

2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EMERGENCY RESPONSE 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>
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
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
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
Emergency Response Minister	means: (a) if there is a Minister whose title includes “Emergency Management” - that Minister; or (b) the Minister declared by the Prime Minister, by notifiable instrument, to be the Emergency Management Minister for the purposes of this Act.
Finance Minister	has the same meaning as defined in section 8 of the PGPA Act
FDF	means the Future Drought Fund established by section 10 of the <i>Future Drought Fund Act 2019</i>
FDF Act	means the <i>Future Drought Fund Act 2019</i>
FDF Special Account	means the Future Drought Fund Special Account established by section 13 of the FDF Act
Future Fund	means the Future Fund established by section 11 of the Future Fund Act
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

Abbreviation or common term	Description
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>
Responsible Ministers	means the following: (a) the Treasurer; and (b) the Finance Minister

OUTLINE

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

The substantive Bill establishes the Emergency Response Fund as a dedicated financial asset to provide a secure revenue stream to be used for emergency response and recovery from natural disasters that have a significant or catastrophic impact.

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

The consequential amendments made in the Bill support the establishment of the Emergency Response Fund in that they:

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

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

The Bill closes the EIF by repealing the NBF Act. The last commitment from the EIF was announced in July 2013 and all commitments have been paid.

The Government is committed to a world class higher education system and is investing a record \$17.7 billion in the university sector in 2019. This is projected to grow to more than \$19 billion by 2022. The Government has recently made significant investments into education infrastructure projects including \$150 million to support the relocation and redevelopment of the University of Tasmania's Launceston and Burnie campuses, and a further \$30 million earmarked for the establishment of a new Central Queensland School of Mining and Manufacturing.

The Emergency Response Fund will be established with an initial balance (money and investments) equal to the balance of the EIF immediately before the establishment of the Emergency Response Fund.

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

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 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 Emergency Response Fund Act. This includes the following amendments:

- amendments to the Future Fund Act to give the Future Fund Board functions in relation to the Emergency Response Fund;
- amendments to the ATSILSFF Act, DCAF Act, the FDF Act, the Future Fund Act, and the MRFF Act to allow amounts to be transferred between the Emergency Response 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 Emergency Response Fund, the FDF the Future Fund, and the MRFF; and
- repeal of the NBF Act to close the EIF as a consequence of the decision to establish the Emergency Response Fund with an initial balance (money and investments) equal to the balance of the EIF immediately before the establishment of the Emergency Response Fund.

Human rights implications

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

To the extent these amendments facilitate the establishment of the Emergency Response Fund, these amendments may indirectly engage the human rights or freedoms engaged by the Emergency Response Fund Bill 2009. The substantive Bill is compatible with human rights because payments from the Fund will support the steps to be taken to promote the right to the enjoyment of the highest attainable standard of physical and mental health enshrined in Article 12(2) of the International Covenant on Economic Social and Cultural Rights, and 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.

EMERGENCY RESPONSE FUND (CONSEQUENTIAL AMENDMENTS) BILL 2018

NOTES ON CLAUSES

Clause 1 – Short Title

1. This clause would provide for the Act to be cited as the *Emergency Response 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 the whole Act commences at the same time as the *Emergency Response Fund Act 2019*, but the Act would not commence at all if the *Emergency Response Fund Act 2019* does not commence.

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 Emergency Response Fund.

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

6. **Item 1** inserts new paragraph 16(a)(ia) 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 Emergency Response Fund.

7. **Item 2** inserts new paragraph 16(b)(ia) 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 Emergency Response Fund.

8. **Item 3** inserts new paragraph 16(c)(ia) 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 Emergency Response Fund.

COAG Reform Fund Act 2008

9. **Item 4** inserts Note 2AC before Note 3 to subsection 5(2) of the COAG Reform Fund Act, to reflect that an amount originating in the Emergency Response Fund may be transferred to the COAG Reform Fund. This note would mirror Note 2A, Note 2AA and Note 2AB that refer to the ability to transfer amounts originating in the DCAF MRFF and FDF to the COAG Reform Fund.

10. **Item 5** inserts into the COAG Reform Fund Act a new paragraph 7(1)(bac), before paragraph 7(1)(d), to recognise that grants from the Emergency Response Fund to States and Territories are channelled through the COAG Reform Fund. The *Emergency Response Fund Act 2019* 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 1AC before Note 3 to subsection 7(3) to reflect that the channelling of grants to States and Territories from the Emergency Response Fund through the COAG Reform Fund is subject to the provisions of the *Emergency Response Fund Act 2019*.

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 Emergency Response 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 Emergency Response 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 Emergency Response Fund.

Future Drought Fund Act 2019

15. **Item 10** inserts new paragraph 17(a)(ia) in the FDF 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 FDF can be met from the FDF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Emergency Response Fund.

16. **Item 11** inserts new paragraph 17(b)(ia) in the FDF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the FDF can be met from the FDF Special Account to the extent that such insurance premiums do not relate to any other Fund invested by the Future Fund Board, including the Emergency Response Fund.

17. **Item 12** inserts new paragraph 17(c)(iia) in the FDF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the FDF can be met from the FDF Special Account to the extent that such expenses do not relate to any other Fund invested by the Future Fund Board, including the Emergency Response Fund.

Future Fund Act 2006

18. **Item 13** 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 *Emergency Response Fund Act 2019*.

19. **Item 14** inserts a definition of *Emergency Management Minister* in the Future Fund Act. This expression is defined as the Minister who has “Emergency Management” 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 “Emergency Management” in their title, the relevant responsibilities under the Emergency Response Fund legislation will be determined by the Prime Minister. This determination will be a notifiable instrument.

20. This item also inserts definitions of *Emergency Response Fund* and *Emergency Response Fund Special Account*. These expressions are defined by reference to the *Emergency Response Fund Act 2019*.

21. **Item 15** 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 Emergency Response Fund.

22. **Item 16** inserts new paragraph 28(5)(bab) and **Item 17** inserts new paragraphs 28(5)(ga) 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 Emergency Response Fund.

23. **Item 18** 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 *Emergency Response Fund Act 2019*.

24. **Item 19** inserts new subparagraph 35(b)(iia) in the Future Fund Act. This amendment provides that the Future Fund Board has the functions conferred on the Future Fund Board by the *Emergency Response Fund Act 2019*.

25. **Item 20** inserts new paragraph 55(3)(ba) 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 *Emergency Response Fund Act 2019*.

26. **Item 21** inserts new paragraph 63(1)(ca) in the Future Fund Act, and **Item 22** inserts new paragraph 63(2)(aba) 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 *Emergency Response Fund Act 2019*.

27. **Item 23** inserts new subsection 81(1DA) and **Item 24** inserts new subsection 81(2DA) 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 Emergency Response Fund and the amounts debited from the Emergency Response Fund for purposes allowed under the *Emergency Response Fund Act 2019*. In addition, the annual report will also need to include benchmarks in relation to the performance of the debits from the Emergency Response Fund. This is consistent with arrangements for the other Funds invested by the Future Fund Board.
28. **Item 25** inserts new paragraph 81(4)(daa) in the Future Fund Act. The effect of this amendment is to include the Emergency Management 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.
29. **Item 26** inserts new paragraph 83B(1)(daa) 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 Emergency Response Fund to the Chair of the Future Fund Board or a SES employee in the Agency.
30. **Item 27** inserts new subparagraph 84(1)(b)(iiaa) and **Item 28** inserts new subparagraph 84(1)(b)(viia) 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 those other Funds.
31. **Item 29** inserts new subsection 84(4AA) 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 Emergency Response Fund Special Account.
32. **Item 30** inserts a new reference to ‘(4AA)’ 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(4AA) must not exceed the amount of the credit.
33. **Item 31** inserts a new reference to ‘(4AA)’ 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(4AA) 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(1A), 84(4A), and 84(4B) and 84(4C) for the transfer of amounts to other special accounts as provided for under those subsections.
34. **Items 32, 33 and 34** 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 *Emergency Response Fund Act 2019*. 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 Emergency Response Fund.
35. **Item 35** adds a reference to the Emergency Response Fund in Clause 1 of Schedule 2A of the Future Fund Act. Clause 1 of Schedule 2A provides a simplified outline of the Schedule.

36. **Item 36** adds new section 5A to Schedule 2A to the Future Fund Act. New section 5A will allow the nominated Minister under the Future Fund Act to require, by writing, the reversal of a debit from the Emergency Response Fund to meet bank account, insurance premium or other costs relating to the Emergency Response Fund. This reversal is to be effected by debiting the Future Fund Special Account and crediting the Emergency Response Fund Special Account. The reversal amount cannot exceed the amount originally debited from the Emergency Response Fund Special Account. The nominated Minister's written direction is declared not to be a legislative instrument.

Medical Research Future Fund Act 2015

37. **Item 37** inserts new subparagraph 19(a)(ib) 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 Emergency Response Fund.

38. **Item 38** inserts new subparagraph 19(b)(ib) 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 Emergency Response Fund.

39. **Item 39** inserts new subparagraph 19(c)(ib) 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 Emergency Response Fund.

Schedule 2 – Abolition of the Education Investment Fund

40. This Schedule makes amendments to several Acts as a result of the closure of the EIF.

Part 1 – Repeal of the Nation-building Funds Act 2008

Nation-building Funds Act 2008

41. **Item 1** provides that the *Nation-building Funds Act 2008* is repealed. On repeal of the *Nation-building Funds Act 2008*, all instruments made under that Act, including the investment mandates, are also repealed.

Part 2 - Amendments

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

42. **Items 2, 3 and 4** repeal subparagraphs 16(a)(iv), 16(b)(iv) and 16(c)(iv) of the ATSILSFF Act which refer to provisions of the NBF Act that provide that the following expenses:

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

incurred by the Future Fund Board in relation to the ATSILSFF can be met from the ATSILSFF Special Account, to the extent that they do not relate to any of the other Funds managed by the Future Fund. The effect of these amendments are to remove reference to the EIF from the list of other Funds invested by the Future Fund Board.

COAG Reform Fund Act 2008

43. **Item 5** repeals paragraph 7(1)(b) of the COAG Reform Fund Act to remove reference to the NBF Act. These references deal with the channelling of State and Territory grants through the COAG Reform Fund. Those grants are made out of money originating in the EIF. These references are no longer required due to the closure of the EIF.

44. **Item 6** repeals Note 1 to remove reference to the NBF Act to account for the amendments to that section in item 5.

DisabilityCare Australia Fund Act 2013

45. **Item 7** substitutes the definition of financial asset contained in the DCAF Act to refer to the definition of financial asset contained in the Future Fund Act.

46. **Items 8, 9 and 10** repeal subparagraphs 16(a)(iii) 16(b)(iii) and 16(c)(iii) of the DCAF Act which refer provisions of the NBF Act that provide that the following expenses:

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

incurred by the Future Fund Board in relation to the DCAF can be met from the DCAF Special Account, to the extent that they do not relate to any of the other Funds managed by the Future Fund. The effect of these amendments are to remove reference to the EIF from the list of other Funds invested by the Future Fund Board.

Future Drought Fund Act 2019

47. **Items 11, 12, and 13** repeal subparagraphs 17(a)(iv) 17(b)(iv) and 17(c)(iv) of the FDF Act which refer to provisions of the NBF Act that provide that the following expenses:

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

incurred by the Future Fund Board in relation to the FDF can be met from the FDF Special Account, to the extent that they do not relate to any of the other Funds managed by the Future Fund. The effect of these amendments are to remove reference to the EIF from the list of other Funds invested by the Future Fund Board.

Future Fund Act 2006

48. **Item 14** removes a reference to the NBF Act in a note to the simplified outcome of the Future Fund Act.

49. **Item 15** repeals a number of definitions from the Future Fund Act related to the EIF, which are no longer required due to its closure.

50. **Item 16** substitutes the definition of Health Minister contained in the NBF Act to refer to the definition of Health Minister contained in the MRFF Act.

51. **Item 17** repeals the definition of the Research Minister which is related to the EIF and is no longer required due to its closure.

52. **Item 18** removes reference to the EIF 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 EIF.

53. **Item 19** repeals paragraphs 28(5)(b) and (e) of the Future Fund Act, which refer to a section of the NBF Act which relates to the EIF that will be repealed by item 1 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 item is to remove the EIF from the list of Funds managed by the Future Fund Board.

54. **Item 20** removes a reference to the NBF Act from the simplified outline of the Future Fund Act that deals with the Future Fund Board. **Item 21** removes the reference to the NBF Act from the list of Acts that confer functions on the Future Fund Board.

55. **Item 22** removes the reference to the NBF Act from the list of Acts that do not apply to the Future Fund Board in respect of keeping the responsible Ministers informed and providing reports, document and information to the nominated Minister (i.e. the Finance Minister). The NBF Act was excluded from the application of these provisions in the Future Fund Act as these responsibilities for the EIF were instead covered by sections 203 to 205 of the NBF Act. Transitional provisions at Item 43 provide for residual reporting requirements relating to the Education Investment Fund.

56. **Items 23 and 24** remove references to the NBF Act from the list of Acts that are not contravened, in relation to the Board's or the Chair's compliance with statutory duties, if an Act in the list required the Board or the Chair to do an act.

57. **Items 25, 26, 27 and 28** make amendments to repeal provisions from the Future Fund Act which set out the Future Fund's reporting requirements in relation to the EIF.

58. **Item 29** repeals paragraph 83B(1)(c) of the Future Fund Act, which refers to a section of the NBF Act that will be repealed by Item 1 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 EIF.

59. **Items 30, 31 and 32** repeal provisions in the Future Fund Act dealing with the EIF Special Account, which will be abolished by Item 1 of this Schedule. **Items 33 and 34** repeal cross-references to the paragraph repealed by Item 31.

60. **Item 35** repeals references in Schedule 2 to the Future Fund Act, which provide that the following expenses:

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

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

61. **Item 36** removes reference to the EIF from the simplified outline of Schedule 2A to the Future Fund Act, which deals with transfers between funds managed by the Future Fund Board.

62. **Item 37** repeals clause 3 of Schedule 2A to the Future Fund Act, which provides a mechanism for amounts to be transferred from the Future Fund to the EIF.

Medical Research Future Fund Act 2015

63. **Items 38 and 39** make minor amendments to two simplified outlines and two definitions to reflect that the NBF Act is repealed.

64. **Item 40, 41 and 42** repeal subparagraphs 19(a)(iii) 19(b)(iii) and 19(c)(iii) of the MRRF Act which refer to provisions of the NBF Act that provide that the following expenses:

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

incurred by the Future Fund Board in relation to the MRFF can be met from the MRFF Special Account, to the extent that they do not relate to any of the other Funds managed by the Future Fund. The effect of these amendments are to remove reference to the EIF from the list of other Funds invested by the Future Fund Board.

Part 3 – Transitional provisions

Item 43 – Transitional – reporting obligations of the Future Fund Board of Guardians

65. 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 EIF, despite the repeal of the NBF Act by this Bill. This provision ensures that there is no gap in oversight and reporting about the EIF after its closure.

Item 44 – Transitional – reports

66. 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 EIF for the financial year in which this Bill commences, despite the repeal of provisions of the Future Fund Act dealing with the EIF by this Bill. This provision ensures that there is no gap in oversight and reporting about the EIF after its closure.

Item 45 – Transitional rules

67. 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 Schedule 2.

68. 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".

69. 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.

70. 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).

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