

2004-2005-2006-2007

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Higher Education Endowment Fund  
(Consequential Amendments) Bill 2007**

**No.     , 2007**

*(Education, Science and Training)*

**A Bill for an Act to deal with consequential matters  
relating to the enactment of the *Higher Education  
Endowment Fund Act 2007*, and for other purposes**



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1     **A Bill for an Act to deal with consequential matters**  
2     **relating to the enactment of the *Higher Education***  
3     ***Endowment Fund Act 2007*, and for other purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Higher Education Endowment Fund*  
7                     (*Consequential Amendments*) Act 2007.

8     **2 Commencement**

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

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	At the same time as the <i>Higher Education Endowment Fund Act 2007</i> commences.	

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

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

### 7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.

1  
2 **Schedule 1—Amendments**

3 **Part 1—Amendments**

4 *Future Fund Act 2006*

5 **1 Title**

6 Omit “related”, substitute “other”.

7 **2 Subsection 3(1)**

8 Before “object”, insert “main”.

9 **3 Section 4**

10 Omit:

- 11 

• The Board is bound by an Investment Mandate given to it by 12 the responsible Ministers.
---

13 substitute:

- 14 

• The Board is bound by a Future Fund Investment Mandate 15 given to it by the responsible Ministers.
--

16 **4 At the end of section 4**

17 Add:

18 Note: The Future Fund Board of Guardians has additional functions under  
19 the *Higher Education Endowment Fund Act 2007*.

20 **5 Section 5**

21 Insert:

22 *business entity* means:

- 23 (a) a company; or  
24 (b) a partnership; or  
25 (c) a trust; or  
26 (d) a body politic.

1     **6 Section 5**

2             Insert:

3                     ***Education Minister*** means the Minister responsible for  
4                     administering the *Higher Education Support Act 2003*.

5     **7 Section 5**

6             Insert:

7                     ***Future Fund investment function*** of the Board means:

8                     (a) a function or power conferred on the Board by section 16, 17,  
9                     23, 25, 27 or 28; or

10                    (b) a right or power conferred on the Board in its capacity as the  
11                    holder of an investment of the Fund.

12     **8 Section 5**

13             Insert:

14                     ***Future Fund Investment Mandate*** has the meaning given by  
15                     subsection 18(3).

16     **9 Section 5**

17             Insert:

18                     ***Higher Education Endowment Fund*** means the Higher Education  
19                     Endowment Fund established by section 11 of the *Higher*  
20                     *Education Endowment Fund Act 2007*.

21     **10 Section 5**

22             Insert:

23                     ***Higher Education Endowment Fund investment function*** has the  
24                     same meaning as in the *Higher Education Endowment Fund Act*  
25                     *2007*.

26     **11 Section 5**

27             Insert:

28                     ***Higher Education Endowment Fund matter*** means a matter that  
29                     relates to the Board's functions under the *Higher Education*  
30                     *Endowment Fund Act 2007*.



1 **12 Section 5**

2 Insert:

3 *Higher Education Endowment Fund Special Account* means the  
4 Higher Education Endowment Fund Special Account established  
5 by section 12 of the *Higher Education Endowment Fund Act 2007*.

6 **13 Section 5 (definition of investment function)**

7 Repeal the definition.

8 **14 Section 5 (definition of Investment Mandate)**

9 Repeal the definition.

10 **15 Section 14**

11 Omit:

- 12 

<ul style="list-style-type: none"><li>• The Board is bound by an Investment Mandate given to it by</li></ul>
--
- 13 

<ul style="list-style-type: none"><li>the responsible Ministers.</li></ul>
--

14 substitute:

- 15 

<ul style="list-style-type: none"><li>• The Board is bound by a Future Fund Investment Mandate</li></ul>
--
- 16 

<ul style="list-style-type: none"><li>given to it by the responsible Ministers.</li></ul>
---

17 **16 Subsection 15(1)**

18 Omit “2(a)”, substitute “2(1)(a)”.

19 **17 Subsection 15(2)**

20 Omit “2(c) to (m)”, substitute “2(1)(c) to (i), and paragraphs 2(2)(a) to  
21 (g).”.

22 **18 Subsection 18(1)**

23 Omit “investment functions”, substitute “Future Fund investment  
24 functions”.

25 Note: The headings to sections 18 and 19 are altered by inserting “**Future Fund**” before  
26 “**Investment**”.

27 **19 After subsection 18(1)**

28 Insert:

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1 (1A) Subsection (1) has effect subject to section 18A.

2 **20 Subsection 18(3)**

3 Omit “Investment Mandate”, substitute “Future Fund Investment  
4 Mandate”.

5 **21 After subsection 18(5)**

6 Insert:

7 (5A) Subsection (4) has effect subject to section 18A.

8 **22 Subsection 18(6)**

9 Omit “Investment Mandate”, substitute “Future Fund Investment  
10 Mandate”.

11 **23 Subsection 18(10)**

12 Omit “investment functions”, substitute “Future Fund investment  
13 functions”.

14 **24 Subsection 18(10) (note)**

15 Omit “*Investment function*”, substitute “*Future Fund investment*  
16 *function*”.

17 **25 Subsection 18(12)**

18 Omit “Investment Mandate” (wherever occurring), substitute “Future  
19 Fund Investment Mandate”.

20 **26 After section 18**

21 Insert:

22 **18A Limitation on Future Fund Investment Mandate**

23 (1) The responsible Ministers must not give a direction under  
24 subsection 18(1) that has the purpose, or has or is likely to have the  
25 effect, of directly or indirectly requiring the Board to:

26 (a) invest an amount standing to the credit of the Fund Account  
27 in a particular financial asset; or

28 (b) acquire a particular derivative; or

29 (c) allocate financial assets to:

30 (i) a particular business entity; or

---

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

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

4 **27 Section 20**

5 Omit “Investment Mandate” (wherever occurring), substitute “Future  
6 Fund Investment Mandate”.

7 Note: The heading to section 20 is altered by inserting “**Future Fund**” before “**Investment**”.

8 **28 At the end of subsection 21(2)**

9 Add “if the acquisition is the result of the performance by the Board of  
10 its Future Fund investment functions”.

11 **29 Section 22**

12 Repeal the section.

13 **30 Subsections 23(1) and (2)**

14 After “borrow money”, insert “for a purpose in connection with the  
15 Fund”.

16 **31 Subsection 23(3)**

17 After “borrow money”, insert “for a purpose in connection with the  
18 Fund if the borrowing takes place”.

19 **32 Subsection 24(1)**

20 After “matters”, insert “in connection with the Fund”.

21 **33 Subsections 24(2) and (6)**

22 Omit “Investment Mandate”, substitute “Future Fund Investment  
23 Mandate”.

24 **34 Paragraph 25(1)(c)**

25 After “derivatives)”, insert “for a purpose in connection with the Fund”.

26 **35 At the end of paragraph 25(1)(d)**

27 Add “for a purpose in connection with the Fund”.

28 **36 At the end of subsection 27(1)**

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1 Add “for a purpose in connection with the Fund”.

2 **37 Subsections 27(2), (3) and (4)**

3 After “arrangement”, insert “entered into under subsection (1)”.

4 **38 At the end of subsection 28(1)**

5 Add “for purposes in connection with the Fund”.

6 **39 Paragraph 28(2)(c)**

7 After “arrangement”, insert “under subsection 27(1)”.

8 **40 At the end of paragraph 28(2)(d)**

9 Add “that are investments of the Fund”.

10 **41 Paragraph 28(2)(e)**

11 After “Board”, insert “under subsection (1) of this section”.

12 **42 Subsections 28(3) and (4)**

13 After “engaged by the Board”, insert “under subsection (1)”.

14 **43 At the end of section 28**

15 Add:

16 (5) Neither this Act nor the *Higher Education Endowment Fund Act*  
17 *2007* prevents the same person from being engaged as an  
18 investment manager under both of the following provisions:

19 (a) subsection (1) of this section;

20 (b) subsection 34(1) of the *Higher Education Endowment Fund*  
21 *Act 2007*.

22 **44 Sections 30 and 31**

23 Repeal the sections, substitute:

24 **30 Refund of franking credits**

25 If:

26 (a) the Board receives a refund of a tax offset under the *Income*  
27 *Tax Assessment Act 1997*; and

28 (b) the tax offset is attributable to an investment of the Fund;

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1 the refund is to be credited to the Fund Account.

2 Note 1: See also section 84B.

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

5 **45 At the end of section 33**

6 Add:

7 Note: The Future Fund Board of Guardians has additional functions under  
8 the *Higher Education Endowment Fund Act 2007*.

9 **46 At the end of paragraph 35(b)**

10 Add “or the *Higher Education Endowment Fund Act 2007*”.

11 **47 Subsection 54(1)**

12 After “require the Board”, insert “to”.

13 **48 Paragraph 54(1)(a)**

14 Omit “to” (first occurring).

15 **49 Paragraph 54(1)(a)**

16 After “functions”, insert “under this Act”.

17 **50 Paragraph 54(2)(a)**

18 After “functions”, insert “under this Act”.

19 **51 At the end of section 55**

20 Add:

21 (3) Subsections (1) and (2) do not apply to the operations of the Board  
22 under the *Higher Education Endowment Fund Act 2007*.

23 **52 Subsection 63(1)**

24 Omit all the words after “doing”, substitute:

25 an act that:

26 (a) another provision of this Act; or

27 (b) the *Higher Education Endowment Fund Act 2007*;

28 requires the Board member to do.

1 **53 After paragraph 63(2)(a)**

2 Insert:

3 (aa) the *Higher Education Endowment Fund Act 2007*; or

4 **54 Paragraph 81(1)(d)**

5 Repeal the paragraph.

6 **55 Paragraph 81(1)(e)**

7 Omit “2(g)”, substitute “2(1)(f)”.

8 **56 After paragraph 81(1)(e)**

9 Insert:

10 (ea) the total amount debited from the Fund Account for the  
11 purpose mentioned in paragraph 2(2)(d) of Schedule 2; and

12 **57 Paragraph 81(1)(f)**

13 Omit “2(k)”, substitute “2(2)(e)”.

14 **58 Paragraph 81(1)(g)**

15 Omit “2(l)”, substitute “2(2)(f)”.

16 **59 Paragraph 81(1)(h)**

17 Omit “2(m)”, substitute “2(2)(g)”.

18 **60 At the end of paragraph 81(1)(h)**

19 Add “and”.

20 **61 After paragraph 81(1)(h)**

21 Insert:

22 (i) the performance of the investments of the Higher Education  
23 Endowment Fund; and

24 (j) the total amount debited from the Higher Education  
25 Endowment Fund Special Account for the purpose mentioned  
26 in paragraph 16(1)(f) of the *Higher Education Endowment*  
27 *Fund Act 2007*; and

28 (k) the total amount debited from the Higher Education  
29 Endowment Fund Special Account for the purpose mentioned

- 1 in paragraph 16(4)(d) of the *Higher Education Endowment*  
2 *Fund Act 2007*; and
- 3 (l) the total amount debited from the Higher Education  
4 Endowment Fund Special Account for the purpose mentioned  
5 in paragraph 16(4)(e) of the *Higher Education Endowment*  
6 *Fund Act 2007*; and
- 7 (m) the total amount debited from the Higher Education  
8 Endowment Fund Special Account for the purpose mentioned  
9 in paragraph 16(4)(f) of the *Higher Education Endowment*  
10 *Fund Act 2007*; and
- 11 (n) the total amount debited from the Higher Education  
12 Endowment Fund Special Account for the purpose mentioned  
13 in paragraph 16(4)(g) of the *Higher Education Endowment*  
14 *Fund Act 2007*;

15 **62 Subsection 81(2)**

16 Omit “(1)(d)”, substitute “(1)(e)”.

17 **63 At the end of subsection 81(2)**

18 Add “and (j) to (n)”.

19 **64 At the end of section 81**

20 Add:

- 21 (4) As soon as practicable after receiving a report under this section,  
22 the nominated Minister must give a copy of the report to the  
23 Education Minister.

24 **65 Section 84**

25 Before “If”, insert “(1)”.

26 **66 Paragraph 84(b)**

27 Repeal the paragraph, substitute:

- 28 (b) neither:
- 29 (i) another provision of this Act; nor
- 30 (ii) a provision of the *Higher Education Endowment Fund*  
31 *Act 2007*;
- 32 requires the amount to be credited to the Fund Account or the  
33 Higher Education Endowment Fund Special Account;

1 **67 At the end of section 84**

2 Add:

3 *Transfer of amounts to the Higher Education Endowment Fund*  
4 *Special Account*

5 (2) If an amount is credited to the Fund Account under subsection (1),  
6 the nominated Minister may, by writing, direct that a specified  
7 amount is to be:

8 (a) debited from the Fund Account; and

9 (b) credited to the Higher Education Endowment Fund Special  
10 Account;

11 on a specified day.

12 (3) The specified amount must not exceed the amount credited to the  
13 Fund Account under subsection (1).

14 (4) A direction under subsection (2) is not a legislative instrument.

15 **68 After section 84**

16 Insert:

17 **84A Exemption from taxation**

18 *Income tax*

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

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

23 *State/Territory taxes*

24 (2) To avoid doubt, the Board is not subject to taxation under a law of  
25 a State or Territory, if the Commonwealth is not subject to the  
26 taxation.

27 **84B Franking credits**

28 (1) For the purposes of the *Income Tax Assessment Act 1997*, the  
29 Board is taken to be an exempt institution that is eligible for a  
30 refund.



1 Note: See Division 207 of the *Income Tax Assessment Act 1997* (franked  
2 distributions).

3 (2) Subsection (1) has effect despite subsection 207-115(1) of the  
4 *Income Tax Assessment Act 1997*.

5 (3) For the purposes of the *Income Tax Assessment Act 1997*, the  
6 Board's entitlement to a tax offset is to be determined as if any  
7 financial assets held by the Board were held by the Board in its  
8 own right.

9 **84C Board must not have a significant stake in a foreign listed**  
10 **company**

11 (1) The Board must take all reasonable steps to ensure that it does not  
12 hold a stake in a foreign listed company of more than 20%.

13 *Stake*

14 (2) The *Financial Sector (Shareholdings) Act 1998* applies for the  
15 purposes of determining the Board's stake in a foreign listed  
16 company, with the following modifications:

- 17 (a) assume that the Board does not have any associates;  
18 (b) assume that any financial assets held by the Board were held  
19 by the Board in its own right;  
20 (c) disregard paragraph 8(1)(c) of Schedule 1 to that Act;  
21 (d) the modification set out in subsection (3).

22 (3) For the purposes of determining the Board's stake in a foreign  
23 listed company, if, under a securities lending arrangement:

- 24 (a) at a particular time (the *disposal time*), the Board disposed of  
25 a financial asset (the *borrowed financial asset*) to another  
26 person (the *borrower*); and  
27 (b) the Board may come under an obligation to:  
28 (i) re-acquire the borrowed financial asset from the  
29 borrower at a later time; or  
30 (ii) acquire an identical financial asset from the borrower at  
31 a later time;

32 the borrowed financial asset is taken to be held by the Board during  
33 the period:

- 34 (c) beginning at the disposal time; and

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---

- 1 (d) ending when the obligation mentioned in paragraph (b) is  
2 discharged or can no longer arise.

3 *Validity of transactions*

- 4 (4) A failure to comply with subsection (1) does not affect the validity  
5 of any transaction.

6 **69 After subclause 8(1) of Schedule 1**

7 Insert:

- 8 (1A) A direction under subclause (1) in relation to financial assets must  
9 not direct the Board in relation to the investment of an amount  
10 credited to the Fund Account in respect of:  
11 (a) income derived from the financial assets; or  
12 (b) a return of capital, or any other financial distribution, relating  
13 to the financial assets; or  
14 (c) the proceeds of the realisation of the financial assets.

15 Note: For directions about the investment of amounts standing to the credit  
16 of the Fund Account, see section 18 (Future Fund Investment  
17 Mandate).

18 **70 Clause 2 of Schedule 2**

19 Before “The”, insert “(1)”.

20 Note: The following heading to new subclause 2(1) is inserted “*Superannuation purposes and*  
21 *purposes related exclusively to the Fund*”.

22 **71 Clause 2 of Schedule 2**

23 Omit “The purposes of the Fund Account are as follows”, substitute  
24 “Each of the following is a purpose of the Fund Account”.

25 **72 Paragraphs 2(c) to (m) of Schedule 2**

26 Repeal the paragraphs, substitute:

- 27 (c) paying the costs of, or incidental to, the acquisition of  
28 financial assets under section 16;  
29 (d) paying expenses of an investment of the Fund;  
30 (e) paying the costs of, or incidental to, the acquisition of  
31 derivatives under section 25;  
32 (f) paying or discharging the costs, expenses and other  
33 obligations incurred by the Board under a contract between
-

- 1 the Board and an investment manager engaged under  
2 subsection 28(1);
- 3 (g) paying or discharging the costs, expenses and other  
4 obligations incurred in connection with the establishment,  
5 maintenance or operation of a bank account of the Board,  
6 where the bank account relates exclusively to the Fund;
- 7 (h) paying a premium in respect of a contract of insurance  
8 entered into by the Board exclusively in connection with the  
9 Fund;
- 10 (i) paying or discharging any other costs, expenses, obligations  
11 or liabilities incurred by the Board exclusively in connection  
12 with the Fund.

13 **73 At the end of clause 2 of Schedule 2 (after the notes)**

14 Add:

15 *Purposes not related exclusively to the Fund*

- 16 (2) Each of the following is a purpose of the Fund Account:
- 17 (a) paying or discharging the costs, expenses and other  
18 obligations incurred in connection with the establishment,  
19 maintenance or operation of a bank account of the Board,  
20 where those costs, expenses or obligations are not covered  
21 by:
- 22 (i) paragraph (1)(g); or  
23 (ii) paragraph 16(1)(g) of the *Higher Education Endowment*  
24 *Fund Act 2007*;
- 25 (b) paying a premium in respect of a contract of insurance  
26 entered into by the Board, where the premium is not covered  
27 by:
- 28 (i) paragraph (1)(h); or  
29 (ii) paragraph 16(1)(h) of the *Higher Education Endowment*  
30 *Fund Act 2007*;
- 31 (c) paying or discharging any other costs, expenses, obligations  
32 or liabilities incurred by the Board, where the costs,  
33 expenses, obligations or liabilities are not covered by:
- 34 (i) a paragraph of subclause (1); or  
35 (ii) a paragraph of subsection 16(1) of the *Higher Education*  
36 *Endowment Fund Act 2007*;
- 37 (d) paying remuneration and allowances of Board members;
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**Part 1** Amendments

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- 1 (e) paying remuneration, and other employment-related costs  
2 and expenses, in respect of members of the staff of the  
3 Agency;
- 4 (f) paying or discharging the costs, expenses and other  
5 obligations incurred by the Commonwealth under a contract  
6 entered into under section 78 or 82;
- 7 (g) paying or discharging the costs, expenses and other  
8 obligations incurred by the Commonwealth in connection  
9 with the establishment or operation of the Agency.
- 10 Note: See section 21 of the *Financial Management and Accountability Act*  
11 *1997* (debits from Special Accounts).

12 **74 Clause 3 of Schedule 2**

13 Omit “2(a)”, substitute “2(1)(a)”.

14 ***Income Tax Assessment Act 1997***

15 **75 Subsection 30-25(2) (at the end of the table)**

16 Add:

2.2.35 the Higher Education Endowment Fund the gift must be in money

17 **76 At the end of section 30-25**

18 Add:

- 19 (3) A gift is made to the Higher Education Endowment Fund if, and  
20 only if, the gift is made to the Future Fund Board of Guardians for  
21 the purposes of the Higher Education Endowment Fund.

22 **77 Subsection 30-315(2) (after table item 56)**

23 Insert:

56A Higher Education Endowment Fund item 2.2.35

1

2 **Part 2—Transitional and application provisions**

3 **78 Transitional—Investment Mandate**

- 4 (1) This item applies to a direction that:  
5 (a) was given under subsection 18(1) of the *Future Fund Act*  
6 *2006*; and  
7 (b) was in force immediately before the commencement of this  
8 item.
- 9 (2) The amendments of subsections 18(1), (3), (6), (10) and (12) of the  
10 *Future Fund Act 2006* made by this Schedule do not affect the  
11 continuity of the direction.

12 **79 Transitional—borrowings**

- 13 (1) This item applies to a borrowing that:  
14 (a) was authorised under subsection 23(2) or (3) of the *Future*  
15 *Fund Act 2006*; and  
16 (b) was in existence immediately before the commencement of  
17 this item.
- 18 (2) The *Future Fund Act 2006* has effect, after the commencement of this  
19 item, as if the borrowing had been authorised under subsection 23(2) or  
20 (3), as the case requires, of that Act as amended by this Schedule.

21 **80 Transitional—investment policies**

- 22 (1) This item applies to policies that:  
23 (a) were formulated under subsection 24(1) of the *Future Fund*  
24 *Act 2006*; and  
25 (b) were in force immediately before the commencement of this  
26 item.
- 27 (2) The policies have effect, after the commencement of this item, as if they  
28 had been formulated under subsection 24(1) of the *Future Fund Act*  
29 *2006* as amended by this Schedule.

30 **81 Transitional—derivatives**

- 31 (1) This item applies to a derivative that:
-

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- 1 (a) was acquired under subsection 25(1) of the *Future Fund Act*  
2 *2006*; and  
3 (b) was held by the Board immediately before the  
4 commencement of this item.
- 5 (2) The *Future Fund Act 2006* has effect, after the commencement of this  
6 item, as if the derivative had been acquired under subsection 25(1) of  
7 that Act as amended by this Schedule.

8 **82 Transitional—securities lending arrangements**

- 9 (1) This item applies to a securities lending arrangement that:  
10 (a) was entered into under subsection 27(1) of the *Future Fund*  
11 *Act 2006*; and  
12 (b) was in force immediately before the commencement of this  
13 item.
- 14 (2) The *Future Fund Act 2006* has effect, after the commencement of this  
15 item, as if the securities lending arrangement had been entered into  
16 under subsection 27(1) of that Act as amended by this Schedule.

17 **83 Transitional—investment managers**

- 18 (1) This item applies to an engagement of an investment manager if the  
19 engagement:  
20 (a) was made under subsection 28(1) of the *Future Fund Act*  
21 *2006*; and  
22 (b) was in force immediately before the commencement of this  
23 item.
- 24 (2) The engagement has effect, after the commencement of this item, as if it  
25 had been made under subsection 28(1) of the *Future Fund Act 2006* as  
26 amended by this Schedule.

27 **84 Application of amendments—directions under subsection**  
28 **18(1) of the *Future Fund Act 2006***

29 The amendments made by items 19, 21 and 26 apply in relation to a  
30 direction under subsection 18(1) of the *Future Fund Act 2006* that is  
31 given after the commencement of this item.

32 **85 Application of amendment—directions under subclause**  
33 **8(1) of Schedule 1 to the *Future Fund Act 2006***

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1           The amendment made by item 69 applies in relation to a direction under  
2           subclause 8(1) of Schedule 1 to the *Future Fund Act 2006* that is given  
3           after the commencement of this item.