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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION ENDOWMENT FUND (CONSEQUENTIAL AMENDMENTS)
BILL 2007**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training,
the Honourable Julie Bishop MP)

HIGHER EDUCATION ENDOWMENT FUND (CONSEQUENTIAL AMENDMENTS) BILL 2007

OUTLINE

The Higher Education Endowment Fund (Consequential Amendments) Bill 2007 (the Bill) amends the provisions of the *Future Fund Act 2006* (Future Fund Act) to extend the Future Fund Act's operation to deal with the expansion of the Future Fund Board of Guardian's (the Board) duties in relation to the Higher Education Endowment Fund (HEEF). The amendments are mostly technical in nature and are consequential to the enactment of the *Higher Education Endowment Fund Act 2007* (HEEF Act).

The Bill:

- extends the Board's functions to include the Board's functions under the HEEF Act;
- makes it clear that there are two investment mandates that the responsible Ministers can issue to the Board – one for the Future Fund and one for the HEEF;
- makes it clear that the Board has two investment functions – one for the Future Fund and one for the HEEF;
- sets out the limitations of the Future Fund Investment Mandate. The aim is to ensure that the Future Fund is not invested in a way that is inconsistent with the Future Fund's objectives;
- specifies that the responsible Ministers cannot direct the Board to use the assets of the Future Fund to invest or support particular financial assets;
- makes amendments to the *Income Tax Assessment Act 1997* to allow deductible gifts of money to be made to the HEEF.

FINANCIAL IMPACT

This Bill will have the following financial impact.

Revenue (\$m)	2007-08	2008-09	2009-2010	2010-11
	0.0	-0.3	- 0.6	-0.9

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NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the *Higher Education Endowment Fund (Consequential Amendments) Act 2007*.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for sections 1-3 to commence on Royal Assent and for Schedule 1 to commence at the same time as the *Higher Education Endowment Fund Act 2007* commences.

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Act but that information in this column is not part of the Act.

Clause 3 - Schedule(s)

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Future Fund Act 2006

The purpose of the *Higher Education Endowment Fund (Consequential Amendments) Bill 2007* (the Bill) is to amend the provisions of the *Future Fund Act 2006* (Future Fund Act) to extend the Future Fund Act's operation to deal with the expansion of the Board's duties in relation to the Higher Education Endowment Fund (the HEEF). The amendments are mostly technical in nature and are consequential to the enactment of the *Higher Education Endowment Fund Act 2007* (HEEF Act).

As far as possible, the amendments have been grouped so as to aid readability.

Future Fund Board of Guardians (the Board)

The Bill will extend the Board's functions under the Future Fund Act to include the Board's functions under the HEEF Act. The provisions which give effect to this are at items 45, 46, 52, and 53.

The Bill has also limited the Board's functions under the Future Fund Act to only deal with the Future Fund because their HEEF functions have been separately provided for under the HEEF Act. The provisions which give effect to this are at items 49, 50 and 51.

Item 45 – At the end of section 33

Section 33 sets out a simplified outline of Part 1 of the Future Fund Act which deals with the Future Fund Board of Guardians. **Item 45** amends the simplified outline by adding a note at the end of section 33 which clarifies that the Board has additional functions under the HEEF Act.

Item 46 – At the end of paragraph 35(b)

Section 35 sets out the Board's functions. **Item 46** extends the Board's functions to include those functions set out in the HEEF Act by amending paragraph 35(b) to add the words "or the *Higher Education Endowment Fund Act 2007*".

Items 52 and 53 – Subsection 63(1) and after paragraph 63(2)(a)

Section 63 deals with the Board members duties in relation to compliance with statutory duties. **Items 52 and 53** amend section 63 to clarify that a Board member or the Chair does not contravene sections 57, 58 or 59 or commit an offence by doing an act that the HEEF Act also requires a Board member or the Chair to do (in addition to those acts previously listed in section 63).

Items 49, 50 and 51 – Paragraphs 54(1)(a), 54(2)(a) and at the end of section 55

Section 54 allows the nominated Minister to require the Board to prepare reports or give information and section 55 requires the Board to keep the responsible Ministers informed about the Board's operations.

Items 49 and 50 amend paragraphs 54(1)(a) and 54(2)(a) by inserting the words "under this Act" after the word "functions" to make it clear that the Board is required to prepare a report or a document that relates to their functions under the Future Fund Act. **Item 51** amends section 55 by adding proposed new subsection 55(3) which provides that the Board's requirement to keep the responsible Ministers informed about their operations does not include their operations under the HEEF Act.

The HEEF Act has duplicated similar provisions to that of sections 54 and 55.

Items 47 and 48 – Subsection 54(1) and paragraph 54(1)(a)

Items 47 and 48 are consequential amendments to item 49.

Investment mandate

The purpose of the amendments made in relation to the *Investment Mandate* is to make it clear that there are two investment mandates that the responsible Ministers can issue to the Board – one for the Future Fund and one for the Higher Education Endowment Fund. As far as possible the provisions relating to the Future Fund Investment Mandate are contained in the Act and the provisions relating to the HEEF Investment Mandate are contained in the HEEF Act.

Items 8 and 14 – Section 5 (definition of *Investment Mandate*)

Item 14 deletes the definition of *Investment Mandate* and **item 8** substitutes a new definition of *Future Fund Investment Mandate*. The purpose of these amendments and the following amendments is to make it clear that the requirements in the Future Fund Act relate to the Future Fund Investment Mandate because the HEEF Act separately provides for the HEEF Investment Mandate. This has the effect of limiting the operation of the Act to Future Fund matters.

Items 3, 15, 20, 22, 25, 27 and 33 – Sections 4 and 14, subsections 18(3), 18(6) and 18(12), section 20 and subsections 24(2) and 24(6)

Amend the relevant provisions of the Future Fund Act to delete the reference to “Investment Mandate” and replace that reference with “Future Fund Investment Mandate”.

Investment function

The purpose of the amendments made in relation to the *investment function* is to make it clear that the Board has two investment functions – one for the Future Fund and one for the Higher Education Endowment Fund. As far as possible the provisions relating to the Future Fund investment functions are contained in the Future Fund Act and the provisions relating to the HEEF investment functions are contained in the HEEF Act.

Items 7 and 13 – Section 5 (definition of *investment function*)

Item 13 deletes the definition of *investment function* and **item 7** substitutes a new definition of *Future Fund investment function*.

Items 18, 23 and 24 – Subsections 18(1) and 18(10) and subsection 18(10) (note)

Amend the relevant provisions of the Future Fund Act to delete references to “investment function” and replace these references with “Future Fund investment function”.

Limitations on the Investment Mandate

Items 19, 21, 26 and 69 – After subsections 18(1) and 18(5), after section 18 and after subclause 8(1) of Schedule 1

Items 19 and 21 make technical amendments to section 18 to give effect to the amendments made by item 26. Items 19 and 21 insert proposed new subsections 18(1A) and 18(5A) which provide that subsections 18(1) and 18(4) have effect subject to section 18A. The effect of these amendments is that the written directions that the responsible Ministers can issue under subsections 18(1) and 18(4) are restricted by the limitations provided for in section 18A.

Section 18 deals with the Investment Mandate (Future Fund Investment Mandate). **Item 26** inserts **proposed new section 18A** which sets out the limitations of the Future Fund Investment Mandate. The aim of the proposed new section is to ensure that the Future Fund is not invested in a way that is inconsistent with the Fund’s objectives. A similar clause is included in the HEEF Act.

Proposed new subsection 18A(1) specifies that the responsible Ministers cannot direct the Board to use the assets of the Fund to invest in a particular financial asset, for example, shares in a particular company. It also prevents the responsible Ministers from issuing a ministerial direction that has the effect of requiring the Board to use the assets of the fund to support a particular business entity, a particular activity or a particular business.

Item 69 is a technical amendment as a consequence of the amendments made by items 19 and 21. Proposed new subclause 8(1A) of Schedule 1 clarifies the nature of a direction that may be given by the nominated Minister in relation to financial assets transferred to the Future Fund Board.

Subclause 8(1A) of Schedule 1 clarifies that the intention of such a direction is not to instruct the Board as to how the income derived from the financial assets, the proceeds from the realisation of the financial assets or a return of capital or other financial distribution relating to the financial assets should be invested by the Future Fund Board.

Section 18 of the Act, as amended, deals with directions relating to the investment of Future Fund assets.

Amendments in relation to “purpose in connection with fund”

Items 30, 31, 32, 34, 35, 36 and 38– Subsections 23(1), 23(2), 23(3) and 24(1), paragraph 25(1)(c), at the end of paragraph 25(1)(d), at the end of subsections 27(1) and 28(1)

Amend the relevant sections of the Future Fund Act to restrict the operation of those sections to matters or purposes in connection with the Future Fund. The HEEF Act has duplicated similar provisions to that of sections 23, 24, 25, 27 and 28 of the Future Fund Act.

Items 37, 39 and 40 – Subsections 27(2), 27(3) and 27(4), paragraph 28(2)(c) and at the end of paragraph 28(2)(d)

Are technical amendments as a consequence of item 36 which have the effect of limiting the application of the provisions.

Purposes of the Fund Account

Items 16, 17, 54, 55, 56, 57, 58, 59, 60,61, 62, 63, 64, 70, 71, 72, 73 and 74 – subsections 15(1) and 15(2), paragraphs 81(1)(d) and 81(1)(e), after paragraph 81(1)(e), paragraphs 81(1)(f)-81(1)(h), at the end of paragraph 81(1)(h), after paragraph 81(1)(h), subsection 81(2), at the end of subsection 81(2), at the end of section 81, clause 2 of Schedule 2, paragraphs 2(c) to (m) of Schedule 2, at the end of clause 2 of Schedule 2 (after the notes) and clause 3 of Schedule 2

Clause 2 of Schedule 2 to the Future Fund Act sets out the purposes of the Fund Account which are to discharge unfunded superannuation liabilities and payment of various expenses associated with the investment and administration of the Fund from the Fund Account.

The HEEF Act has a provision which sets out the purposes of the HEEF Account. In order to aid readability, the purposes have been split into two categories:

- payment of grants for financial assistance to eligible higher education institutions in relation to capital expenditure purposes and payment of various expenses that can be exclusively attributable to the Fund; and
- payment of various expenses for purposes that may not necessarily exclusively be attributable to the Fund, rather purposes that could be attributed to the HEEF or the Future Fund. The purpose of this second category is to allow common costs of the HEEF and the Future Fund to be apportioned.

To ensure consistency of application between the Future Fund Act and the HEEF Act, consequential amendments have been made to clause 2 of Schedule 2 to the Future Fund Act to expand the purposes of the Fund to take into account HEEF matters and to adopt a similar structure for these provisions under both Acts. These amendments are given effect to by items 72 and 73.

In addition, technical amendments have been made to other sections of the Future Fund Act that refer to clause 2 of Schedule 2 to deal with the restructure of the clause. These amendments are given effect to by items 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 70 and 71.

Items 16, 17, 70, 71, 72, 73 and 74 – subsections 15(1) and 15(2), clause 2 of Schedule 2, paragraphs 2(c) to (m) of Schedule 2, at the end of clause 2 of Schedule 2 (after the notes) and clause 3 of Schedule 2

Items 72 and 73 are the substantive amendments to the Future Fund Act. Item 72 sets out the superannuation purposes and the purposes related exclusively to the Future Fund. Item 73 sets out the other purposes for which expenses can be debited from the Fund, which has the effect of expanding the purposes of the Fund to include expenses that could be attributed to the HEEF.

Items 16, 17, 70, 71 and 74 are technical amendments as a consequence to items 72 and 73.

Items 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64 – paragraphs 81(1)(d) and 81(1)(e), after paragraph 81(1)(e), paragraphs 81(1)(f), 81(1)(g) and 81(1)(h), at the end of paragraph 81(1)(h), after paragraph 81(1)(h), subsection 81(2), at the end of subsection 81(2) and at the end of section 81

Section 81 requires the Chair to prepare and give to the nominated Minister an annual report. **Item 61** inserts new paragraphs 81(1)(i) to (n) to expand the matters the annual report must cover to include the performance of the HEEF and to set out the amounts debited out of the HEEF account in relation to specific purposes (as set out in the HEEF Act).

Items 54, 55, 56, 57, 58, 59, 60, 62 and 63 are technical amendments as a consequence to item 61.

Item 64 inserts proposed new subsection 81(4) which requires the nominated Minister to provide a copy of the annual report to the Education Minister as soon as practicable after receiving it.

Exemption from taxation

Items 44 and 68 – Sections 30 and 31 and after section 84

Sections 30 and 31 clarify that the Board is exempt from income tax and for the purposes of the *Income Tax Assessment Act 1997* is taken to be an exempt institution that is eligible for a tax refund in relation to the franked dividends.

Item 44 repeals sections 30 and 31 and substitutes proposed new section 30 which deals with the refund of franking credits. **Item 68** inserts proposed new sections 84A and 84B which clarify that the Board is exempt from income tax and for the purposes of the *Income Tax Assessment Act 1997* is taken to be an exempt institution that is eligible for a tax refund. The amendments made by items 44 and 68 are technical amendments which essentially move sections 30 and subsections 31(1) to 31(3) into Part 6 which sets out the miscellaneous provisions of the Future Fund Act and keeps subsection 31(4) in Part 3 (Investments of the Future Fund). The purpose of these amendments is to:

- give the Board universal exemption from income tax for all of its activities (i.e. for Future Fund matters and HEEF matters); and
- make it clear that the provision relating to tax offsets (what was subsection 31(4) and is now proposed new section 30) is specifically limited to the Future Fund. An identical provision has been inserted into the HEEF Act for the same purpose (i.e. limiting tax offsets to HEEF matters).

Miscellaneous receipts to be credited to the Fund Account

Items 65, 66 and 67 – Section 84, paragraph 84(b) and at the end of section 84

Section 84 provides that any receipts of money received by the Board that is not otherwise covered by the Future Fund Act are to be credited to the Fund Account. **Items 65, 66 and 67** amend section 84 to:

- include receipts of money received by the Board that are also not otherwise authorised by the HEEF Act; and
- provide that if an amount of money is received by the Board and credited to the Fund account but should have been credited to the HEEF Account then proposed new subsection 84(2) allows the nominated Minister and the Education Minister to direct that a specified amount is to be debited from the Fund account and credited to the HEEF Account on a specified day. That direction cannot exceed the amount credited to the Fund Account.

Proposed new subsection 84(4) provides that the direction is a legislative instrument for the purposes of section 5 of the *Legislative Instruments Act 2003* and is required to be tabled in Parliament and published on the Federal Register of Legislative Instruments, but, as a ministerial direction, is not subject to disallowance or sunseting (see section 42 and Part 6 respectively).

Other consequential amendments

Item 1 – Title

Item 1 amends the long title to the Act by deleting the word “related” and replacing that word with the word “other”. The long title is now “An Act about the Future Fund, and for other purposes”.

Item 2 – Subsection 3(1)

Section 3 sets out the Objects of the Future Fund Act. **Item 2** amends subsection 3(1) by inserting the word “main” before the word “Object”.

Item 4 – At the end of section 4

Inserts at the end of section 4 a note which clarifies that the Future Fund Board of Guardians has additional functions under the *Higher Education Endowment Fund Act 2007*.

Item 5 – Section 5

Inserts a new definition of *business entity* as a consequence of the amendments made by items 24 and 25

Items 6, 9, 10, 11 and 12 – Section 5

Insert new definitions of *Education Minister, Higher Education Endowment Fund, Higher Education Endowment Fund investment function, Higher Education Endowment Fund matter, Higher Education Endowment Fund Special Account.*

Items 28, 29, 68 – At the end of subsection 21(2) and section 22, after section 84

Make consequential amendments to sections 21, repeal section 22 and insert proposed new section 84C. The effect of items 29 and 68 is to relocate section 22 which prohibits the Board from holding a significant stake in a foreign listed company from Part 3 of the Future Fund Act to Part 6 (miscellaneous). This is to clarify that this provision applies to the Board in relation to Future Fund and HEEF matters. The effect of item 28 is to ensure that section 21 of the Future Fund Act is consistent with the analogous provision in the HEEF Act.

Items 41 and 42 – Paragraph 28(2)(e) and subsections 28(3) and 28(4)

Amend paragraph 28(2)(e) and subsections 28(3) and 28(4) to limit their operation to Future Fund matters.

Item 43 – At the end of section 28

Section 28 allows the Board to engage one or more investment managers. **Item 43** inserts proposed new subsection 28(5) to clarify that the same person may be engaged as an investment manager for both the Future Fund and the HEEF.

Income Tax Assessment Act 1997

Items 75, 76, 77 – Subsection 30-25(2) (at the end of the table), at the end of section 30-25 and subsection 30-315(2) (after table item 56)

Make amendments to the *Income Tax Assessment Act 1997* to allow deductible gifts of money to be made to the HEEF.

Part 2 – Transitional and application provisions

Items 78-83 – Transitional – Investment Mandate, borrowings, investment policies, derivatives, securities lending arrangements and investment managers

Items 78-83 are transitional arrangements in relation to the Investment Mandate, borrowings, investment policies, derivatives, securities lending arrangements and investment managers. The purpose of these provisions is to clarify that any direction, borrowing, policy, derivative, securities investment arrangement, engagement of an investment manager that was entered into, authorised, acquired, made or in force immediately before the commencement of these items continues to have effect despite the amendments made to the relevant provisions of the Future Fund Act.

Items 84 and 85 - Application of amendments—directions under subsection 18(1) and subclause 8(1) of Schedule 1 to the *Future Fund Act 2006*

Are application provisions which clarify that the amendments made by:

- items 19, 21 and 26 apply in relation to a direction under subsection 18(1) of the Future Fund Act 2006; and
- item 69 applies in relation to a direction under subclause 8(1) of Schedule 1 to the Future Fund Act 2006

that is given after the commencement of items 84 and 85 respectively.