



National Reconstruction Fund Corporation Act 2023

No. 12, 2023

**An Act to establish the National Reconstruction
Fund Corporation, and for related purposes**

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

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Object	2
4 Simplified outline of this Act	3
5 Definitions	4
6 Priority areas of the Australian economy	11
7 Crown to be bound	11
8 Extension to external Territories	12
9 Extra-territorial application	12
Part 2—National Reconstruction Fund Corporation	13
10 Simplified outline of this Part	13
11 Establishment	13
12 Corporation’s functions	13
13 Corporation’s powers	14
14 Corporation does not have privileges and immunities of the Crown	14
Part 3—Board of Corporation	15
Division 1—Simplified outline	15
15 Simplified outline of this Part	15
Division 2—Establishment and functions	16
16 Establishment	16
17 Functions of the Board	16
Division 3—Board Members	18
18 Membership	18
19 Appointment of Board members	18
20 Chair	19
21 Term of appointment	19
22 Acting appointments	19
23 Remuneration	20
24 Leave of absence	20
25 Resignation of Board members	21
26 Termination of appointment of Board members	21
27 Other terms and conditions of Board members	21
Division 4—Meetings of the Board	22
28 Convening meetings	22

29	Presiding at meetings.....	22
30	Quorum.....	22
31	Voting at meetings.....	23
32	Conduct of meetings.....	23
33	Minutes.....	23
34	Decisions without meetings.....	23
Part 4—Chief Executive Officer, staff and consultants and committees		25
Division 1—Simplified outline		25
35	Simplified outline of this Part.....	25
Division 2—Chief Executive Officer of Corporation		26
36	Establishment.....	26
37	Functions of the CEO.....	26
38	Appointment.....	26
39	CEO holds office during Board’s pleasure.....	27
40	Acting appointments.....	27
41	Remuneration of CEO.....	27
42	Outside employment.....	28
43	Other terms and conditions.....	28
44	Disclosure of interests.....	28
45	Resignation.....	28
Division 3—Staff and consultants		30
46	Staff.....	30
47	Consultants.....	30
Division 4—Committees		31
48	Committees.....	31
49	Remuneration and allowances.....	31
Part 5—Financial arrangements		32
Division 1—Simplified outline		32
50	Simplified outline of this Part.....	32
Division 2—National Reconstruction Fund Corporation Special Account		33
Subdivision A—Establishment of Account		33
51	Establishment of Account.....	33
Subdivision B—Credits		33
52	Credits to the Account.....	33

Subdivision C—Debits	34
53 Purposes of the Account	34
54 Corporation’s request for a payment for itself	34
55 Nominated Minister’s authorisation of payment to Corporation	34
56 Agreement between nominated Minister and Corporation	35
Division 3—The Corporation’s money	36
57 Application of the Corporation’s money	36
58 Managing surplus money	36
59 Borrowing	37
60 Receipt of gifts	38
61 Taxation	38
Part 6—Investment functions and powers	39
Division 1—Simplified outline of this Part	39
62 Simplified outline of this Part	39
Division 2—Investment functions and powers	40
63 Investment functions	40
64 Terms and conditions of financial accommodation provided to a constitutional corporation	41
65 Terms and conditions of financial accommodation provided to an entity (other than a constitutional corporation, a State or a Territory) or an individual	41
66 Terms and conditions of financial accommodation provided to a State or Territory	42
67 A Corporation body may realise, or otherwise deal with, investments	42
68 A Corporation body must realise equity interests in certain circumstances	42
69 Investments of Corporation bodies to be solely or mainly Australian-based	43
70 When an investment of a Corporation body is <i>solely or mainly Australian-based</i>	44
Division 3—Performance of investment functions etc.	45
71 Investment Mandate	45
72 Limits on Investment Mandate	46
73 Board to be consulted on Investment Mandate	46
74 Compliance with Investment Mandate	47
75 Investment policies	48
76 Guarantees	50
77 Derivatives	50

Part 7—Miscellaneous	51
78 Simplified outline of this Part.....	51
79 Incorporation or formation of subsidiaries	51
80 Responsibilities of designated subsidiaries.....	51
81 Corporation body may charge fees	52
82 Publication of investment reports	52
83 Publication of reports etc.....	53
84 Extra matters to be included in annual report	54
85 Disclosure of official information.....	55
86 Nominated Minister.....	57
87 Delegation by nominated Minister	57
88 Delegation by Corporation	57
89 Delegation by Board.....	57
90 Delegation and subdelegation by CEO	58
91 Periodic reviews of the operation of this Act.....	58
92 Rules.....	59



National Reconstruction Fund Corporation Act 2023

No. 12, 2023

**An Act to establish the National Reconstruction
Fund Corporation, and for related purposes**

[Assented to 11 April 2023]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *National Reconstruction Fund Corporation Act 2023*.

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.	18 September 2023 (F2023N00275)

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

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

3 Object

The object of this Act is to establish the National Reconstruction Fund Corporation to facilitate increased flows of finance into priority areas of the Australian economy.

4 Simplified outline of this Act

- There is to be a National Reconstruction Fund Corporation.
- The functions of the Corporation include:
 - (a) the Corporation's investment functions; and
 - (b) to liaise with relevant persons and bodies, including other Commonwealth entities and State and Territory governments, for the purposes of facilitating the Corporation's investment functions.
- There is to be a Board of the Corporation and a Chief Executive Officer of the Corporation.
- The Corporation can engage staff and consultants.
- The National Reconstruction Fund Corporation Special Account is established.
- Amounts are to be credited to the Account.
- The purpose of the Account is to make payments to the Corporation.
- The Corporation's investment functions are:
 - (a) to provide financial accommodation for purposes relating to any of the priority areas of the Australian economy; and
 - (b) to acquire equity interests in entities that carry on activities in a priority area of the Australian economy.
- The Corporation may perform its investment functions itself or through subsidiaries.
- Each investment of the Corporation must be solely or mainly Australian-based.

Section 5

- The Minister administering this Act and the Finance Minister jointly exercise various powers conferred by this Act in relation to the Corporation.
- The Corporation is bound by the Investment Mandate given to it by the Ministers.

Note: For the Corporation's investment functions, see section 63.

5 Definitions

In this Act:

Account means the National Reconstruction Fund Corporation Special Account established by section 51.

acquire includes:

- (a) acquire by way of issue; and
- (b) acquire by way of formation.

Note: Formation of a partnership involves acquiring an interest in the partnership.

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.

Australia, when used in a geographical sense, includes the external Territories.

Australia's greenhouse gas emissions reduction targets means:

- (a) if:
 - (i) Australia's current nationally determined contribution was communicated in accordance with Article 4 of the Paris Agreement in June 2022; and
 - (ii) that nationally determined contribution has not been adjusted in accordance with paragraph 11 of Article 4 of the Paris Agreement;

the greenhouse gas emissions reduction targets set out in paragraphs 10(1)(a) and (b) of the *Climate Change Act 2022*; or

- (b) in any other case—the greenhouse gas emissions reduction targets included in:
- (i) Australia’s current nationally determined contribution communicated in accordance with Article 4 of the Paris Agreement; or
 - (ii) if that nationally determined contribution has been adjusted in accordance with paragraph 11 of Article 4 of the Paris Agreement—that nationally determined contribution, as adjusted and in force from time to time.

Board means the Board of the Corporation.

Board member means a member of the Board (and includes the Chair).

CEO means the Chief Executive Officer of the Corporation.

Chair means the Chair of the Board.

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

Commonwealth place means a Commonwealth place within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*.

company means a body corporate.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies. To avoid doubt, the definition of **Corporation** does not apply to this definition.

constitutionally-supported activities means activities covered by one or more of the following paragraphs:

- (a) activities carried out with respect to constitutional trade or commerce;
- (b) activities carried out with respect to the defence of Australia;

Section 5

- (c) activities with respect to a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution);
- (d) activities that contribute to the achievement of Australia's obligations under the Paris Agreement;
- (e) activities that contribute to the achievement of Australia's obligations under an international agreement other than the Paris Agreement;
- (f) activities with respect to the provision of medical or dental services by the Commonwealth;
- (g) activities with respect to a fishery to which paragraph 51(x) of the Constitution applies;
- (h) activities with respect to astronomical or meteorological observations;
- (i) activities the carrying on of which would be supported by the power of the Parliament to make laws with respect to nationhood;
- (j) activities carried out in a Territory;
- (k) activities carried out in a Commonwealth place;
- (l) activities with respect to persons, places, matters or things outside Australia.

constitutional trade or commerce means trade or commerce:

- (a) between Australia and a place outside Australia; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories; or
- (e) within a Territory.

Corporation means the National Reconstruction Fund Corporation established by section 11.

Corporation body means:

- (a) the Corporation; or
- (b) a designated subsidiary of the Corporation.

Corporation official means:

- (a) a Board member; or

- (b) the CEO; or
- (c) a member of the staff of the Corporation referred to in section 46; or
- (d) a person whose services are made available to the Corporation under section 46; or
- (e) a person engaged as a consultant under section 47.

Corporation's investment functions: see section 63.

Corporation's investment powers means:

- (a) a power conferred on the Corporation by section 64, 65, 66 or 67; or
- (b) a right or power conferred on the Corporation in its capacity as the holder of an investment of the Corporation.

Corporation's money: see section 57.

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

designated subsidiary of the Corporation means a subsidiary through which the Corporation performs any of the Corporation's investment functions.

entity includes:

- (a) a company; and
- (b) a trust; and
- (c) a partnership.

equity interest means:

- (a) a share in a company; or
- (b) an interest in a trust; or
- (c) an interest in a partnership; or
- (d) an interest specified in the rules;

but does not include an interest that, under the rules, is taken to not be an equity interest for the purposes of this Act.

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

Section 5

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

financial accommodation means:

- (a) financial accommodation in the form of a loan; or
- (b) financial accommodation in the form of a letter of credit; or
- (c) financial accommodation in the form of a purchase of bonds or other debt securities; or
- (d) financial accommodation in the form of a guarantee; or
- (e) financial accommodation in another form;

but does not include:

- (f) the acquisition of one or more equity interests; or
- (g) a monetary grant (whether or not subject to conditions) that is, or may reasonably be regarded as the equivalent of, a gift.

guarantee includes any form of monetary commitment supporting the performance of an obligation.

international agreement means an agreement whose parties are:

- (a) Australia and a foreign country; or
- (b) Australia and 2 or more foreign countries.

Investment Mandate: see section 71.

investment of a Corporation body means:

- (a) if the Corporation body is the Corporation—an investment of the Corporation; or
- (b) if the Corporation body is a designated subsidiary of the Corporation—an investment of the designated subsidiary.

investment of a designated subsidiary of the Corporation means:

- (a) a loan made by the designated subsidiary; or
- (b) a letter of credit issued by the designated subsidiary; or
- (c) a bond held by the designated subsidiary; or
- (d) a guarantee given by the designated subsidiary; or
- (e) an equity interest held by the designated subsidiary; or
- (f) any other asset, right or obligation held by the designated subsidiary;

as a result of the Corporation's investment functions being performed through the designated subsidiary.

investment of the Corporation means:

- (a) a loan made by the Corporation; or
- (b) a letter of credit issued by the Corporation; or
- (c) a bond held by the Corporation; or
- (d) a guarantee given by the Corporation; or
- (e) an equity interest held by the Corporation; or
- (f) any other asset, right or obligation held by the Corporation;

as a result of the Corporation's performance of the Corporation's investment functions.

investment powers, when used in relation to a designated subsidiary of the Corporation, means:

- (a) a power conferred on the designated subsidiary by section 64, 65, 66 or 67; or
- (b) a right or power conferred on the designated subsidiary in its capacity as the holder of an investment of the designated subsidiary.

likely to prejudice national security: something is **likely to prejudice national security** if there is a real, and not merely a remote, possibility that it will prejudice national security.

Ministers means:

- (a) the Minister administering this Act; and
- (b) the Finance Minister.

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

national security agency means an agency that is a member of the national intelligence community (within the meaning of the *Office of National Intelligence Act 2018*).

national security information means information the publication of which is likely to prejudice national security.

nominated Minister: see section 86.

Section 5

official information means information that:

- (a) was obtained by a person in the person's capacity as a Corporation official; and
- (b) relates to the affairs of a person other than a Corporation official.

operating balance means the amount agreed under paragraph 56(c) to be the operating balance.

Paris Agreement means the Paris Agreement, done at Paris on 12 December 2015, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2016 No. 24 ([2016] ATS 24) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

person includes a partnership.

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

prescribed means prescribed by the rules.

priority area of the Australian economy: see section 6.

quarter: see subsection 82(2).

realise includes redeem or dispose of.

rules means rules made under section 92.

sensitive financial intelligence information means:

- (a) information given in compliance with subsection 41(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or
- (b) information given in compliance with a notice under subsection 49(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

solely or mainly Australian based: see section 70.

staff member of a national security agency includes the head (however described) of the national security agency.

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

surplus money: see subsections 58(2) and (3).

uncommitted balance, of the Account, at any time means the amount standing to the credit of the Account at that time less the total, at that time, of the Corporation's liabilities (whether actual or contingent) in respect of guarantees given by the Corporation and still in effect.

vacancy, in relation to the office of a Board member, has a meaning affected by subsection 22(4).

wholly-owned subsidiary of the Corporation means a subsidiary of the Corporation none of whose members is a person other than:

- (a) the Corporation; or
- (b) a nominee of the Corporation; or
- (c) a subsidiary of the Corporation, being a subsidiary none of whose members is a person other than:
 - (i) the Corporation; or
 - (ii) a nominee of the Corporation; or
- (d) a nominee of such a subsidiary.

6 Priority areas of the Australian economy

The Ministers may, by legislative instrument, declare that each area of the Australian economy specified in the declaration is a **priority area of the Australian economy** for the purposes of this Act.

7 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 a pecuniary penalty or to be prosecuted for an offence.

Part 1 Preliminary

Section 8

8 Extension to external Territories

This Act extends to the external Territories.

9 Extra-territorial application

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

Part 2—National Reconstruction Fund Corporation

10 Simplified outline of this Part

- There is to be a National Reconstruction Fund Corporation.
- The functions of the Corporation include:
 - (a) the Corporation’s investment functions; and
 - (b) to liaise with relevant persons and bodies, including other Commonwealth entities and State and Territory governments, for the purposes of facilitating the Corporation’s investment functions.

Note: For the Corporation’s investment functions, see section 63.

11 Establishment

- (1) The National Reconstruction Fund Corporation (the **Corporation**) is established by this section.
- (2) The Corporation:
 - (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of assets; and
 - (d) may sue and be sued.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Corporation. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (3) The Corporation’s seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

12 Corporation’s functions

- (1) The Corporation has the following functions:
-

Section 13

- (a) the Corporation's investment functions (see section 63);
 - (b) to liaise with relevant persons and bodies, including other Commonwealth entities and State and Territory governments, for the purposes of facilitating the Corporation's investment functions;
 - (c) any other functions conferred on the Corporation by this Act or any other Commonwealth law;
 - (d) to do anything incidental or conducive to the performance of the above functions.
- (2) In performing its functions, the Corporation must act in a proper, efficient and effective manner.

13 Corporation's powers

- (1) The Corporation has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the Corporation may be exercised within or outside Australia.

14 Corporation does not have privileges and immunities of the Crown

The Corporation does not have the privileges and immunities of the Crown in right of the Commonwealth.

Part 3—Board of Corporation

Division 1—Simplified outline

15 Simplified outline of this Part

- There is to be a Board of the Corporation.
- The Board's functions include:
 - (a) to decide the strategies and policies to be followed by the Corporation; and
 - (b) to ensure the proper, efficient and effective performance of the Corporation's functions.
- The Ministers appoint Board members, including the Chair.
- The Board is to hold meetings, as necessary, for the performance of its functions.

Division 2—Establishment and functions

16 Establishment

There is to be a Board of the Corporation.

17 Functions of the Board

- (1) The functions of the Board are:
 - (a) to decide strategies and policies to be followed by the Corporation; and
 - (b) to ensure the proper, efficient and effective performance of the Corporation's functions; and
 - (c) any other functions conferred on the Board by this Act.
- (2) The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (3) Anything done in the name of, or on behalf of, the Corporation by the Board, or with the authority of the Board, is taken to have been done by the Corporation.
- (3A) In performing its functions, the Board must have regard to:
 - (a) the desirability of transforming Australia's industry and economy by:
 - (i) growing or improving Australia's industrial capability; or
 - (ii) improving Australian industry's ability to pursue value-adding opportunities; or
 - (iii) supporting a long-term improvement in Australia's economic diversity; and
 - (b) the desirability of attracting private sector finance or investments into the priority areas of the Australian economy; and
 - (c) Australia's greenhouse gas emissions reduction targets and the desirability of supporting decarbonisation; and

- (d) the desirability of creating secure jobs and a skilled and adaptable workforce; and
 - (e) the desirability of enhancing Australia's resilience against supply chain vulnerabilities; and
 - (f) the desirability of encouraging the commercialisation of Australian innovation and technology.
- (4) In performing its functions, the Board must have regard to the desirability of encouraging and improving economic participation by historically underrepresented groups, including:
- (a) women; and
 - (b) First Nations Australians; and
 - (c) people with a disability; and
 - (d) people of culturally and linguistically diverse backgrounds.
- (5) Subsections (3A) and (4) do not:
- (a) limit the matters to which the Board may have regard; or
 - (b) by implication, limit the matters with respect to which the Board may be directed under subsection 71(1).

Division 3—Board Members

18 Membership

The Board consists of:

- (a) the Chair; and
- (b) at least 6, and no more than 8, other members.

19 Appointment of Board members

- (1) Board members are to be appointed:
 - (a) by the Ministers by written instrument; and
 - (b) on a part-time basis.
- (2) A person is not eligible for appointment as a Board member unless the Ministers are satisfied that the person has:
 - (a) substantial experience or expertise; and
 - (b) professional credibility and significant standing;in at least one of the following fields:
 - (c) banking and finance;
 - (d) venture capital, private equity or investment by way of lending or provision of credit;
 - (e) economics;
 - (f) government funding programs or bodies;
 - (g) accounting;
 - (h) law;
 - (i) a priority area of the Australian economy;
 - (j) industrial relations;
 - (k) industry growth;
 - (ka) the commercialisation of innovative research;
 - (l) any other field that the Ministers consider appropriate.
- (2A) In appointing members, the Ministers must ensure that the Board members collectively have an appropriate balance of experience or expertise, professional credibility and significant standing in the fields mentioned in subsection (2).

- (3) The following persons are not eligible for appointment as a Board member:
- (a) an employee of the Commonwealth;
 - (b) the holder of a full-time office under a law of the Commonwealth.

20 Chair

The Ministers must, by writing, appoint one Board member to be the Chair.

21 Term of appointment

A Board member holds office for the period specified in the instrument of appointment. The period must not be more than 4 years.

Note: A Board member is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

22 Acting appointments

- (1) The Ministers may, by written instrument, appoint a Board member to act as the Chair:
- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The Ministers may, by written instrument, appoint a person to act as a Board member (other than the Chair):
- (a) during a vacancy in the office of a Board member (other than the Chair) whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a Board member (other than the Chair):
 - (i) is absent from duty or from Australia; or

Section 23

- (ii) is, for any reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

- (3) A person is not eligible for appointment to act as a Board member unless the person is eligible for appointment as a Board member under section 19.
- (4) For the purposes of a reference in:
- (a) this Act to a ***vacancy*** in the office of a Board member; or
 - (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the membership of a body;
- there are taken to be 6 Board member offices in addition to the Chair.

23 Remuneration

- (1) A Board member 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 prescribed by the rules.
- (2) A Board member is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

24 Leave of absence

Chair

- (1) The nominated Minister may grant leave of absence to the Chair on the terms and conditions that the nominated Minister determines.

Other Board members

- (2) The Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines.

- (3) The Chair must notify the Ministers if the Chair grants a Board member leave of absence for a period that exceeds 3 months.

25 Resignation of Board members

- (1) A Board member may resign the member's appointment by giving the Ministers a written resignation.
- (2) The resignation takes effect on:
- (a) the day it is received by the Ministers (or if the Ministers receive it on different days, the later of those days); or
 - (b) if a later day is specified in the resignation—on that later day.

26 Termination of appointment of Board members

The Ministers may terminate the appointment of a Board member:

- (a) for misbehaviour; or
- (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity; or
- (c) if the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
- (d) if the member is absent, except on leave of absence, from 3 consecutive meetings of the Board.

Note: The appointment of a Board member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

27 Other terms and conditions of Board members

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

Division 4—Meetings of the Board

28 Convening meetings

- (1) The Board must hold the meetings that are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at the times and places that the Board determines.

Note: See also section 33B of the *Acts Interpretation Act 1901*, which contains extra rules about meetings by telephone etc.

- (3) The Chair:
 - (a) may convene a meeting; and
 - (b) must convene at least 6 meetings each calendar year; and
 - (c) must convene a meeting within 30 days of receiving a written request to do so from another Board member.

29 Presiding at meetings

- (1) The Chair must preside at all meetings at which the Chair is present.
- (2) If the Chair is not present at a meeting, the other Board members present must appoint one of themselves to preside.

30 Quorum

- (1) At a meeting of the Board, a quorum is constituted by:
 - (a) 4 Board members; or
 - (b) at any time when there are only 5 Board members—3 Board members.
- (2) However, if:
 - (a) a Board member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and

(b) when the member leaves the meeting concerned there is no longer a quorum present;
the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

31 Voting at meetings

- (1) A question arising at a meeting is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

32 Conduct of meetings

The Board may regulate proceedings at its meetings as it considers appropriate.

33 Minutes

The Board must keep minutes of its meetings.

34 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
 - (a) has determined that it may make decisions of that kind without meeting; and

Part 3 Board of Corporation

Division 4 Meetings of the Board

Section 34

- (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

Part 4—Chief Executive Officer, staff and consultants and committees

Division 1—Simplified outline

35 Simplified outline of this Part

- There is to be a Chief Executive Officer of the Corporation.
- The CEO is responsible for the day-to-day administration of the Corporation.
- The Corporation can engage staff and consultants.

Division 2—Chief Executive Officer of Corporation

36 Establishment

There is to be a Chief Executive Officer of the Corporation.

37 Functions of the CEO

- (1) The CEO is responsible for the day-to-day administration of the Corporation.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of the CEO's duties.
- (3) The CEO is to act in accordance with policies determined by the Board.
- (4) The Board may give written directions to the CEO about the performance of the CEO's responsibilities.
- (5) The CEO must comply with a direction under subsection (4).
- (6) A direction under subsection (4) is not a legislative instrument.

38 Appointment

- (1) The CEO is to be appointed by the Board after consultation with the Ministers.
- (2) The CEO is to be appointed:
 - (a) by written instrument; and
 - (b) on a full-time basis.
- (3) The CEO must not be a Board member.
- (4) The Board must appoint the first CEO no later than 6 months after the commencement of this section.
- (5) Consultation under subsection (1) must be in accordance with such requirements (if any) as are prescribed by the rules.

39 CEO holds office during Board's pleasure

- (1) The CEO holds office during the Board's pleasure.
- (2) The Chair must consult with the Ministers before the Board terminates the appointment of the CEO.
- (3) The Chair must notify the Ministers if the Board terminates the appointment of the CEO.
- (4) Consultation under subsection (2) must be in accordance with such requirements (if any) as are prescribed by the rules.

40 Acting appointments

The Board may, by written instrument and after consultation with the Ministers, appoint a person (other than a Board member) to act as the CEO:

- (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

41 Remuneration of CEO

- (1) The CEO 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 CEO is to be paid the remuneration that is prescribed under subsection (4).
- (2) The CEO is to be paid the allowances that are prescribed under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Ministers may, by legislative instrument, prescribe:

Section 42

- (a) remuneration for the purposes of subsection (1); and
- (b) allowances for the purposes of subsection (2).

42 Outside employment

- (1) The CEO must not engage in paid employment outside the duties of the CEO's office without the Chair's approval.
- (2) The Chair must notify the Ministers of any approval given under subsection (1).

43 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

44 Disclosure of interests

- (1) A disclosure by the CEO under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Board.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the CEO is taken not to have complied with section 29 of that Act if the CEO does not comply with subsection (1) of this section.

45 Resignation

- (1) The CEO may resign the CEO's appointment by giving the Chair a written resignation.
- (2) The resignation takes effect on the day it is received by the Chair or, if a later day is specified in the resignation, on that later day.

- (3) The Chair must notify the Ministers of the CEO's resignation as soon as practicable after it is received by the Chair.

Division 3—Staff and consultants

46 Staff

- (1) The Corporation may employ such persons as it considers necessary for the performance of its functions and the exercise of its powers.
- (2) An employee is to be employed on the terms and conditions that the Corporation determines in writing.
- (3) The Corporation may arrange with:
 - (a) an Agency Head (within the meaning of the *Public Service Act 1999*); or
 - (b) a body established for a public purpose by a law of the Commonwealth;for the services of officers or employees of the Agency or body to be made available to the Corporation.
- (4) The Corporation may enter into an arrangement with the appropriate authority of a State or Territory for the services of:
 - (a) officers or employees of the Public Service of the State or Territory; or
 - (b) officers or employees of a State or Territory statutory authority;to be made available to the Corporation.

47 Consultants

- (1) The Corporation may engage consultants to assist in the performance of its functions.
- (2) The consultants are to be engaged on the terms and conditions that the Corporation determines.

Division 4—Committees

48 Committees

- (1) The Board may establish committees to advise or assist in the performance of the Board's or the Corporation's functions.
- (2) A committee may be constituted:
 - (a) wholly by Board members; or
 - (b) wholly by persons who are not Board members; or
 - (c) partly by Board members and partly by other persons.
- (3) The Board may determine, in relation to a committee established under this section:
 - (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.

49 Remuneration and allowances

- (1) If the Board decides that a committee member who is also a Board member is to be remunerated in relation to the member's committee membership, the committee member 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 committee member is to be paid the remuneration that is prescribed by the rules.
- (2) A committee member who is a Board member is to be paid the allowances that are prescribed by the rules.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.
- (4) If the Board decides that a committee member other than a Board member is to be remunerated, the committee member is to be paid the remuneration and allowances determined by the Corporation in writing.

Part 5 Financial arrangements

Division 1 Simplified outline

Section 50

Part 5—Financial arrangements

Division 1—Simplified outline

50 Simplified outline of this Part

- The National Reconstruction Fund Corporation Special Account is established.
- Amounts are to be credited to the Account.
- The purpose of the Account is to make payments to the Corporation.
- If the Corporation has surplus money, the Ministers may direct the Corporation to pay to the Commonwealth an amount equal to the whole or a part of the excess.
- The Corporation may borrow money for limited purposes.

Division 2—National Reconstruction Fund Corporation Special Account

Subdivision A—Establishment of Account

51 Establishment of Account

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

Subdivision B—Credits

52 Credits to the Account

- (1) There must be credited to the Account amounts equal to the following:
 - (a) \$5 billion, to be credited on the day on which this section commences;
 - (b) amounts paid to the Commonwealth under section 58.
- (2) The Ministers may, by writing, determine that:
 - (a) a specified amount is to be credited to the Account on a specified day; or
 - (b) a specified amount is to be credited to the Account in specified instalments on specified days.

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

- (3) There must be credited to the Account any other money appropriated by the Parliament for the purposes of the Account.
- (4) The Ministers must ensure that the total of the amounts credited to the Account under subsection (2) before 2 July 2029 is equal to \$10 billion.

Section 53

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

Subdivision C—Debits

53 Purposes of the Account

The purpose of the Account is to make payments to the Corporation, so long as the payments are authorised by the nominated Minister under subsection 55(1).

54 Corporation’s request for a payment for itself

- (1) The Corporation may request a payment by the Commonwealth of a specified amount:
- (a) to meet liabilities or expenses of the Corporation:
 - (i) that are already due; or
 - (ii) that will, or that are expected to, become due during the period specified in the request; or
 - (b) so that the total balance of the Corporation’s bank account or accounts is at least the operating balance.
- (2) The Corporation’s request must:
- (a) be in writing; and
 - (b) specify:
 - (i) the liabilities or expenses the payment is to meet; or
 - (ii) the amount by which the Corporation’s bank balance falls short of the operating balance; and
 - (c) be in accordance with the agreement under section 56.
- (3) The Corporation must not request a payment under subsection (1) of an amount that would exceed the uncommitted balance of the Account at the time the request is made.

55 Nominated Minister’s authorisation of payment to Corporation

- (1) As soon as practicable after a request is made under section 54, the nominated Minister must:
-

- (a) determine whether the request is in accordance with the agreement under section 56; and
 - (b) if satisfied that it is—give written authorisation for the requested payment.
- (2) If the nominated Minister gives written authorisation for the requested payment, the Commonwealth must, as soon as practicable, pay the authorised amount to the Corporation.
- Note: See also section 53.
- (3) An authorisation under subsection (1) is not a legislative instrument.

56 Agreement between nominated Minister and Corporation

The following matters are to be as agreed between the nominated Minister and the Corporation in relation to requests for payments under section 54:

- (a) how requests are to be made, including:
 - (i) the form in which a request is to be made; and
 - (ii) the person to whom a request is to be given;
- (b) the period that may be specified in a request as mentioned in subparagraph 54(1)(a)(ii);
- (c) the amount of the Corporation's operating balance for the purposes of paragraph 54(1)(b).

Division 3—The Corporation's money

57 Application of the Corporation's money

- (1) The *Corporation's money* consists of:
 - (a) money paid to the Corporation under subsection 55(2); and
 - (b) any other money received by the Corporation.
- (2) The Corporation's money is to be applied only:
 - (a) in performing the Corporation's investment functions; and
 - (b) in exercising the Corporation's investment powers; and
 - (c) in paying or discharging the costs, expenses and other obligations incurred by the Corporation in the performance of the Corporation's functions; and
 - (d) in paying any remuneration and allowances payable to any person under this Act; and
 - (e) in making payments to the Commonwealth under section 58.
- (3) Subsection (2) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Corporation.

58 Managing surplus money

- (1) If, at any time, the sum of the surplus money of:
 - (a) the Corporation; and
 - (b) any wholly-owned subsidiaries of the Corporation;exceeds:
 - (c) \$20 million; or
 - (d) if the rules prescribe a different amount—the prescribed amount;the Ministers may, in writing:
 - (e) direct the Corporation to pay to the Commonwealth an amount equal to the excess; or
 - (f) direct the Corporation to pay to the Commonwealth an amount equal to a specified part of the excess.

- (2) Money of the Corporation is **surplus money** if it is not immediately required for the purposes of the Corporation.
- (3) Money of a wholly-owned subsidiary is **surplus money** if it is not immediately required for the purposes of the subsidiary.
- (4) The Corporation must comply with the direction.
 - Note: The amount paid by the Corporation is credited to the Account under paragraph 52(1)(b).
- (5) The rules may prescribe an amount for the purposes of paragraph (1)(d) by prescribing either or both of the following:
 - (a) an amount;
 - (b) a method or methods of calculating an amount.

59 Borrowing

Borrowing by the Corporation

- (1) The Corporation must not borrow money for a purpose in connection with the Corporation's investment functions unless the borrowing is authorised:
 - (a) by subsection (2) or (3); or
 - (b) under section 57 of the *Public Governance, Performance and Accountability Act 2013*.
- (2) The Corporation is authorised to borrow money for a purpose in connection with the Corporation's functions if:
 - (a) the purpose of the borrowing is to enable the Corporation to cover settlement of a transaction in connection with the Corporation's functions; and
 - (b) at the time the decision was made to enter into the transaction, it was likely that the borrowing would not be needed; and
 - (c) the period of the borrowing does not exceed 7 days.
- (3) The Corporation is authorised to borrow money for a purpose in connection with the Corporation's functions if the borrowing takes place in the circumstances (if any) prescribed by the rules.

Section 60

Borrowing by subsidiaries

- (5) A wholly-owned subsidiary of the Corporation may borrow money from the Corporation (and the borrowing need not comply with subsection (2) or (3)).
- (6) Section 86 of the *Public Governance, Performance and Accountability Act 2013* (which deals with subsidiaries of corporate Commonwealth entities) does not apply to the Corporation in relation to borrowings by subsidiaries authorised by subsection (5).

60 Receipt of gifts

- (1) The Corporation may accept a gift of money if the nominated Minister authorises the Corporation, by written notice given to the Board, to accept the gift.
- (2) The Corporation may accept a gift of one or more equity interests if:
 - (a) the equity interests could have been acquired by the Corporation; and
 - (b) the nominated Minister authorises the Corporation, by written notice given to the Board, to accept the gift.

61 Taxation

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

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

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

Part 6—Investment functions and powers

Division 1—Simplified outline of this Part

62 Simplified outline of this Part

- The Corporation's investment functions are:
 - (a) to provide financial accommodation for purposes relating to any of the priority areas of the Australian economy; and
 - (b) to acquire equity interests in entities that carry on activities in a priority area of the Australian economy.
- The Corporation may perform its investment functions itself or through subsidiaries.
- Each investment of the Corporation must be solely or mainly Australian-based.
- The Corporation is bound by the Investment Mandate given to it by the Ministers.

Division 2—Investment functions and powers

63 Investment functions

- (1) The Corporation's *investment functions* are:
- (a) to provide financial accommodation to constitutional corporations, where the financial accommodation satisfies the following conditions:
 - (i) the financial accommodation is for purposes relating to any of the priority areas of the Australian economy;
 - (ii) the financial accommodation assists the constitutional corporation in carrying out its activities; and
 - (b) to provide financial accommodation to entities (other than constitutional corporations, States or Territories) or individuals, where the financial accommodation satisfies the following conditions:
 - (i) the financial accommodation is for purposes relating to any of the priority areas of the Australian economy;
 - (ii) the financial accommodation assists the entity or individual in carrying out constitutionally-supported activities; and
 - (c) to acquire equity interests in entities that satisfy the following conditions:
 - (i) any of the entity's activities are in a priority area of the Australian economy;
 - (ii) all of the entity's activities are constitutionally-supported activities; and
 - (d) to provide financial accommodation to the States and Territories, where the financial accommodation satisfies the following conditions:
 - (i) the financial accommodation is for purposes relating to any of the priority areas of the Australian economy;
 - (ii) the financial accommodation is provided by way of the grant of financial assistance to the State or Territory.

Subsidiaries

- (2) The Corporation may perform its investment functions itself or through subsidiaries.

Prohibited investments

- (3) An investment of a Corporation body must not:
- (a) directly finance the extraction of coal or natural gas; or
 - (b) directly finance the construction of pipeline infrastructure primarily for the extraction of natural gas; or
 - (c) directly finance the logging of native forests.
- (4) In this section:

native forest does not include a plantation.

plantation means an intensively managed stand of trees that is created by the regular placement of seedlings or seed.

64 Terms and conditions of financial accommodation provided to a constitutional corporation

- (1) This section applies to financial accommodation provided to a constitutional corporation by a Corporation body.
- (2) The terms and conditions on which that financial accommodation is provided must be set out in a written agreement between the Corporation body and the constitutional corporation.
- (3) The constitutional corporation must comply with the terms and conditions.

65 Terms and conditions of financial accommodation provided to an entity (other than a constitutional corporation, a State or a Territory) or an individual

- (1) This section applies to financial accommodation provided to an entity (other than a constitutional corporation, a State or a Territory) or an individual by a Corporation body.

Section 66

- (2) The terms and conditions on which that financial accommodation is provided must be set out in a written agreement between the Corporation body and the entity or individual.
- (3) The entity or individual must comply with the terms and conditions.

66 Terms and conditions of financial accommodation provided to a State or Territory

- (1) This section applies to financial accommodation provided to a State or Territory by a Corporation body.
- (2) The terms and conditions on which that financial accommodation is provided must be set out in a written agreement between the Corporation body and the State or Territory.

67 A Corporation body may realise, or otherwise deal with, investments

A Corporation body may realise, or otherwise deal with, an investment of the Corporation body.

68 A Corporation body must realise equity interests in certain circumstances

- (1) This section applies if:
 - (a) a Corporation body holds one or more equity interests in an entity; and
 - (b) the Corporation body becomes aware of the fact that one or more of the activities of the entity are not constitutionally-supported activities.
- (2) The Corporation body must:
 - (a) realise the equity interests; and
 - (b) do so as soon as reasonably practicable in the circumstances after the Corporation body becomes aware of the fact.

69 Investments of Corporation bodies to be solely or mainly Australian-based

- (1) The Board must take all reasonable steps to ensure that each investment of a Corporation body is at all times solely or mainly Australian-based.
- (2) As soon as practicable after the Board becomes aware that an investment of a Corporation body has ceased to be, or never was, solely or mainly Australian-based, the Board must give the Ministers a written statement:
 - (a) informing the Ministers; and
 - (b) setting out the action that the Board proposes to take in order to ensure that all investments of the Corporation body are solely or mainly Australian-based.
- (3) If the Ministers are satisfied that an investment of a Corporation body has ceased to be, or was never, solely or mainly Australian-based, the Ministers may (whether or not the Board has given the Ministers a statement under subsection (2)), by written notice given to the Board, direct the Board:
 - (a) to give the Ministers, within a period specified in the notice, a written explanation; and
 - (b) to take action specified in the notice, within a period specified in the notice, in order to ensure that all investments of the Corporation body are solely or mainly Australian-based.
- (4) The Board must comply with a direction under subsection (3).
- (5) The fact that an investment of a Corporation body has ceased to be, or never was, solely or mainly Australian-based, does not affect the validity of any transaction.
- (6) A direction under subsection (3) is not a legislative instrument.

Section 70

70 When an investment of a Corporation body is *solely or mainly Australian-based*

- (1) An investment of a Corporation body is *solely or mainly Australian-based* if the Board is satisfied, in accordance with guidelines made under subsection (2), that the investment is solely or mainly Australian-based.
- (2) The Board must, by writing, make guidelines setting out circumstances, conditions or other matters to which the Board will have regard in satisfying itself that an investment of a Corporation body is solely or mainly Australian-based.
- (3) The guidelines must not be inconsistent with the Investment Mandate.
- (4) The Board must publish guidelines made under subsection (2) on the Corporation's website.
- (5) Guidelines made under subsection (2) are not a legislative instrument.

Division 3—Performance of investment functions etc.

71 Investment Mandate

- (1) The Ministers may, by legislative instrument, give the Board directions about the performance of the Corporation's investment functions or the exercise of the Corporation's investment powers (or both), and must give at least one such direction. The directions together constitute the *Investment Mandate*.

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

- (2) In giving a direction, the Ministers must have regard to:
- (a) the object of this Act; and
 - (b) any other matters the Ministers consider relevant.
- (3) Without limiting subsection (1), a direction may set out the policies to be pursued by the Corporation in relation to any or all of the following:
- (a) matters of risk and return;
 - (b) the allocation of investments of the Corporation between the various priority areas of the Australian economy;
 - (c) the types of financial accommodation that may be provided to constitutional corporations by a Corporation body and the circumstances in which they may be provided;
 - (d) the types of constitutional corporations to which financial accommodation may be provided by a Corporation body;
 - (e) providing financial accommodation to constitutional corporations on concessional terms;
 - (f) the types of financial accommodation that may be provided to entities (other than constitutional corporations, States or Territories) or individuals by a Corporation body and the circumstances in which they may be provided;
 - (g) the types of entities (other than constitutional corporations, States or Territories) or individuals to which financial accommodation may be provided by a Corporation body;

Section 72

- (h) providing financial accommodation to entities (other than constitutional corporations, States or Territories) or individuals on concessional terms;
- (i) the types of equity interests that may be acquired by a Corporation body;
- (j) the types of entities in which a Corporation body may acquire equity interests;
- (k) acquiring equity interests on concessional terms;
- (l) the types of financial accommodation that may be provided to the States and Territories by a Corporation body and the circumstances in which they may be provided;
- (m) providing financial accommodation to the States and Territories on concessional terms;
- (n) the types of derivatives which the Corporation may acquire;
- (o) national security;
- (p) broad operational matters;
- (q) other matters the Ministers consider appropriate to deal with in a direction under subsection (1).

72 Limits on Investment Mandate

The Ministers must not give a direction under subsection 71(1):

- (a) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring a Corporation body to, or not to, make a particular provision of financial accommodation to a constitutional corporation, a State, a Territory, an entity or an individual; or
- (b) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring a Corporation body to, or not to, make a particular acquisition of one or more equity interests; or
- (c) that is inconsistent with this Act (including the object of this Act).

73 Board to be consulted on Investment Mandate

- (1) Before giving the Board a direction under subsection 71(1), the Ministers must:

- (a) send a draft of the direction to the Board; and
 - (b) invite the Board to make a submission to the Ministers on the draft direction within a reasonable time limit specified by the Ministers; and
 - (c) consider any submission that is received from the Board within that time limit.
- (2) If:
- (a) the Ministers give the Board a direction under subsection 71(1); and
 - (b) the Board made a submission to the Ministers on a draft of the direction within the time limit specified by the 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 *Legislation Act 2003*.
- (3) The Ministers must omit any national security information or sensitive financial intelligence information from the submission tabled under subsection (2).

74 Compliance with Investment Mandate

- (1) The Board must take all reasonable steps to ensure that the Corporation and its subsidiaries comply with the Investment Mandate.
- (2) As soon as practicable after the Board becomes aware that the Corporation or one of its subsidiaries has failed to comply with the Investment Mandate, the Board must give the Ministers a written statement:
 - (a) informing the Ministers; and
 - (b) setting out the action that the Board proposes to take in order to ensure that the Corporation or subsidiary complies with the Investment Mandate.
- (3) If the Ministers are satisfied that the Corporation or one of its subsidiaries has failed to comply with the Investment Mandate, the Ministers may (whether or not the Board has given the Ministers a

Section 75

statement under subsection (2)), by written notice given to the Board, direct the Board:

- (a) to give the Ministers, within a period specified in the notice, a written explanation; and
 - (b) to take action specified in the notice, within a period specified in the notice, in order to ensure that the Corporation or subsidiary complies with the Investment Mandate.
- (4) The Board must comply with a direction under subsection (3).
- (5) A failure to comply with:
- (a) the 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.

75 Investment policies

- (1) The Board must formulate written policies to be complied with by Corporation bodies in relation to the following matters:
- (a) in the case of the Corporation—the strategy of the Corporation in relation to:
 - (i) the Corporation’s investment functions; and
 - (ii) the Corporation’s investment powers;
 - (aa) in the case of the Corporation—the impact of investments of the Corporation on First Nations Australians;
 - (b) in the case of the Corporation—benchmarks and standards for assessing the performance of the investments of the Corporation and of the Corporation itself;
 - (c) in the case of the Corporation—risk management for the investments of the Corporation and for the Corporation itself;
 - (ca) in the case of the Corporation—environmental, labour, social and governance matters to be considered by the Corporation in relation to:
 - (i) the Corporation’s investment functions; and
 - (ii) the Corporation’s investment powers;

- (d) in the case of a designated subsidiary of the Corporation—the strategy of the designated subsidiary in relation to:
 - (i) the Corporation’s investment functions being performed through the designated subsidiary; and
 - (ii) the designated subsidiary’s investment powers;
- (da) in the case of a designated subsidiary of the Corporation—the impact of investments of the designated subsidiary on First Nations Australians;
- (e) in the case of a designated subsidiary of the Corporation—benchmarks and standards for assessing the performance of the investments of the designated subsidiary and of the designated subsidiary itself;
- (f) in the case of designated subsidiary of the Corporation—risk management for the investments of the designated subsidiary and for the designated subsidiary itself;
- (fa) in the case of a designated subsidiary of the Corporation—environmental, labour, social and governance matters to be considered by the designated subsidiary in relation to:
 - (i) the Corporation’s investment functions being performed through the designated subsidiary; and
 - (ii) the designated subsidiary’s investment powers;
- (g) a matter specified in the rules.

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

- (2) The Board must ensure that the policies are consistent with the Investment Mandate.
- (3) The Board must cause copies of the policies to be published on the Corporation’s website.
- (4) The Board must ensure that the first policies are published as soon as practicable after the commencement of this section.
- (5) The Board must conduct periodic reviews of the policies.
- (6) If there is a change in the Investment Mandate, the Board must review any affected policies.
- (7) A Corporation body must comply with the policies.

Section 76

- (8) A failure to comply with a policy does not affect the validity of any transaction.
- (9) A policy formulated under subsection (1) is not a legislative instrument.

76 Guarantees

- (1) A guarantee purportedly given by the Corporation is void if, at the time the Corporation purports to give the guarantee, it would secure an amount that is more than the uncommitted balance of the Account at that time, less any liabilities of the Corporation at that time (whether actual or contingent) that are not in respect of guarantees.
- (2) To avoid doubt, the guarantee is wholly void regardless of whether a part of the amount it would secure could be covered by the amount worked out in subsection (1).

77 Derivatives

- (1) The Corporation may acquire a derivative for the purpose of:
 - (a) protecting the value of an investment of the Corporation (other than a derivative); or
 - (b) protecting the return on an investment of the Corporation (other than a derivative); or
 - (c) achieving indirect exposure to one or more equity interests for a purpose in connection with the Corporation's investment functions; or
 - (d) achieving transactional efficiency for a purpose in connection with the Corporation's investment functions;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 Board under subsection 75(1).

Part 7—Miscellaneous

78 Simplified outline of this Part

- This Part deals with miscellaneous matters, including responsibilities of subsidiaries, reporting obligations, disclosure of information, reviewing the operation of this Act and the power to make rules.

79 Incorporation or formation of subsidiaries

The Corporation must not incorporate or otherwise form a subsidiary in a place other than Australia.

80 Responsibilities of designated subsidiaries

A designated subsidiary of the Corporation must:

- (a) only provide financial accommodation to a constitutional corporation if the financial accommodation could have been provided by the Corporation; and
- (b) only provide financial accommodation to an entity (other than a constitutional corporation, a State or a Territory) or an individual if the financial accommodation could have been provided by the Corporation; and
- (c) only acquire an equity interest if the interest could have been acquired by the Corporation; and
- (d) only provide financial accommodation to a State or Territory if the financial accommodation could have been provided by the Corporation; and
- (e) take all reasonable steps to comply with the Investment Mandate, to the extent to which the Investment Mandate is capable of applying to the activities of the subsidiary; and
- (f) comply with policies formulated by the Board under section 75, to the extent to which the policies are capable of applying to the activities of the subsidiary; and

Section 81

- (g) only acquire derivatives for a purpose for which the Corporation may do so under section 77.

81 Corporation body may charge fees

- (1) The Corporation may charge a fee in relation to anything done in performing the Corporation's functions.
- (2) A designated subsidiary of the Corporation may charge a fee in relation to anything done in performing the Corporation's investment functions.
- (3) A fee must not be such as to amount to taxation.

82 Publication of investment reports

- (1) The Corporation must, within one month after the end of each quarter, publish a report on its website for the quarter that sets out the following information:
 - (a) if, during the quarter, a Corporation body provided financial accommodation to a constitutional corporation:
 - (i) the form of the financial accommodation; and
 - (ii) the value or amount of the financial accommodation; and
 - (iii) the place or places where the main activities of the constitutional corporation are carried out;
 - (b) if, during the quarter, a Corporation body provided financial accommodation to an entity (other than a constitutional corporation, a State or a Territory) or an individual:
 - (i) the form of the financial accommodation; and
 - (ii) the value or amount of the financial accommodation; and
 - (iii) the place or places where the main activities of the entity or individual are carried out;
 - (c) if, during the quarter, a Corporation body acquired one or more equity interests in an entity:
 - (i) the type of the equity interests; and
 - (ii) the value of the equity interests; and

- (iii) the place or places where the main activities of the entity are carried out;
 - (d) if, during the quarter, a Corporation body provided financial accommodation to a State or Territory:
 - (i) the form of the financial accommodation; and
 - (ii) the value or amount of the financial accommodation;
 - (e) such other information (if any) as is prescribed by the rules;
 - (f) any other information the Corporation considers appropriate.
- (2) A *quarter* is a period of 3 months ending on:
- (a) 31 March; and
 - (b) 30 June; and
 - (c) 30 September; and
 - (d) 31 December.

83 Publication of reports etc.

- (1) The Ministers may publish, on the internet or in any other way the Ministers consider appropriate:
 - (a) a report, a document or information given to the Minister administering this Act by the accountable authority of the Corporation; or
 - (b) a report, a document or information given to the Finance Minister by the accountable authority of the Corporation; under paragraph 19(1)(b) of the *Public Governance, Performance and Accountability Act 2013*.
- (2) The Ministers must omit from the published report, document or information any information that the Board is satisfied in accordance with subsection (3) is commercial-in-confidence.
- (3) The Board may be satisfied that information is commercial-in-confidence if a person demonstrates to the Board that:
 - (a) release of the information would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and

Section 84

- (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.
- (4) The Ministers must omit from the published report, document or information any national security information or sensitive financial intelligence information.

84 Extra matters to be included in annual report

Matters relating to the Corporation

- (1) The annual report prepared by the Board and given to the Minister administering this Act under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must do the following:
- (a) set out details of the realisation of any investments of the Corporation in the period;
 - (b) set out details of any procurement contracts to which the Corporation is party that were in force at any time in the period and that had a value of more than:
 - (i) \$80,000; or
 - (ii) if a higher amount is prescribed by the rules—the higher amount;
 - (c) set out details of any amounts paid to the Corporation under subsection 55(2) in the period;
 - (d) set out details of any amounts paid by the Corporation under section 58 in the period;
 - (e) set out such other information (if any) as is prescribed by the rules.

Matters relating to designated subsidiaries of the Corporation

- (2) The annual report prepared by the Board and given to the Minister administering this Act under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must do the following in relation to each designated subsidiary of the Corporation:

- (a) set out details of the realisation of any investments of the designated subsidiary in the period;
- (b) set out details of any procurement contracts to which the designated subsidiary is party that were in force at any time in the period that had a value of more than:
 - (i) \$80,000; or
 - (ii) if a higher amount is prescribed by the rules—the higher amount;
- (c) set out such other information (if any) as is prescribed by the rules.

85 Disclosure of official information

Information other than national security information or sensitive financial intelligence information

- (1) A Corporation official may disclose official information to an agency, body or person specified in subsection (2) if:
 - (a) the disclosure will:
 - (i) facilitate the performance of the Corporation's investment functions; or
 - (ii) enable or assist the agency, body or person to perform or exercise any of the functions or powers of the agency, body or person; and
 - (b) the information is not:
 - (i) national security information; or
 - (ii) sensitive financial intelligence information.
- (2) For the purposes of subsection (1), the agencies, bodies and persons are the following:
 - (a) a subsidiary of the Corporation;
 - (b) the Australian Bureau of Statistics;
 - (c) an APS employee in a Department;
 - (d) the government of a State or Territory;
 - (e) a prescribed agency, body or person.

Section 85

National security information and sensitive financial intelligence information

- (3) A Corporation official may disclose official information to an agency, body or person specified in subsection (4) if:
- (a) the disclosure will:
 - (i) facilitate the performance of the Corporation's investment functions; or
 - (ii) enable or assist the agency, body or person to perform or exercise any of the functions or powers of the agency, body or person; or
 - (iii) if the disclosure is to a staff member of a national security agency—enable or assist the agency to perform or exercise any of the functions or powers of the national security agency; and
 - (b) the information is:
 - (i) national security information; or
 - (ii) sensitive financial intelligence information.
- (4) For the purposes of subsection (3), the agencies, bodies and persons are the following:
- (a) a Minister of the Commonwealth who has responsibility for national security;
 - (b) the Minister administering this Act;
 - (c) the Finance Minister;
 - (d) a person who:
 - (i) is a person employed, under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff of a Minister mentioned in paragraph (a), (b) or (c); and
 - (ii) holds an appropriate security clearance;
 - (e) the Secretary of a Department administered by a Minister mentioned in paragraph (a), (b) or (c);
 - (f) a national security agency;
 - (g) a person who:
 - (i) is a staff member of a national security agency; and
 - (ii) holds an appropriate security clearance;

(h) a prescribed agency, body or person.

86 Nominated Minister

- (1) The *nominated Minister* is the Minister administering this Act, unless a determination under subsection (2) is in force.
- (2) The Ministers may, by writing, determine that the *nominated Minister* is the Finance Minister.
- (3) A determination under subsection (2) is not a legislative instrument.
- (4) The nominated Minister may give the other of the Ministers any information or documents obtained by the nominated Minister under this Act.

87 Delegation by nominated Minister

- (1) The nominated Minister may, in writing, delegate to the Secretary of the Department administered by the nominated Minister the nominated Minister's function under subsection 55(1).
- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the nominated Minister.

88 Delegation by Corporation

- (1) The Corporation may, in writing under its seal, delegate all or any of its powers or functions under this Act to the CEO.
- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the Corporation.

89 Delegation by Board

- (1) The Board may, in writing, delegate to a Board member or the CEO any of its powers or functions under this Act.

Section 90

- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the Board.

90 Delegation and subdelegation by CEO

- (1) The CEO may, in writing, delegate to a senior member of the staff referred to in section 46 any of the CEO's powers or functions under this Act.
- (2) If the Corporation or the Board delegates a power or function under subsection 88(1) or 89(1) to the CEO, the CEO may, in writing, subdelegate the power or function to a senior member of the staff referred to in section 46.
- (3) In exercising any powers or performing any functions under the delegation or subdelegation, the delegate or subdelegate must comply with any directions of the CEO.
- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

91 Periodic reviews of the operation of this Act

- (1) The nominated Minister must cause independent reviews to be conducted of the operation of this Act.

Public consultation

- (2) A review under subsection (1) must make provision for public consultation.

Report

- (3) The person or persons who conduct the review must give the nominated Minister a written report of the review.
- (4) The nominated Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the review is completed.

First review

- (5) The first review under subsection (1) must be completed by 31 December 2026.

Subsequent reviews

- (6) Each subsequent review under subsection (1) must be completed within 5 years after the completion of the previous review.

When review is completed

- (7) For the purposes of subsections (4), (5) and (6), a review is completed when the report of the review is given to the nominated Minister under subsection (3).

92 Rules

- (1) The Ministers may make rules 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.
- (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.

*[Minister's second reading speech made in—
House of Representatives on 30 November 2022
Senate on 20 March 2023]*

(131/22)