Special Account</b>	<b>10</b>
9 Establishment of the Emergency Response Fund .....	10
10 Transfer of balance of the Education Investment Fund Special Account .....	10
11 Transfer of investments of the Education Investment Fund .....	10
12 Establishment of the Emergency Response Fund Special Account .....	11
<b>Division 3—Credits of amounts to the Emergency Response Fund Special Account</b>	<b>12</b>
13 Credits of amounts .....	12
<b>Division 4—Debits of amounts from the Emergency Response Fund</b>	<b>13</b>
14 Main purposes of the Emergency Response Fund Special Account .....	13
15 Purposes of the Emergency Response Fund Special Account—purposes related exclusively to the investments etc. of the Emergency Response Fund .....	13
16 Purposes of the Emergency Response Fund Special Account—purposes not related exclusively to the Emergency Response Fund .....	14
17 Future Fund Board must ensure that the balance of the Emergency Response Fund Special Account is sufficient to cover authorised debits etc. ....	16
18 Transfers from the Emergency Response Fund to the Future Fund .....	16

---

<b>Part 3—Arrangements and grants relating to natural disasters</b>	17
<b>Division 1—Introduction</b>	17
19 Simplified outline of this Part.....	17
<b>Division 2—Arrangements and grants</b>	18
20 Arrangements and grants.....	18
21 Terms and conditions of grants.....	21
22 Emergency Management Minister has powers etc. of the Commonwealth .....	21
23 Conferral of powers on the Emergency Management Minister .....	22
24 Constitutional limits .....	22
25 Executive power of the Commonwealth.....	23
26 Publication of information relating to arrangements and grants.....	23
<b>Division 3—Home Affairs Emergency Response Fund Special         Account</b>	25
27 Home Affairs Emergency Response Fund Special Account.....	25
28 Transfers from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account—general .....	25
28A Transfers from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account—resilience etc. ....	27
29 Other credits to the Home Affairs Emergency Response Fund Special Account.....	29
30 Purposes of the Home Affairs Emergency Response Fund Special Account.....	29
31 Excess balance of the Home Affairs Emergency Response Fund Special Account must be transferred to the Emergency Response Fund Special Account .....	29
<b>Division 4—Channelling State/Territory grants through the         COAG Reform Fund</b>	31
32 Channelling State/Territory grants through the COAG Reform Fund—general .....	31
32A Channelling State/Territory grants through the COAG Reform Fund—resilience etc.....	31
33 Debits from the COAG Reform Fund.....	32
<b>Division 5—Annual limit on amounts debited from the         Emergency Response Fund Special Account</b>	33
34 Annual limit on amounts debited from the Emergency Response Fund Special Account .....	33

---

---

<b>Part 4—Investment of the Emergency Response Fund</b>	<b>34</b>
35 Simplified outline of this Part.....	34
36 Objects of investment of the Emergency Response Fund.....	34
37 Investment of the Emergency Response Fund.....	34
38 Management of investments of the Emergency Response Fund.....	35
39 Emergency Response Fund Investment Mandate .....	35
40 Obligation on Future Fund Board in performing investment functions.....	37
41 Limitation on Emergency Response Fund Investment Mandate.....	37
42 Future Fund Board to be consulted on Emergency Response Fund Investment Mandate .....	38
43 Compliance with Emergency Response Fund Investment Mandate.....	38
44 Future Fund Board must not trigger the takeover provisions of the <i>Corporations Act 2001</i> .....	39
45 Borrowing.....	39
46 Emergency Response Fund investment policies.....	40
47 Derivatives .....	41
48 Additional financial assets.....	42
49 Securities lending arrangements .....	42
50 Investment managers .....	43
51 Refund of franking credits .....	43
52 Realisation of non-financial assets .....	44
53 Additional function of the Future Fund Board.....	44
<b>Part 5—Reporting obligations etc.</b>	<b>45</b>
54 Simplified outline of this Part.....	45
55 Finance Minister may require Future Fund Board to prepare reports or give information .....	45
56 Keeping the responsible Ministers informed etc.....	46
57 Finance Minister may give reports, documents and other information to other Ministers .....	46
<b>Part 6—Miscellaneous</b>	<b>47</b>
58 Simplified outline of this Part.....	47
59 Delegation by the Finance Minister.....	47
60 Delegation by the Treasurer.....	48
61 Delegation by the Emergency Management Minister.....	48
62 Transitional—receipts relating to the Education Investment Fund.....	49
63 Review of operation of Act .....	49

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64	Rules.....	50
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# Emergency Response Fund Act 2019

No. 90, 2019

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## An Act to establish the Emergency Response Fund, and for other purposes

[Assented to 28 October 2019]

The Parliament of Australia enacts:

### Part 1—Preliminary

#### 1 Short title

This Act is the *Emergency Response Fund Act 2019*.

## Section 2

### 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	12 December 2019 (F2019N00089)

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

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

### 3 Simplified outline of this Act

- This Act establishes the Emergency Response Fund, which will enhance the Commonwealth's ability to:
  - (a) make arrangements with persons or bodies in relation to natural disasters; and
  - (b) make grants to persons or bodies in relation to natural disasters.
- The Emergency Response Fund consists of:
  - (a) the Emergency Response Fund Special Account; and
  - (b) the investments of the Emergency Response Fund.



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Section 3

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- The balance of the Education Investment Fund Special Account is transferred to the Emergency Response Fund Special Account. The investments of the Education Investment Fund become investments of the Emergency Response Fund.
- The Future Fund Board is responsible for deciding how to invest the Emergency Response Fund. In doing so, the Future Fund Board is bound by the Emergency Response Fund Investment Mandate given to it by the responsible Ministers.
- The Emergency Management Minister may, on behalf of the Commonwealth:
  - (a) make an arrangement with a person or body in relation to a natural disaster; and
  - (b) make a grant to a person or body in relation to a natural disaster.
- This Act establishes the Home Affairs Emergency Response Fund Special Account.
- Amounts will be transferred from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account.
- The purposes of the Home Affairs Emergency Response Fund Special Account are as follows:
  - (a) to pay amounts payable by the Commonwealth under arrangements relating to a natural disaster;
  - (b) to make grants relating to a natural disaster.
- Amounts will be transferred from the Emergency Response Fund Special Account to the COAG Reform Fund for the purposes of making grants to the States and Territories in relation to natural disasters.

Section 4

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**4 Definitions**

In this Act:

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

**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.

**arrangement** includes contract, agreement or deed. This definition does not apply to the expressions “securities lending arrangement” or “securities lending arrangements”.

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

**balance of the Emergency Response Fund** means the sum of:

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

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

**business entity** means:

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

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

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

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

***Covenant on Economic, Social and Cultural Rights*** means the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966.

Note: The Covenant is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

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

***Education Investment Fund*** means the Education Investment Fund that was established by section 131 of the *Nation-building Funds Act 2008* before that section was repealed.

***Education Investment Fund Special Account*** means the Education Investment Fund Special Account that was established by section 132 of the *Nation-building Funds Act 2008* before that section was repealed.

***Emergency Management Minister*** means:

- (a) if there is a Minister whose title includes “Emergency Management”—that Minister; or
- (b) otherwise—the Minister declared by the Prime Minister, by notifiable instrument, to be the Emergency Management Minister for the purposes of this Act.

***Emergency Response Fund*** means the Emergency Response Fund established by section 9.

***Emergency Response Fund investment function*** of the Future Fund Board means:

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

***Emergency Response Fund Investment Mandate*** has the meaning given by subsection 39(3).

Section 4

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***Emergency Response Fund Special Account*** means the Emergency Response Fund Special Account established by section 12.

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

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

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

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

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

***half-year*** means a period of 6 months starting on 1 January or 1 July.

***Home Affairs Department*** means the Department administered by the Home Affairs Minister.

***Home Affairs Emergency Response Fund Special Account*** means the Home Affairs Emergency Response Fund Special Account established by section 27.

***Home Affairs Minister*** means the Minister administering the *Australian Federal Police Act 1979*.

***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;

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Section 4

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

***investment of the Education Investment Fund*** has the same meaning as in the *Nation-building Funds Act 2008* as in force immediately before the commencement of this section.

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

***make***, in relation to an arrangement, includes enter into.

***natural disaster*** means natural disaster in Australia.

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

***person*** includes a partnership.

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

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

***responsible Ministers*** means:

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

***rules*** means rules made under section 64.

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

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

Section 5

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**5 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.

**6 Extension to external Territories**

This Act extends to every external Territory.

**7 Extra-territorial application**

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

## **Part 2—Emergency Response Fund**

### **Division 1—Introduction**

#### **8 Simplified outline of this Part**

- The Emergency Response Fund consists of:
  - (a) the Emergency Response Fund Special Account; and
  - (b) the investments of the Emergency Response Fund.
- The balance of the Education Investment Fund Special Account is transferred to the Emergency Response Fund Special Account. The investments of the Education Investment Fund become investments of the Emergency Response Fund.
- The responsible Ministers may determine that additional amounts be credited to the Emergency Response Fund Special Account.
- Each of the following is a purpose of the Emergency Response Fund Special Account:
  - (a) to transfer amounts to the Home Affairs Emergency Response Fund Special Account for the purposes of making payments and grants in relation to natural disasters;
  - (b) to transfer amounts to the COAG Reform Fund for the purposes of making grants to the States and Territories in relation to natural disasters.
- The Emergency Response Fund Special Account can be debited in relation to costs and other obligations incurred by the Future Fund Board in managing the Emergency Response Fund.

Section 9

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**Division 2—Establishment of the Emergency Response Fund and the Emergency Response Fund Special Account**

**9 Establishment of the Emergency Response Fund**

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

**10 Transfer of balance of the Education Investment Fund Special Account**

As soon as practicable after the commencement of this section, there is to be credited to the Emergency Response Fund Special Account an amount equal to the balance of the Education Investment Fund Special Account immediately before the commencement of this section.

Note: The balance of the Education Investment Fund Special Account does not include the value of an investment of the Education Investment Fund.

**11 Transfer of investments of the Education Investment Fund**

*Scope*

- (1) This section applies to a financial asset if, immediately before the commencement of this section, the asset was an investment of the Education Investment Fund.

*Transfer*

- (2) Immediately after the commencement of this section, the financial asset is taken to cease to be an investment of the Education Investment Fund and to become an investment of the Emergency Response Fund.



## **12 Establishment of the Emergency Response Fund Special Account**

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

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

## **Division 3—Credits of amounts to the Emergency Response Fund Special Account**

### **13 Credits of amounts**

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

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

Note 2: Amounts must also be credited to the Emergency Response Fund Special Account under sections 31, 38, 49, 51 and 62.

- (2) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

## **Division 4—Debits of amounts from the Emergency Response Fund**

### **14 Main purposes of the Emergency Response Fund Special Account**

Each of the following is a purpose of the Emergency Response Fund Special Account:

- (a) to transfer amounts to the Home Affairs Emergency Response Fund Special Account in accordance with section 28 or 28A for the purposes of:
  - (i) paying amounts payable by the Commonwealth under an arrangement made under section 20; and
  - (ii) making grants under section 20;
- (b) to transfer amounts to the COAG Reform Fund in accordance with section 32 or 32A for the purposes of making grants to the States and Territories under section 20.

### **15 Purposes of the Emergency Response Fund Special Account—purposes related exclusively to the investments etc. of the Emergency Response Fund**

Each of the following is a purpose of the Emergency Response Fund Special Account:

- (a) paying the costs of, or incidental to, the acquisition of financial assets under section 37;
- (b) paying expenses of an investment of the Emergency Response Fund;
- (c) paying the costs of, or incidental to, the acquisition of derivatives under section 47;
- (d) paying or discharging the costs, expenses and other obligations incurred by the Future Fund Board under a contract between the Board and an investment manager engaged under subsection 50(1);
- (e) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Future

Section 16

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Fund Board, if the bank account relates exclusively to the Emergency Response Fund;

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

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

**16 Purposes of the Emergency Response Fund Special Account—  
purposes not related exclusively to the Emergency  
Response Fund**

Each of the following is a purpose of the Emergency Response 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, if those costs, expenses or obligations are not covered by:
  - (i) paragraph 15(e); or
  - (ii) paragraph 2(1)(g) of Schedule 2 to the *Future Fund Act 2006*; or
  - (iii) paragraph 16(e) of the *Future Drought Fund Act 2019*; or
  - (iv) paragraph 18(e) of the *Medical Research Future Fund Act 2015*; or
  - (v) paragraph 15(e) of the *DisabilityCare Australia Fund Act 2013*; or
  - (vi) paragraph 15(e) of the *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018*;
- (b) paying a premium in respect of a contract of insurance entered into by the Future Fund Board, if the premium is not covered by:
  - (i) paragraph 15(f); or

- (ii) paragraph 2(1)(h) of Schedule 2 to the *Future Fund Act 2006*; or
- (iii) paragraph 16(f) of the *Future Drought Fund Act 2019*; or
- (iv) paragraph 18(f) of the *Medical Research Future Fund Act 2015*; or
- (v) paragraph 15(f) of the *DisabilityCare Australia Fund Act 2013*; or
- (vi) paragraph 15(f) of the *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018*;
- (c) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board, if the costs, expenses, obligations or liabilities are not covered by:
  - (i) a paragraph of section 15; or
  - (ii) a paragraph of subclause 2(1) of Schedule 2 to the *Future Fund Act 2006*; or
  - (iii) a paragraph of section 16 of the *Future Drought Fund Act 2019*; or
  - (iv) a paragraph of section 18 of the *Medical Research Future Fund Act 2015*; or
  - (v) a paragraph of section 15 of the *DisabilityCare Australia Fund Act 2013*; or
  - (vi) a paragraph of section 15 of the *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018*;
- (d) paying remuneration and allowances of Future Fund Board members;
- (e) paying remuneration, and other employment-related costs and expenses, in respect of members of the staff of the Agency;
- (f) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth or the Future Fund Board:
  - (i) under a contract entered into under section 78 or 82 of the *Future Fund Act 2006*; or
  - (ii) in connection with the operation of the Agency; or

Section 17

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- (iii) before section 131 of the *Nation-building Funds Act 2008* is repealed, in connection with the management of the Education Investment Fund.

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

**17 Future Fund Board must ensure that the balance of the Emergency Response Fund Special Account is sufficient to cover authorised debits etc.**

The Future Fund Board must take all reasonable steps to ensure that the balance of the Emergency Response Fund Special Account is sufficient to cover the debits of amounts for the purposes specified in sections 14, 15 and 16.

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

**18 Transfers from the Emergency Response Fund to the Future Fund**

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

## **Part 3—Arrangements and grants relating to natural disasters**

### **Division 1—Introduction**

#### **19 Simplified outline of this Part**

- The Emergency Management Minister may, on behalf of the Commonwealth:
  - (a) make an arrangement with a person or body in relation to a natural disaster; and
  - (b) make a grant to a person or body in relation to a natural disaster.
- This Part establishes the Home Affairs Emergency Response Fund Special Account.
- Amounts will be transferred from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account. Those transfers are subject to an annual limit.
- The purposes of the Home Affairs Emergency Response Fund Special Account are as follows:
  - (a) to pay amounts payable by the Commonwealth under arrangements relating to a natural disaster;
  - (b) to make grants relating to a natural disaster.
- Amounts will be transferred from the Emergency Response Fund Special Account to the COAG Reform Fund for the purposes of making grants to the States and Territories in relation to natural disasters. Those transfers are subject to an annual limit.

## Division 2—Arrangements and grants

### 20 Arrangements and grants

- (1) The Emergency Management Minister may, on behalf of the Commonwealth:
- (a) make an arrangement with; or
  - (b) make a grant of financial assistance to;
- a person or body for:
- (c) the carrying out of a project that is directed towards achieving either or both of the following:
    - (i) recovery from a natural disaster;
    - (ii) post-disaster resilience in relation to an area that has been affected (whether directly or indirectly) by a natural disaster; or
  - (d) the provision of a service that is directed towards achieving either or both of the following:
    - (i) recovery from a natural disaster;
    - (ii) post-disaster resilience in relation to an area that has been affected (whether directly or indirectly) by a natural disaster; or
  - (e) the adoption of technology that is directed towards achieving either or both of the following:
    - (i) recovery from a natural disaster;
    - (ii) post-disaster resilience in relation to an area that has been affected (whether directly or indirectly) by a natural disaster; or
  - (f) a matter that is incidental or ancillary to a matter mentioned in paragraph (c), (d) or (e).

Note 1: For *post-disaster resilience*, see subsection (6).

Note 2: See also section 24 (constitutional limits).

- (1A) The Emergency Management Minister may, on behalf of the Commonwealth:
- (a) make an arrangement with; or
  - (b) make a grant of financial assistance to;
-



a person or body for:

- (c) the carrying out of a project that is directed towards achieving any or all of the following:
  - (i) resilience to a future natural disaster that could affect an area (whether directly or indirectly);
  - (ii) preparedness for a future natural disaster that could affect an area (whether directly or indirectly);
  - (iii) reduction of the risk of a future natural disaster that could affect an area (whether directly or indirectly);
  - (iv) the long-term sustainability of a community or communities in an area that is at risk of being affected (whether directly or indirectly) by a future natural disaster; or
- (d) the provision of a service that is directed towards achieving any or all of the following:
  - (i) resilience to a future natural disaster that could affect an area (whether directly or indirectly);
  - (ii) preparedness for a future natural disaster that could affect an area (whether directly or indirectly);
  - (iii) reduction of the risk of a future natural disaster that could affect an area (whether directly or indirectly);
  - (iv) the long-term sustainability of a community or communities in an area that is at risk of being affected (whether directly or indirectly) by a future natural disaster; or
- (e) the adoption of technology that is directed towards achieving any or all of the following:
  - (i) resilience to a future natural disaster that could affect an area (whether directly or indirectly);
  - (ii) preparedness for a future natural disaster that could affect an area (whether directly or indirectly);
  - (iii) reduction of the risk of a future natural disaster that could affect an area (whether directly or indirectly);
  - (iv) the long-term sustainability of a community or communities in an area that is at risk of being affected (whether directly or indirectly) by a future natural disaster; or

**Section 20**

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- (f) a matter that is incidental or ancillary to a matter mentioned in paragraph (c), (d) or (e).

Note: See also section 24 (constitutional limits).

- (2) An arrangement under subsection (1) or (1A) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses.
- (3) A grant under subsection (1) or (1A) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses.
- (4) Subsections (2) and (3) do not limit subsection (1) or (1A).
- (5) Subsections (1) and (1A) do not authorise:
  - (a) the acquisition of shares in a company; or
  - (b) the making of a loan.

*Post-disaster resilience in relation to an area that has been affected by a natural disaster*

- (6) For the purposes of this section, if:
  - (a) an area has been affected (whether directly or indirectly) by a natural disaster of a particular kind; and
  - (b) either:
    - (i) at least one arrangement has been made under subsection (1) in relation to recovery from the natural disaster; or
    - (ii) at least one grant has been made under subsection (1) in relation to recovery from the natural disaster;each of the following is ***post-disaster resilience*** in relation to that area:
  - (c) resilience to a future natural disaster of that kind that could affect that area (whether directly or indirectly);
  - (d) preparedness for a future natural disaster of that kind that could affect that area (whether directly or indirectly);
  - (e) reduction of the risk of a future natural disaster of that kind that could affect that area (whether directly or indirectly);
  - (f) the long-term sustainability of a community or communities in that area.

*Transitional*

- (7) This section does not apply to a natural disaster that occurred before the commencement of this section.

**21 Terms and conditions of grants***Scope*

- (1) This section applies to a grant of financial assistance made under section 20.

*Terms and conditions*

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

Note: See also section 24 (constitutional limits).

- (3) The grant recipient must comply with the terms and conditions.
- (4) Without limiting subsection (2), the terms and conditions must provide for the circumstances in which the grant recipient must repay amounts to the Commonwealth.

Note: An amount repayable to the Commonwealth would be a debt due to the Commonwealth.

- (5) An agreement under subsection (2) is to be entered into by the Emergency Management Minister on behalf of the Commonwealth.

**22 Emergency Management Minister has powers etc. of the Commonwealth**

- (1) The Emergency Management Minister, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as:
- (a) a party to an arrangement made under section 20; or
  - (b) the grantor of a grant made under section 20.

## Section 23

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- (2) Without limiting subsection (1):
- (a) an amount payable by the Commonwealth under a section 20 arrangement is to be paid by the Emergency Management Minister on behalf of the Commonwealth; and
  - (b) an amount payable to the Commonwealth under a section 20 arrangement is to be paid to the Emergency Management Minister on behalf of the Commonwealth; and
  - (c) a section 20 grant is to be paid by the Emergency Management Minister on behalf of the Commonwealth; and
  - (d) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a section 20 grant is to be paid to the Emergency Management Minister on behalf of the Commonwealth; and
  - (e) the Emergency Management Minister may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns:
    - (i) a section 20 arrangement; or
    - (ii) a section 20 grant.

## **23 Conferral of powers on the Emergency Management Minister**

The Emergency Management Minister may exercise a power conferred on the Emergency Management Minister by:

- (a) an arrangement made under section 20; or
- (b) an agreement under section 21.

## **24 Constitutional limits**

The Emergency Management Minister may exercise a power conferred on the Emergency Management Minister by section 20 or 21 only:

- (a) with respect to the implied power of the Parliament to make laws with respect to nationhood; or
- (b) with respect to the granting of financial assistance to a State or Territory; or
- (c) with respect to a Territory; or

- (d) with respect to implementing any of Australia's international obligations under the Covenant on Economic, Social and Cultural Rights; or
- (e) with respect to the granting of financial assistance to a constitutional corporation for the purposes of carrying out the corporation's activities; or
- (f) with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (g) with respect to trade and commerce:
  - (i) between Australia and places outside Australia; or
  - (ii) among the States; or
  - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (h) with respect to the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (i) with respect to research relating to the development of patents of inventions; or
- (j) with respect to statistics; or
- (k) with respect to meteorological observations; or
- (l) with respect to insurance to which paragraph 51(xiv) of the Constitution applies; or
- (m) with respect to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

## **25 Executive power of the Commonwealth**

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

## **26 Publication of information relating to arrangements and grants**

- (1) The Emergency Management Minister must cause the following information to be published on the Home Affairs Department's website:

**Section 26**

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- (a) each amount paid by the Commonwealth under a section 20 arrangement or as a section 20 grant;
  - (b) the total of the amounts referred to in paragraph (a);
  - (c) the total of the amounts payable, but not yet paid, by the Commonwealth under a section 20 arrangement or as a section 20 grant;
  - (d) for:
    - (i) each section 20 arrangement made with a person (other than an individual) or body; and
    - (ii) each section 20 grant made to a person (other than an individual) or body;the following information:
    - (iii) the name of the person or body;
    - (iv) the purpose of the arrangement or grant;
  - (e) the date of the most recent amount paid by the Commonwealth under a section 20 arrangement or as a section 20 grant.
- (2) The information published under subsection (1) must be kept up-to-date.
- (3) For the purposes of subsection (2), information is up-to-date if it is published as soon as practicable.

## **Division 3—Home Affairs Emergency Response Fund Special Account**

### **27 Home Affairs Emergency Response Fund Special Account**

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

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

- (3) The Secretary of the Home Affairs Department is responsible for the Home Affairs Emergency Response Fund Special Account.

### **28 Transfers from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account—general**

*Amounts payable under arrangements*

- (1) If:
  - (a) one or more arrangements have been, or will be, made under subsection 20(1); and
  - (b) the Emergency Management Minister is satisfied that one or more amounts (the **committed amounts**) will become payable by the Commonwealth during a financial year under those arrangements;

the Emergency Management Minister may, during the financial year, request the Finance Minister to transfer a specified amount (which must equal the total of the committed amounts) from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account.

**Section 28**

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- (2) The Emergency Management Minister must not make more than one request under subsection (1) in relation to a particular amount that will become payable by the Commonwealth under a subsection 20(1) arrangement.
- (3) To avoid doubt, the Emergency Management Minister may make 2 or more requests under subsection (1) during a financial year.

*Grants*

- (4) If the Emergency Management Minister decides that one or more grants should be made under subsection 20(1) during a financial year to persons other than a State or Territory, the Emergency Management Minister may, during the financial year, request the Finance Minister to transfer a specified amount (which must equal the total amount of the grants) from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account.

Note: For a grant to a State or Territory, see section 32 (channelling State/Territory grants through the COAG Reform Fund).

- (5) The Emergency Management Minister must not make more than one request under subsection (4) in relation to a particular subsection 20(1) grant.
- (6) To avoid doubt, the Emergency Management Minister may make 2 or more requests under subsection (4) during a financial year.

*Transfer*

- (7) If:
  - (a) during a financial year, the Emergency Management Minister requests the Finance Minister under subsection (1) or (4) to transfer an amount from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account; and
  - (b) the Finance Minister is satisfied that the transfer will not contravene subsection 34(1) (annual limit);the Finance Minister must, in writing, direct that a specified amount (which must equal the requested amount) is to be:



- (c) debited from the Emergency Response Fund Special Account; and
  - (d) credited to the Home Affairs Emergency Response Fund Special Account;
- on a specified day during the financial year.
- (8) A direction under subsection (7) is not a legislative instrument.
  - (9) The Finance Minister must give a copy of a direction under subsection (7) to the Treasurer and the Emergency Management Minister.

**28A Transfers from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account—resilience etc.**

*Amounts payable under arrangements*

- (1) If:
  - (a) one or more arrangements have been, or will be, made under subsection 20(1A); and
  - (b) the Emergency Management Minister is satisfied that one or more amounts (the **committed amounts**) will become payable by the Commonwealth during a financial year under those arrangements;the Emergency Management Minister may, during the financial year, request the Finance Minister to transfer a specified amount (which must equal the total of the committed amounts) from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account.
- (2) The Emergency Management Minister must not make more than one request under subsection (1) in relation to a particular amount that will become payable by the Commonwealth under a subsection 20(1A) arrangement.
- (3) To avoid doubt, the Emergency Management Minister may make 2 or more requests under subsection (1) during a financial year.

Section 28A

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*Grants*

- (4) If the Emergency Management Minister decides that one or more grants should be made under subsection 20(1A) during a financial year to persons other than a State or Territory, the Emergency Management Minister may, during the financial year, request the Finance Minister to transfer a specified amount (which must equal the total amount of the grants) from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account.

Note: For a grant to a State or Territory, see section 32A (channelling State/Territory grants through the COAG Reform Fund).

- (5) The Emergency Management Minister must not make more than one request under subsection (4) in relation to a particular subsection 20(1A) grant.
- (6) To avoid doubt, the Emergency Management Minister may make 2 or more requests under subsection (4) during a financial year.

*Transfer*

- (7) If:
- (a) during a financial year, the Emergency Management Minister requests the Finance Minister under subsection (1) or (4) to transfer an amount from the Emergency Response Fund Special Account to the Home Affairs Emergency Response Fund Special Account; and
  - (b) the Finance Minister is satisfied that the transfer will not contravene subsection 34(2) (annual limit);
- the Finance Minister must, in writing, direct that a specified amount (which must equal the requested amount) is to be:
- (c) debited from the Emergency Response Fund Special Account; and
  - (d) credited to the Home Affairs Emergency Response Fund Special Account;
- on a specified day during the financial year.
- (8) A direction under subsection (7) is not a legislative instrument.

- (9) The Finance Minister must give a copy of a direction under subsection (7) to the Treasurer and the Emergency Management Minister.

## **29 Other credits to the Home Affairs Emergency Response Fund Special Account**

There must be credited to the Home Affairs Emergency Response Fund Special Account:

- (a) an amount equal to an amount paid to the Commonwealth under a section 20 arrangement; and
- (b) an amount equal to an amount paid to the Commonwealth by way of damages or compensation for a breach of a section 20 arrangement; and
- (c) an amount equal to an amount paid to the Commonwealth by way of the repayment of the whole or a part of a section 20 grant.

## **30 Purposes of the Home Affairs Emergency Response Fund Special Account**

The purposes of the Home Affairs Emergency Response Fund Special Account are:

- (a) to pay amounts payable by the Commonwealth under an arrangement made under section 20; and
- (b) to make grants under section 20.

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

## **31 Excess balance of the Home Affairs Emergency Response Fund Special Account must be transferred to the Emergency Response Fund Special Account**

*Half-yearly assessment*

- (1) At a time during the first 15 days of each half-year, the Emergency Management Minister must make an assessment of:

**Section 31**

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- (a) whether the balance of the Home Affairs Emergency Response Fund Special Account exceeds what is sufficient to:
  - (i) pay amounts that will become payable by the Commonwealth under section 20 arrangements during the 12-month period that began at the start of the half-year; and
  - (ii) make section 20 grants (other than grants to a State or Territory) during the 12-month period that began at the start of the half-year; and
- (b) if so, the amount of the excess.

*Transfer*

- (2) If the Emergency Management Minister makes an assessment of the amount of the excess, the Emergency Management Minister must:
  - (a) in writing, direct that a specified amount (which must equal the assessed amount of the excess) is to be:
    - (i) debited from the Home Affairs Emergency Response Fund Special Account; and
    - (ii) credited to the Emergency Response Fund Special Account;as soon as practicable after the direction is given; and
  - (b) do so as soon as practicable after the assessment is made.
- (3) A direction under subsection (2) is a notifiable instrument.
- (4) The Emergency Management Minister must give a copy of a direction under subsection (2) to the Treasurer and the Finance Minister.

## **Division 4—Channelling State/Territory grants through the COAG Reform Fund**

### **32 Channelling State/Territory grants through the COAG Reform Fund—general**

- (1) If the Emergency Management Minister decides that a grant of financial assistance should be made to a State or Territory under subsection 20(1), the Emergency Management Minister must, by writing, direct that, on a specified day, a specified amount (which must equal the amount of the grant) is to be:
  - (a) debited from the Emergency Response Fund Special Account; and
  - (b) credited to the COAG Reform Fund.
- (2) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- (3) The Emergency Management Minister must not give a direction under subsection (1) if doing so would contravene subsection 34(1) (annual limit).
- (4) Two 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 Emergency Management Minister must give a copy of a direction under subsection (1) to the Treasurer and the Finance Minister.

### **32A Channelling State/Territory grants through the COAG Reform Fund—resilience etc.**

- (1) If the Emergency Management Minister decides that a grant of financial assistance should be made to a State or Territory under subsection 20(1A), the Emergency Management Minister must, by

## Section 33

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writing, direct that, on a specified day, a specified amount (which must equal the amount of the grant) is to be:

- (a) debited from the Emergency Response Fund Special Account; and
  - (b) credited to the COAG Reform Fund.
- (2) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- (3) The Emergency Management Minister must not give a direction under subsection (1) if doing so would contravene subsection 34(2) (annual limit).
- (4) Two 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 Emergency Management Minister must give a copy of a direction under subsection (1) to the Treasurer and the Finance Minister.

### **33 Debits from the COAG Reform Fund**

If an amount has been credited under paragraph 32(1)(b) or 32A(1)(b) to the COAG Reform Fund for a purpose in relation to a grant of financial assistance to a State or Territory, the Treasurer must:

- (a) ensure that the COAG Reform Fund is debited for the purposes of making the grant; and
  - (b) do so as soon as practicable after the amount has been credited.

**Division 5—Annual limit on amounts debited from the  
Emergency Response Fund Special Account**

**34 Annual limit on amounts debited from the Emergency Response  
Fund Special Account**

- (1) The total amount debited from the Emergency Response Fund Special Account under sections 28 and 32 during a financial year must not exceed \$150 million.
- (2) The total amount debited from the Emergency Response Fund Special Account under sections 28A and 32A during a financial year must not exceed \$50 million.

## **Part 4—Investment of the Emergency Response Fund**

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

- The Future Fund Board is responsible for deciding how to invest the Emergency Response Fund.
- Investments of the Emergency Response Fund consist of financial assets, and are held in the name of the Future Fund Board.
- The Future Fund Board is bound by the Emergency Response Fund Investment Mandate given to it by the responsible Ministers.

### **36 Objects of investment of the Emergency Response Fund**

- (1) The main objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Emergency Response Fund are to enhance the Commonwealth's ability to transfer amounts in accordance with sections 28, 28A, 32 and 32A.
- (2) The ancillary objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Emergency Response Fund are to enhance the ability of the Commonwealth and the Future Fund Board to discharge the costs, expenses, obligations and liabilities mentioned in sections 15 and 16.

### **37 Investment of the Emergency Response Fund**

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

(4) This section does not authorise the acquisition of a derivative.

Note: For acquisition of derivatives, see section 47.

### **38 Management of investments of the Emergency Response Fund**

(1) Income derived from an investment of the Emergency Response Fund is to be credited to the Emergency Response Fund Special Account.

(2) A return of capital, or any other financial distribution, relating to an investment of the Emergency Response Fund is to be credited to the Emergency Response Fund Special Account.

(3) The Future Fund Board may realise an investment of the Emergency Response Fund.

(4) Upon realisation of an investment of the Emergency Response Fund, the proceeds of the investment are to be credited to the Emergency Response Fund Special Account.

(5) At any time before an investment of the Emergency Response 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 Emergency Response Fund.

(6) Section 58 of the *Public Governance, Performance and Accountability Act 2013* (which deals with investment by the Commonwealth) does not apply to an investment of the Emergency Response Fund.

### **39 Emergency Response Fund Investment Mandate**

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

## Section 39

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Note 1: ***Emergency Response 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) In giving a direction under subsection (1), the responsible Ministers must have regard to:
- (a) the need to maximise the return earned on the Emergency Response Fund over the long term, consistent with international best practice for institutional investment; and
  - (b) the need to enhance the Commonwealth's ability to:
    - (i) pay amounts payable by the Commonwealth under an arrangement made under section 20; and
    - (ii) make grants under section 20; and
  - (c) such other matters as the responsible Ministers consider relevant.
- (3) Directions under subsection (1) are to be known collectively as the ***Emergency Response Fund Investment Mandate***.
- (4) Without limiting subsection (1), a direction under that subsection may set out the policies to be pursued by the Future Fund Board in relation to:
- (a) matters of risk and return; and
  - (b) the allocation of financial assets.

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

### *Relationship between directions and other provisions of this Act*

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

### *When direction takes effect*

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

*Direction is a legislative instrument*

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

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction—see regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction—see regulations made for the purposes of paragraph 54(2)(b) of that Act.

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

In performing its Emergency Response Fund investment function, the Future Fund Board must (subject to this Act and a direction under subsection 39(1)) seek to maximise the return earned on the Emergency Response Fund over the long term, consistent with international best practice for institutional investment.

#### **41 Limitation on Emergency Response Fund Investment Mandate**

- (1) The responsible Ministers must not give a direction under subsection 39(1) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring the Future Fund Board to:
- (a) invest an amount standing to the credit of the Emergency Response 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).

Section 42

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**42 Future Fund Board to be consulted on Emergency Response Fund Investment Mandate**

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

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

**43 Compliance with Emergency Response Fund Investment Mandate**

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

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

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

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

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

#### **45 Borrowing**

- (1) The Future Fund Board must not borrow money for a purpose in connection with the Emergency Response 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 Emergency Response Fund if:

## Section 46

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

### **46 Emergency Response 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 Emergency Response Fund:
  - (a) the investment strategy for the Fund;
  - (b) benchmarks and standards for assessing the performance of the Fund;
  - (c) risk management for the Fund;
  - (d) a matter relating to international best practice for institutional investment;
  - (e) a matter specified in the rules.

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

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

*Review of policies*

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

*Compliance with policies*

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

*Policies*

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

## **47 Derivatives**

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

## Section 48

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

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

### **48 Additional financial assets**

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

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

### **49 Securities lending arrangements**

- (1) The Future Fund Board may enter into securities lending arrangements for a purpose in connection with the Emergency Response 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 Emergency Response 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 Emergency Response Fund.
- (4) A financial asset is taken to be an investment of the Emergency Response Fund if, as the result of the operation of a securities lending arrangement entered into under subsection (1), the Future Fund Board becomes the holder of the financial asset.



**50 Investment managers**

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

**51 Refund of franking credits**

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

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

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

## Section 52

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

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

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

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

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

## **Part 5—Reporting obligations etc.**

### **54 Simplified outline of this Part**

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

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

#### *Reports and information*

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

#### *Compliance*

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

#### *Publication of reports and documents*

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

**Section 56**

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*Reports and documents*

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

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

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

**57 Finance Minister may give reports, documents and other information to other Ministers**

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

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

## Part 6—Miscellaneous

### 58 Simplified outline of this Part

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

### 59 Delegation by the Finance Minister

- (1) The Finance Minister may, by writing, delegate any or all of the Finance Minister's functions or powers under section 13, 28 or 28A to:
  - (a) the Secretary of the Finance Department; or
  - (b) an SES employee, or acting SES employee, in the Finance Department.

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

- (2) The Finance Minister may, by writing, delegate any or all of the Finance Minister's powers under section 18 to:
  - (a) the Secretary of the Finance Department; or
  - (b) an SES employee, or acting SES employee, in the Finance Department; or
  - (c) the Chair (within the meaning of section 5 of the *Future Fund Act 2006*); or
  - (d) an SES employee, or acting SES employee, in the Agency.

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

- (3) In performing functions, or exercising powers, under a delegation under subsection (1) or (2), the delegate must comply with any directions of the Finance Minister.

Section 60

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**60 Delegation by the Treasurer**

- (1) The Treasurer may, by writing, delegate any or all of the Treasurer's powers under section 13 to:
- (a) the Secretary of the Treasury Department; or
  - (b) an SES employee, or acting SES employee, in the Treasury Department.

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

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

**61 Delegation by the Emergency Management Minister**

- (1) The Emergency Management Minister may, by writing, delegate any or all of the Emergency Management Minister's powers under Division 2 of Part 3 to:
- (a) the Secretary of the Home Affairs Department; or
  - (b) an SES employee, or acting SES employee, of the Home Affairs Department who has the expertise appropriate to the power; or
  - (c) a person who:
    - (i) is an official of a Commonwealth entity; and
    - (ii) is not covered by paragraph (a) or (b); and
    - (iii) has the expertise appropriate to the power.

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

- (2) In exercising powers under a delegation under subsection (1), the delegate must comply with any directions of the Emergency Management Minister.
- (3) The Emergency Management Minister may, by writing, delegate any or all of the Emergency Management Minister's functions or powers under section 28, 28A, 31, 32 or 32A to:
- (a) the Secretary of the Home Affairs Department; or
  - (b) an SES employee, or acting SES employee, in the Home Affairs Department.

Section 62

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

- (4) In performing functions, or exercising powers, under a delegation under subsection (3), the delegate must comply with any directions of the Emergency Management Minister.

## **62 Transitional—receipts relating to the Education Investment Fund**

If the Future Fund Board receives an amount of money that relates to the Education Investment Fund, the amount is to be credited to the Emergency Response Fund Special Account.

## **63 Review of operation of Act**

- (1) The responsible Ministers must cause a review of the operation of this Act to be undertaken before the tenth anniversary of the commencement of this section.
- (2) The review must consider:
- (a) the extent to which financial assistance provided under this Act has complemented other financial assistance provided by:
    - (i) the Commonwealth; and
    - (ii) the States; and
    - (iii) the Territories;in relation to natural disasters; and
  - (b) whether section 34 should be amended so as to increase the limits set out in that section.
- (3) Subsection (2) does not limit subsection (1).
- (4) The person or persons who conduct the review must:
- (a) give the responsible Ministers a written report of the review; and
  - (b) do so before the tenth anniversary of the commencement of this section.
- (5) The responsible Ministers must cause a copy of:

## Section 64

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- (a) the terms of reference for the review; and
  - (b) the report of the review;
- to be tabled in each House of the Parliament within 15 sitting days of that House after the tenth anniversary of the commencement of this section.
- (6) The responsible Ministers must also cause a copy of the terms of reference and report to be published on the internet as soon as practicable after the tenth anniversary of the commencement of this section.

## 64 Rules

- (1) The Finance Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 11 September 2019  
Senate on 18 September 2019]*

(160/19)

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