

2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FUTURE DROUGHT FUND (CONSEQUENTIAL
AMENDMENTS) BILL 2019**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance,
Senator the Hon Mathias Cormann)

Table of abbreviations and common terms

Abbreviation or common term	Description
Agency	means the Future Fund Management Agency established by section 74 of the <i>Future Fund Act 2006</i>
Agriculture Minister	means the Minister administering the <i>Primary Industries Research and Development Act 1989</i>
ATSILSFF	means the Aboriginal and Torres Strait Islander Land and Sea Future Fund established by section 9 of the ATSILSFF Act
ATSILSFF Act	means the <i>Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018</i>
ATSILSFF Special Account	means the Aboriginal and Torres Strait Islander Land and Sea Future Fund Special Account established by section 12 of the ATSILSFF Act
BAF	means the Building Australia Fund established by section 12 of the NBF Act
BAF Special Account	means the Building Australia Fund Special Account established by section 13 of the NBF Act
COAG Reform Fund	means the COAG Reform Fund established by section 5 of the <i>COAG Reform Fund Act 2008</i>
COAG Reform Fund Act	means the <i>COAG Reform Fund Act 2008</i>
DCAF	means the DisabilityCare Australia Fund established by section 10 of the DCAF Act
DCAF Act	means the <i>DisabilityCare Australia Fund Act 2013</i>
DCAF Special Account	means the DisabilityCare Australia Fund Special Account established by section 11 of the DCAF Act
Drought Minister	means: (a) a Minister whose title includes the word “Drought”; or (b) otherwise – the Agriculture Minister
EIF	means the Education Investment Fund established by section 131 of the NBF Act
EIF Special Account	means the Education Investment Fund Special Account established by section 132 of the NBF Act
Finance Minister	has the same meaning as defined in section 8 of the PGPA Act
Future Drought Fund	means the Future Drought Fund established by section 10 of the Future Drought Fund Act
Future Drought Fund Act	means the <i>Future Drought Fund Act 2019</i>
Future Drought Fund Special Account	means the Future Drought Fund Special Account established by section 13 of the Future Drought Fund Act
Future Fund	means the Future Fund established by section 11 of the Future Fund Act

Abbreviation or common term	Description
Future Fund Act	means the <i>Future Fund Act 2006</i>
Future Fund Board	means the Future Fund Board of Guardians established by section 34 of the Future Fund Act
Future Fund Special Account	means the Future Fund Special Account established by section 12 of the Future Fund Act
Legislation Act	means the <i>Legislation Act 2003</i>
MRFF	means the Medical Research Future Fund established by section 11 of the MRFF Act
MRFF Act	means the <i>Medical Research Future Fund Act 2015</i>
MRFF Special Account	means the Medical Research Future Fund Special Account established by section 14 of the MRFF Act
NBF Act	means the <i>Nation-building Funds Act 2008</i>
PGPA Act	means the <i>Public Governance, Performance and Accountability Act 2013</i>
RIC Act	means the <i>Regional Investment Corporation Act 2018</i>
Responsible Ministers	means the following: (a) the Treasurer; and (b) the Finance Minister

FUTURE DROUGHT FUND (CONSEQUENTIAL AMENDMENTS) BILL 2019

OUTLINE

The Bill makes a number of consequential amendments to other pieces of legislation required to enable the effective operation of the Future Drought Fund at commencement. It accompanies the Future Drought Fund Bill 2019 (the substantive Bill) that has prompted the need for this Bill.

The Future Drought Fund Bill establishes the Future Drought Fund as a dedicated financial asset to provide a secure revenue stream to be used for drought resilience, preparedness and response.

The Future Drought Fund will be established as the Future Drought Fund Special Account and the investments of the Future Drought Fund (made and managed by the Future Fund Board).

The consequential amendments made in this Bill support the establishment of the Future Drought Fund in that they:

- extend the Future Fund Board's duties to manage the Future Drought Fund; and
- allow for amounts to be transferred between the Future Drought Fund and the Future Fund to allow for proper apportioning of common expenses incurred by the Future Fund Board in managing the Future Drought Fund, the ATSILSFF, the Future Fund, MRFF, the EIF, the BAF, and the DCAF.

The Bill amends the ATSILSFF Act, the Future Fund Act, the NBF Act, the DCAF Act, the MRFF Act, the RIC Act and the COAG Reform Fund Act.

The Bill closes the BAF by repealing relevant sections of the NBF Act. The last commitment from the BAF was made in the 2012-13 Budget. The closure of the BAF and repurposing the uncommitted funds is possible because the Government has separately committed more than \$100 billion over the next 10 years (including \$47 billion over the forward estimates) to transport infrastructure projects across Australia. This means the Government is able to use the uncommitted funds currently in the BAF to fund initiatives that enhance future drought resilience, preparedness and response across Australia.

The Future Drought Fund will be established with an initial balance (money and investments) equal to the balance of the BAF immediately before the time of establishment of the Future Drought Fund.

The Bill also provides for transitional arrangements including relating to reporting arrangements for the BAF.

Providing for a separate Bill for consequential amendments conforms to the Commonwealth practice to reduce the complexity of principal Acts.

Financial Impact Statement

The Bill has no financial impact.

Statement of Compatibility with Human Rights

The Future Drought Fund (Consequential Amendments) Bill 2019 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

The Bill deals with consequential matters arising from the enactment of the Future Drought Fund Act. This includes the following amendments:

- amendments to the Future Fund Act to give the Future Fund Board functions in relation to the Future Drought Fund;
- amendments to the ATSILSFF Act, DCAF Act, the Future Fund Act, the MRFF Act and the NBF Act to allow amounts to be transferred between the Future Drought Fund and the Future Fund to allow for proper apportioning of common expenses incurred by the Future Fund Board in managing the ATSILSFF, the DCAF, the Future Drought Fund, the Future Fund, the MRFF, and the EIF; and
- amendments to the NBF Act to close the BAF, as a consequence of the decision to establish the Future Drought Fund with an initial balance (money and investments) equal to the balance of the BAF immediately before the time of the establishment of the Future Drought Fund.

Human rights implications

The consequential amendments in the Bill are administrative or machinery in nature. None of these amendments directly advances or limits a relevant human right or freedom.

To the extent these amendments facilitate the establishment of the Future Drought Fund, these amendments may indirectly engage the human rights or freedoms engaged by the Future Drought Fund Act. The Future Drought Fund Act is compatible with human rights because it promotes the right to an adequate standard of living, enshrined in Article 11(1) of the International Covenant on Economic Social and Cultural Rights.

Conclusion

This Bill is compatible with human rights.

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NOTES ON CLAUSES

Clause 1 – Short Title

1. This clause would provide for the Act to be cited as the *Future Drought Fund (Consequential Amendments) Act 2019*.

Clause 2 – Commencement

2. Clause 2 sets out commencement provisions for the Bill. Commencement details for specific sections of the Bill are included in the table in subclause 2(1).

- Item 1 of the table provides that sections 1 to 3 and anything in the Act not elsewhere covered by the table would commence on the day the Bill receives the Royal Assent.
- Item 2 of the table provides that schedules 1 and 2 would commence at the same time as the Future Drought Fund Act, but these schedules would not commence at all if that Act does not commence.
- Item 3 of the table provides that schedule 3 would commence the day after this Act receives the Royal Assent.

3. Subclause 2(2) clarifies that the information in column 3 of the table is not part of the Act.

Clause 3 – Schedules

4. Clause 3 provides that the legislation specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the relevant Schedule.. It also provides that any other item in a Schedule to the Act has effect according to its terms.

Schedule 1 – General Amendments

5. This schedule makes amendments to several Acts as a result of the establishment of the Future Drought Fund.

Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018

6. **Item 1** inserts new paragraph 16(a)(vi) in the ASTILSFF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the ATILSFF can be met from the ATILSFF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

7. **Item 2** inserts new paragraph 16(b)(vi) in the ASTILSFF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the ASTILSFF can be met from the ASTILSFF Special Account to the extent that such insurance premiums do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

8. **Item 3** inserts new paragraph 16(c)(vi) in the ASTILSFF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the ASTILSFF can be met from the ASTILSFF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

COAG Reform Fund Act 2008

9. **Item 4** inserts Note 2AB after Note 2AA to subsection 5(2) of the COAG Reform Fund Act, to reflect that an amount originating in the Future Drought Fund may be transferred to the COAG Reform Fund. This note would mirror Note 2, Note 2A and Note 2AA that refer to the ability to transfer amounts originating in the BAF, DCAF and MRFF to the COAG Reform Fund.

10. **Item 5** inserts into the COAG Reform Fund Act a new paragraph 7(1)(bab), after paragraph 7(1)(baa), to recognise that grants from the Future Drought Fund to States and Territories are channelled through the COAG Reform Fund. The Future Drought Fund Act requires that payments to States and Territories through the COAG Reform Fund are bound by the terms and conditions of a written agreement and are therefore exempt from the terms and conditions set out in this section.

11. **Item 6** inserts Note 1AB after Note 1AA to subsection 7(3) to reflect that the channelling of grants to States and Territories from the Future Drought Fund through the COAG Reform Fund is subject to the provisions of the Future Drought Fund Act.

DisabilityCare Australia Fund Act 2013

12. **Item 7** inserts new paragraph 16(a)(ia) in the DCAF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the DCAF can be met from the DCAF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

13. **Item 8** inserts new paragraph 16(b)(ia) in the DCAF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the DCAF can be met from the DCAF Special Account to the extent that such insurance premiums do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

14. **Item 9** inserts new paragraph 16(c)(ia) in the DCAF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the DCAF can be met from the DCAF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

Future Fund Act 2006

15. **Item 10** amends the note to section 4 of the Future Fund Act. The amended note confirms that the Future Fund Board has additional functions under the Future Drought Fund Act.

16. **Item 11** inserts definitions of *Future Drought Fund* and *Future Drought Fund Special Account*. These expressions are defined by reference to the Future Drought Fund Act.

17. This item also inserts a definition of *Drought Minister* in the Future Fund Act. This expression is defined as the Minister who has “Drought” in their title. When making this assessment, a Minister’s formal title on the Government’s current Ministry list would be used as the authoritative reference. If there is no Minister with the word “Drought” in their title, the relevant responsibilities under the Future Drought Fund legislation will default to the Agriculture Minister who is defined as the Minister who administers the *Primary Industries Research and Development Act 1989*.

18. **Item 12** amends Note 2A to section 13 of the Future Fund Act. The amended note explains that Schedule 2A to the Future Fund Act is about transfers of amounts from the Future Fund to the other Funds invested by the Future Fund Board, including the Future Drought Fund.
19. **Item 13** inserts new paragraph 28(5)(aa) and **Item 14** inserts new paragraphs 28(5)(ca) in the Future Fund Act. The effect of these amendments is to allow the same person to be engaged as an investment manager for more than one Fund invested by the Future Fund Board, including the Future Drought Fund.
20. **Item 15** amends the note to section 33 of the Future Fund Act. The amended note explains that the Future Fund Board has additional functions under other legislation, including the Future Drought Fund Act.
21. **Item 16** inserts new subparagraph 35(b)(ia) in the Future Fund Act. This amendment provides that the Future Fund Board has the functions conferred on the Future Fund Board by the Future Drought Fund Act.
22. **Item 17** inserts new paragraph 55(3)(aa) in the Future Fund Act. This amendment provides that the Future Fund Board's reporting obligations in relation to the Future Fund do not include its separate reporting obligation to the responsible Ministers under the Future Drought Fund Act.
23. **Item 18** inserts new paragraph 63(1)(aa) in the Future Fund Act, and **Item 19** inserts new paragraph 63(2)(aaa) in the Future Fund Act. These amendments ensure that neither a Future Fund Board member nor the Chair of the Future Fund Board breaches civil or criminal obligations under the Future Fund Act by performing an act that the Future Fund Board member or Chair is required to perform under the Future Drought Fund Act.
24. **Item 20** inserts new subsection 81(1AA) and **Item 21** inserts new subsection 81(2AA) in the Future Fund Act. These amendments require that the annual report prepared by the Chair of the Future Fund Board include a report on the performance of investments of the Future Drought Fund and the amounts debited from the Future Drought Fund for purposes allowed under the Future Drought Fund Act. In addition, the annual report will also need to include benchmarks in relation to the performance of the debits from the Future Drought Fund. This is consistent with arrangements for the other Funds invested by the Future Fund Board.
25. **Item 22** inserts new paragraph 81(4)(aa) in the Future Fund Act. The effect of this amendment is to include the Drought Minister in the list of Ministers to whom the nominated Minister must give a copy of the annual report given to the nominated Minister under section 46 of the PGPA Act.
26. **Item 23** inserts new paragraph 83B(1)(aa) in the Future Fund Act. The effect of this amendment is to allow the Future Fund Board to delegate its power to engage investment managers for purposes in connection with the Future Drought Fund to the Chair of the Future Fund Board or a SES Employee in the Agency.
27. **Item 24** inserts new subparagraph 84(1)(b)(ia) and **Item 25** inserts new subparagraph 84(1)(b)(iia) in the Future Fund Act. The effect of these amendments is to provide that any amount of money received by the Future Fund Board must be credited to the Future Fund Special Account if none of the legislation for the other Funds invested by the Future Fund Board requires the amount to be credited to these other Funds.
28. **Item 26** inserts new subsection 84(1A) in the Future Fund Act. The effect of this amendment is to allow the nominated Minister to provide a written direction to the Future

Fund Board requiring an amount credited to the Future Fund Special Account under subsection 84(1) of the Future Fund Act to be debited from the Future Fund Special Account and credited to the Future Drought Fund Special Account.

29. **Item 27** inserts a new reference to ‘(1A)’ in paragraph 84(5)(b) of the Future Fund Act. The effect of this amendment is to provide that if an amount is credited to the Future Fund Special Account under subsection 84(1) of the Future Fund Act, the sum of one or more amounts specified under new subsection 84(1A) must not exceed the amount of the credit.

30. **Item 28** inserts a new reference to ‘(1A)’ in subsection 84(6) of the Future Fund Act. The effect of this amendment is to declare that a written direction made under new subsection 84(1A) is not a legislative instrument. This is consistent with the status of other written directions that can be made by the nominated Minister under subsections 84(3), 84(4A), and 84(4B) for the transfer of amounts to other special accounts as provided for under those subsections.

31. **Items 29, 30 and 31** amend paragraphs 2(2)(a), 2(2)(b) and 2(2)(c) of Schedule 2 of the Future Fund Act to make reference to certain provisions of the Future Drought Fund Act. The effect of these amendments is to provide that the purposes of the Future Fund Special Account include debits by the Future Fund Board to pay bank account expenses, insurance premiums and costs relating to the management of the Future Drought Fund.

32. **Item 32** adds a reference to the Future Drought Fund in Clause 1 of Schedule 2A of the Future Fund Act. Clause 1 of Schedule 2A provides a simplified outline of the Schedule.

33. **Item 33** adds new clause 1A to Schedule 2A to the Future Fund Act. New clause 1A will allow the nominated Minister under the Future Fund Act to require, by writing, the reversal of a debit from the Future Drought Fund to meet bank account, insurance premium or other costs relating to the Future Drought Fund. This reversal is to be effected by debiting the Future Fund Special Account and crediting the Future Drought Fund Special Account. The reversal amount cannot exceed the amount originally debited from the Future Drought Fund Special Account. The nominated Minister’s written direction is declared not to be a legislative instrument.

Medical Research Future Fund Act 2015

34. **Item 34** inserts new subparagraph 19(a)(v) in the MRFF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the MRFF can be met from the MRFF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

35. **Item 35** inserts new subparagraph 19(b)(v) in the MRFF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the MRFF can be met from the MRFF Special Account to the extent that such insurance premiums do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

36. **Item 36** inserts new subparagraph 19(c)(v) in the MRFF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the MRFF can be met from the MRFF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

Nation-building Funds Act 2008

37. **Item 37** inserts new subparagraph 138(a)(va) in the NBF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the EIF can be met from the EIF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

38. **Item 38** inserts new paragraph 138(b)(va) in the NBF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the EIF can be met from the EIF Special Account to the extent that such insurance does not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

39. **Item 39** inserts new subparagraph 138(c)(va) in the NBF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the EIF can be met from the EIF Special Account, to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Future Drought Fund.

Regional Investment Corporation Act 2018

40. **Item 40** inserts a definition of drought resilience in section 4 of the RIC Act. This definition has the same meaning as the definition of drought resilience in the Future Drought Fund Act.

41. **Item 41** amends paragraph 15(1)(e) in the RIC Act. The effect of this amendment is to expand the functions of the RIC Board to include functions conferred on it by the Future Drought Fund Act. The additional function is to provide advice to the Drought Minister regarding grants or payments for services from the Future Drought Fund.

42. **Items 42 and 43** amend subparagraph 17(2)(a)(viii) and paragraph 17(2)(a) in the RIC Act. The effect of these amendments is to include 'drought resilience' as a relevant qualification, skill or experience that a member of the RIC Board may possess.

43. **Items 44 and 45** amend the notes at subsection 26(2) of the RIC Act. The effect of these amendments is to include an additional note (Note 2), which clarifies that the appointment of a Board Member of the Regional Investment Corporation may be terminated under section 30 of the Future Drought Fund Act as well as under the provisions of the RIC Act. Termination under the Future Drought Fund Act relates to a Board member failing to comply with obligations regarding disclosure of interests.

Schedule 2 – Abolition of the Building Australia Fund

44. This Schedule makes amendments to several Acts as a result of the closure of the BAF.

Part 1 – Amendments

Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018

45. **Item 1** amends subparagraph 16(a)(iv) of the ATSILSFF Act to remove reference to paragraph 18(1)(j) of the NBF Act. Paragraph 16(a) of the ATSILSFF Act provides that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the ATSILSFF can be met from the ATSILSFF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board. The effect of this amendment is to remove reference to the BAF from the list of other Funds invested by the Future Fund Board.

46. **Item 2** amends subparagraph 16(b)(iv) of the ATSILSFF Act to remove reference to paragraph 18(1)(k) of the NBF Act. Paragraph 16(b) of the ATSILSFF Act provides the cost of insurance incurred by the Future Fund Board in relation to the ASTILSFF can be met from the ASTILSFF Special Account to the extent that such insurance premiums do not relate to any other Fund invested by the Future Fund Board. The effect of this amendment is to remove reference to the BAF from the list of other Funds invested by the Future Fund Board.

47. **Item 3** amends subparagraph 16(c)(iv) of the ATSILSFF Act to remove reference to paragraph 18(1) of the NBF Act. Paragraph 16(c) of the ATSILSFF Act provides that expenses incurred by the Future Fund Board in relation to managing the ASTILSFF can be met from the ASTILSFF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board. The effect of this amendment is to remove reference to the BAF from the list of other Funds invested by the Future Fund Board.

COAG Reform Fund Act 2008

48. **Item 4** repeals note 2 after subclause 5(2) of the COAG Reform Fund Act, which refers to transfer of amounts from the BAF to the COAG Reform Fund. This note is no longer required due to the closure of the BAF.

49. **Item 5** amends subsection 7(1)(b) of the COAG Reform Fund Act to remove reference to subsections 92(2), 97(2), 102(2) and 107(2) of the NBF Act. These references deal with the channelling of State and Territory grants payments through the COAG Reform Fund. Those grants are made out of money originating in the BAF. These references are no longer required due to the closure of the BAF. The reference to subsection 197(2) of the NBF Act is retained.

50. **Items 6 and 7** amend the relevant note at the end of section 7 of the COAG Reform Fund Act to account for the amendments to that section in item 5.

DisabilityCare Australia Fund Act 2013

51. **Item 8** amends subparagraph 16(a)(iii) of the DCAF Act to remove reference to paragraph 18(1)(j) of the NBF Act. Paragraph 16(a) of the DCAF Act provides that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the DCAF can be met from the DCAF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board. The effect of this amendment is

to remove reference to the BAF from the list of other Funds invested by the Future Fund Board.

52. **Item 9** amends subparagraph 16(b)(iii) of the DCAF Act to remove reference to paragraph 18(1)(k) of the NBF Act. Paragraph 16(b) of the DCAF Act provides the cost of insurance incurred by the Future Fund Board in relation to the DCAF can be met from the DCAF Special Account to the extent that such insurance premiums do not relate to any other Fund invested by the Future Fund Board. The effect of this amendment is to remove reference to the BAF from the list of other Funds invested by the Future Fund Board.

53. **Item 10** amends subparagraph 16(c)(iii) of the DCAF Act to remove reference to subsection 18(1) of the NBF Act. Paragraph 16(c) of the DCAF Act provides that expenses incurred by the Future Fund Board in relation to managing the DCAF can be met from the DCAF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board. The effect of this amendment is to remove reference to the BAF from the list of other Funds invested by the Future Fund Board.

Future Fund Act 2006

54. **Item 11** repeals a number of definitions from the Future Fund Act related to the BAF, which are no longer required due to its closure.

55. **Item 12** removes reference to the BAF from note 2A after section 13 of the Future Fund Act, which refers to transfer of amounts from the Future Fund to other Funds managed by the Future Fund. This reference is no longer required due to the closure of the BAF.

56. **Item 13** repeals paragraph 28(5)(d) of the Future Fund Act, which refers to a section of the NBF Act which relates to the BAF that will be repealed by item 36 of this Schedule. Subsection 28(5) of the Future Fund Act provides that an investment manager may be engaged in relation to more than one fund managed by the Future Fund Board. The effect of this repeal is to remove the BAF from the list of funds managed by the Future Fund Board.

57. **Items 14, 15, 16 and 17** make amendments to repeal provisions from the Future Fund Act which set out the Future Fund's reporting requirements in relation to the BAF.

58. **Item 18** repeals paragraph 83B(1)(b) of the Future Fund Act, which refers to a section of the NBF Act that will be repealed by item 36 of this Schedule. The effect of this repeal is to remove the power for the Future Fund Board to delegate its powers to engage investment managers for purposes in relation to the BAF.

59. **Items 19 and 20** repeal provisions in the Future Fund Act dealing with the BAF Special Account, which will be abolished by item 36 of this Schedule. **Items 21 and 22** repeal cross-references to the paragraph repealed by item 20.

60. **Item 23** repeals references in provisions of Schedule 2 to the Future Fund Act, which refer to paragraphs 18(1)(j) and (k) and subsection 18(1) of the NBF Act. The provisions amended by this item provide that the following expenses incurred by the Future Fund Board in relation to the Future Fund can be met from the Future Fund Special Account, to the extent that they do not relate to any of the other funds managed by the Future Fund:

- establishing and operating bank accounts;
- the cost of insurance; and
- costs of managing the Future Fund.

61. The effect of these amendments is to remove reference to the BAF from the other Funds invested by the Future Fund Board.

62. **Item 24** removes reference to the BAF from the simplified outline of Schedule 2A to the Future Fund Act, which deals with transfers between funds managed by the Future Fund Board.
63. **Item 25** repeals clause 2 of Schedule 2A to the Future Fund Act, which provides a mechanism for amounts to be transferred from the Future Fund to the BAF.

Medical Research Future Fund Act 2015

64. **Item 26** amends subparagraph 19(a)(iii) of the MRFF Act to remove reference to paragraph 18(1)(j) of the NBF Act. Paragraph 19(a) of the MRFF Act provides that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the MRFF can be met from the MRFF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board. The effect of this amendment is to remove the BAF from the list of other Funds invested by the Future Fund Board.
65. **Item 27** amends subparagraph 19(b)(iii) of the MRFF Act to remove reference to paragraph 18(1)(k) of the NBF Act. Paragraph 19(b) of the MRFF Act provides the cost of insurance incurred by the Future Fund Board in relation to the MRFF can be met from the MRFF Special Account to the extent that such insurance premiums do not relate to any other Fund invested by the Future Fund Board. The effect of this amendment is to remove the BAF from the list of other Funds invested by the Future Fund Board.
66. **Item 28** amends subparagraph 19(c)(iii) of the MRFF Act to remove reference to subsection 18(1) of the NBF Act. Paragraph 19(c) of the MRFF Act provides that expenses incurred by the Future Fund Board in relation to managing the MRFF can be met from the MRFF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board. The effect of this amendment is to remove reference the BAF from the list of other Funds invested by the Future Fund Board.

Nation-building Funds Act 2008

67. **Item 29** amends the title of the NBF Act to remove reference to the BAF, due to its closure.
68. **Item 30** removes the simplified outline of Chapter 2, which sets up the BAF, from the NBF Act.
69. **Item 31** repeals a number of definitions from the NBF Act related to the BAF, which are no longer required due to its closure.
70. **Item 32** amends the definition of ‘value’ of an investment to remove reference to investments of the BAF, but retains reference to investments of the EIF.
71. **Item 33** repeals the definitions of ‘Water Department’ and ‘Water Minister’ from the NBF Act, as they are no longer required due to the closure of the BAF.
72. **Items 34 and 35** amend section 7 of the NBF Act to remove reference to the extent of the national broadband network from the application provisions of that Act. This reference is no longer required as it related to the operation of the BAF.
73. **Item 36** repeals Chapter 2 of the NBF Act, which establishes the BAF and sets out how it operates. The effect of this repeal will be to close the BAF. The Future Drought Fund Act provides for the transfer of the balance of the BAF to the Future Drought Fund.
74. **Item 37** repeals references in section 138 of the NBF Act, which refer to paragraphs 18(1)(j) and (k) and subsection 18(1) of that Act. Section 138 of the NBF Act provides that

the following expenses incurred by the Future Fund Board in relation to the EIF can be met from the EIF Special Account, to the extent that they do not relate to any of the other funds managed by the Future Fund Board:

- establishing and operating bank accounts;
- the cost of insurance; and
- costs of managing the EIF.

75. The effect of this item is to remove reference to the BAF from the other Funds invested by the Future Fund Board.

76. **Item 38** repeals section 147 of the NBF Act, which deals with transfers of funds between the EIF and the BAF. **Items 39 and 40** remove cross-references to section 147 in relation to the delegation of the functions or powers of the Finance Minister.

Part 2 – Transitional provisions

Item 41 – Transitional – reporting obligations of the Future Fund Board of Guardians

77. This item is a transitional provision that maintains the Finance Minister's ability to request information and reports, and the Future Fund Board's obligations to keep the responsible Ministers informed, in relation to the performance of the Future Fund Board's functions and the operation of the Board in respect of the BAF, despite the repeal of the relevant sections on the NBF Act by this Bill. This provision ensures that there is no gap in oversight and reporting about the BAF after its closure.

Item 42 – Transitional – reports

78. This item is a transitional provision that maintains the existing arrangements for the preparation and tabling of the Future Fund's annual report in relation to the BAF for the financial year in which this Bill commences, despite the repeal of provisions of the Future Fund Act dealing with the BAF by this Bill. This provision ensures that there is no gap in oversight and reporting about the BAF after its closure.

Item 43 – Transitional rules

79. This item enables the Finance Minister to make rules, by legislative instrument, covering matters of a transitional nature (including savings or application provisions) relating to the amendments made by this Schedule.

80. Enabling the making of rules rather than regulations would accord with the Office of Parliamentary Counsel's Drafting Direction No. 3.8 – Subordinate Legislation. Paragraph 2 of that Drafting Direction states that "OPC's starting point is that subordinate instruments should be made in the form of legislative instruments (as distinct from regulations) unless there is good reason not to do so".

81. Paragraph 3 of the Drafting Direction states that matters such as compliance and enforcement, the imposition of taxes, setting amounts to be appropriated, and amendments to the text of an Act, should be included in regulations unless there is a strong justification otherwise. The Bill does not intend to enable the rules to provide for any of the types of matters listed.

82. In addition, this item would clarify that the rules made under this item would be a legislative instrument for the purposes of the Legislation Act. Pursuant to sections 38 and 39 of that Act, all legislative instruments and their explanatory statements must be tabled in both

Houses of the Parliament within 6 sitting days of the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the rules would be subject to the same level of Parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and a motion to disallow the rules may be moved in either House of the Parliament within 15 sitting days of the date the rules are tabled (see section 42 of the Legislation Act).

83. Sub-item 40(2) would be a declaratory clause, included for the avoidance of doubt.

Schedule 3 – Technical corrections

84. This Schedule makes amendments to correct references in the DCAF Act relating to the MRFF and the ATSILSFF.

85. **Items 1 to 6** correct references in subparagraphs 16(a)(iv), 16(a)(v), 16 (b)(iv), 16(b)(v), 16(c)(iv) and 16(c)(v) of the DCAF Act to particular provisions of the MRFF Act and the ATSILSFF Act. The effect of these amendments is to correctly specify as additional purposes of the DCAF Special Account certain expenses incurred by the Future Fund Board for which the special account may be debited, to the extent that such expenses do not relate to the MRFF or the ATSILSFF.