



# **Higher Education Endowment Fund Act 2007**

**No. 160, 2007**

**An Act about the Higher Education Endowment  
Fund, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Higher Education Endowment Fund Act 2007**

**No. 160, 2007**

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## **An Act about the Higher Education Endowment Fund, and for related purposes**

*[Assented to 24 September 2007]*

The Parliament of Australia enacts:

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## Part 1—Introduction

### 1 Short title

This Act may be cited as the *Higher Education Endowment Fund Act 2007*.

### 2 Commencement

This Act commences on the day after it receives the Royal Assent.

### 3 Object

The object of this Act is to enhance the Commonwealth's ability to:

- (a) make grants of financial assistance to eligible higher education institutions in relation to capital expenditure; and
- (b) make grants of financial assistance to eligible higher education institutions in relation to research facilities.

### 4 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up the Higher Education Endowment Fund which consists of:
  - (a) the Higher Education Endowment Fund Special Account; and
  - (b) the investments of the Higher Education Endowment Fund.
- The main purposes of the Higher Education Endowment Fund Special Account are:
  - (a) to make grants of financial assistance to eligible higher education institutions in relation to capital expenditure; and

(b) to make grants of financial assistance to eligible higher education institutions in relation to research facilities.

- This Act establishes the Higher Education Endowment Fund Advisory Board to advise the Education Minister about grants.
- The Education Minister is responsible for authorising grants.
- The total amount of grants authorised in a financial year must not exceed the maximum grants amount calculated in accordance with the Maximum Grants Rules.
- The terms and conditions on which financial assistance is granted are to be set out in a written agreement between the Commonwealth and the eligible higher education institution concerned.
- The Future Fund Board of Guardians is responsible for deciding how to invest the Higher Education Endowment Fund.
- Investments of the Higher Education Endowment Fund will consist of financial assets.
- The Future Fund Board of Guardians is bound by a Higher Education Endowment Fund Investment Mandate given to it by the responsible Ministers.

Note: The *Future Fund Act 2006* provides that the Future Fund Management Agency is responsible for assisting and advising the Future Fund Board of Guardians.

## 5 Definitions

In this Act:

***accumulated nominal earnings*** of the Fund has the meaning given by section 49.

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**Advisory Board** means the Higher Education Endowment Fund Advisory Board established under section 40.

**Agency** means the Future Fund Management Agency.

**asset** means:

- (a) any kind of real or personal property; or
- (b) any legal or equitable estate or interest in real or personal property; or
- (c) any legal or equitable right.

**balance of the Fund** means the sum of:

- (a) amounts standing to the credit of the Fund Account; and
- (b) the value of investments of the Fund.

**bank** has the same meaning as in the *Financial Management and Accountability Act 1997*.

**business entity** means:

- (a) a company; or
- (b) a partnership; or
- (c) a trust; or
- (d) a body politic.

**Chair** means the Chair of the Future Fund Board.

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

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

**eligible higher education institution** means:

- (a) a Table A provider (within the meaning of the *Higher Education Support Act 2003*); or
- (b) a Table B provider (within the meaning of that Act).

**Finance Department** means the Department administered by the Finance Minister.

**Finance Minister** has the same meaning as in the *Financial Management and Accountability Act 1997*.

**financial asset** has the meaning given by section 6.

**Fund** means the Higher Education Endowment Fund established by section 11.

**Fund Account** means the Higher Education Endowment Fund Special Account established by section 12.

**Future Fund Board** means the Future Fund Board of Guardians.

**Future Fund Board member** means a member of the Future Fund Board, and includes the Chair.

**Future Fund Special Account** means the Future Fund Special Account established by section 12 of the *Future Fund Act 2006*.

**GFS Australia** means the publication of the Australian Bureau of Statistics known as Australian System of Government Finance Statistics: Concepts, Sources and Methods, as updated from time to time. This updating takes 2 forms:

- (a) from time to time, a new version of the publication is produced;
- (b) from time to time, material in the current version of the publication is updated by other publications of the Australian Bureau of Statistics.

**GFS system** has the same meaning as in GFS Australia.

**Government contribution to the Fund Account** means:

- (a) the amount credited to the Fund Account under section 13; or
- (b) an amount credited to the Fund Account under section 14.

**Higher Education Endowment Fund investment function** of the Future Fund Board means:

- (a) a function or power conferred on the Future Fund Board by section 22, 23, 29, 31, 33 or 34; or
- (b) a right or power conferred on the Future Fund Board in its capacity as the holder of an investment of the Fund.

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**Higher Education Endowment Fund Investment Mandate** has the meaning given by subsection 24(4).

**investment** means any mode of application of money or financial assets for the purpose of gaining a return (whether by way of income, capital gain or any other form of return).

**investment manager** means a person or body (other than the Agency) who undertakes to do any or all of the following:

- (a) invest amounts on behalf of the Future Fund Board;
- (b) manage the investment of funds on behalf of the Future Fund Board;
- (c) acquire derivatives on behalf of the Future Fund Board;
- (d) manage derivatives on behalf of the Future Fund Board;
- (e) enter into securities lending arrangements on behalf of the Future Fund Board;
- (f) realise financial assets on behalf of the Future Fund Board;
- (g) perform custodial functions in relation to the financial assets of the Future Fund Board.

**investment of the Fund** means a financial asset that, under a provision of this Act, is taken to be an investment of the Fund.

**Maximum Grants Rules** means the rules made under section 47.

**nominated Minister** has the meaning given by section 54.

**person** (except in Part 4) includes a partnership.

Note: See also paragraph 22(1)(a) of the *Acts Interpretation Act 1901*.

**realise** includes redeem or dispose of.

**responsible Ministers** means:

- (a) the Treasurer; and
- (b) the Finance Minister.

**securities lending arrangement** means an agreement of the kind known as a securities lending arrangement.

*value* of an investment of the Fund means the market value of the investment. For this purpose, disregard anything that would prevent or restrict conversion of a financial asset to money.

## **6 Financial assets**

A reference in this Act to a *financial asset* is a reference to:

- (a) an asset that, in accordance with GFS Australia, is treated as a financial asset for the purposes of the GFS system in Australia; or
- (b) an asset specified in regulations made for the purposes of this paragraph;

but does not include a reference to an asset that, under the regulations, is taken to be a non-financial asset for the purposes of this Act.

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

## **7 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

## **8 Extension to external Territories**

This Act extends to every external Territory.

## **9 Extra-territorial application**

This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).

## **Part 2—The Higher Education Endowment Fund**

### **Division 1—Introduction**

#### **10 Simplified outline**

The following is a simplified outline of this Part:

- This Part sets up the Higher Education Endowment Fund.
- The Higher Education Endowment Fund consists of:
  - (a) the Higher Education Endowment Fund Special Account; and
  - (b) the investments of the Higher Education Endowment Fund.
- An initial amount of \$5 billion must be credited to the Fund Account.
- The responsible Ministers may determine that additional amounts are to be credited to the Fund Account.
- Amounts may be debited from the Fund Account in accordance with the purposes of the Fund Account.
- The main purposes of the Fund Account are:
  - (a) to make grants of financial assistance to eligible higher education institutions in relation to capital expenditure; and
  - (b) to make grants of financial assistance to eligible higher education institutions in relation to research facilities.

## **Division 2—Establishment of the Higher Education Endowment Fund etc.**

### **11 Establishment of the Higher Education Endowment Fund**

- (1) The Higher Education Endowment Fund is established by this section.
- (2) The Higher Education Endowment Fund consists of:
  - (a) the Higher Education Endowment Fund Special Account; and
  - (b) the investments of the Fund.

### **12 Establishment of the Higher Education Endowment Fund Special Account**

- (1) The Higher Education Endowment Fund Special Account is established by this section.
- (2) The Fund Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

Note 1: **Fund Account** means the Higher Education Endowment Fund Special Account—see section 5.

Note 2: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

## **Division 3—Credits of amounts to the Higher Education Endowment Fund**

### **13 Initial credit of \$5 billion to the Fund Account**

- (1) As soon as practicable after the commencement of this Act, the responsible Ministers must:
  - (a) by writing, determine that \$5 billion is to be credited to the Fund Account on a specified day; or
  - (b) by writing, determine that \$5 billion is to be credited to the Fund Account in specified instalments on specified days.
- (2) A determination under subsection (1) is irrevocable.
- (3) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

### **14 Subsequent credits of amounts to the Fund Account—determinations by the responsible Ministers**

- (1) The responsible Ministers may, by writing, determine that:
  - (a) a specified amount is to be credited to the Fund Account on a specified day; or
  - (b) a specified amount is to be credited to the Fund Account in specified instalments on specified days.

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

- (2) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

### **15 Credit of amounts to the Fund Account—gifts**

- (1) The Future Fund Board may accept a gift of money made for the purposes of the Fund if the acceptance of the gift is authorised under subsection (2).

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- (2) The Education Minister may, by writing, authorise the acceptance under subsection (1) of a specified gift.

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

- (3) An amount accepted under subsection (1) is to be credited to the Fund Account.
- (4) An instrument under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the instrument.

## **Division 4—Debits of amounts from the Higher Education Endowment Fund**

### **16 Purposes of the Fund Account**

*Grants purposes and purposes related exclusively to the Fund*

- (1) Each of the following is a purpose of the Fund Account:
  - (a) making grants of financial assistance to eligible higher education institutions in relation to capital expenditure, so long as the grants are authorised under subsection 45(1);
  - (b) making grants of financial assistance to eligible higher education institutions in relation to research facilities, so long as the grants are authorised under subsection 45(2);
  - (c) paying the costs of, or incidental to, the acquisition of financial assets under section 22;
  - (d) paying expenses of an investment of the Fund;
  - (e) paying the costs of, or incidental to, the acquisition of derivatives under section 31;
  - (f) paying or discharging the costs, expenses and other obligations incurred by the Future Fund Board under a contract between the Future Fund Board and an investment manager engaged under subsection 34(1);
  - (g) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Future Fund Board, where the bank account relates exclusively to the Fund;
  - (h) paying a premium in respect of a contract of insurance entered into by the Future Fund Board exclusively in connection with the Fund;
  - (i) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board exclusively in connection with the Fund.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

- (2) Paragraph (1)(a) does not limit paragraph (1)(b).
- (3) Paragraph (1)(b) does not limit paragraph (1)(a).

*Purposes not related exclusively to the Fund*

- (4) Each of the following is a purpose of the Fund Account:
  - (a) paying or discharging the costs, expenses and other obligations incurred in connection with the establishment, maintenance or operation of a bank account of the Future Fund Board, where those costs, expenses or obligations are not covered by:
    - (i) paragraph (1)(g); or
    - (ii) paragraph 2(1)(g) of Schedule 2 to the *Future Fund Act 2006*;
  - (b) paying a premium in respect of a contract of insurance entered into by the Future Fund Board, where the premium is not covered by:
    - (i) paragraph (1)(h); or
    - (ii) paragraph 2(1)(h) of Schedule 2 to the *Future Fund Act 2006*;
  - (c) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board, where the costs, expenses, obligations or liabilities are not covered by:
    - (i) a paragraph of subsection (1); or
    - (ii) a paragraph of subclause 2(1) of Schedule 2 to the *Future Fund Act 2006*;
  - (d) paying remuneration and allowances of Future Fund Board members;
  - (e) paying remuneration, and other employment-related costs and expenses, in respect of members of the staff of the Agency;
  - (f) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth under a contract entered into under section 78 or 82 of the *Future Fund Act 2006*;

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**Division 4** Debits of amounts from the Higher Education Endowment Fund

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- (g) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in connection with the operation of the Agency.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

**17 Future Fund Board must ensure that there is sufficient money in the Fund Account to cover authorised grants etc.**

The Future Fund Board must take all reasonable steps to ensure that the amount of money standing to the credit of the Fund Account is sufficient to cover the debit of amounts for grants authorised, or proposed to be authorised, under subsection 45(1) or (2).

Note: This may require the Future Fund Board to realise an investment of the Fund in accordance with section 23.

## **Division 5—Transfers between the Higher Education Endowment Fund and the Future Fund**

### **18 Transfers from the Future Fund to the Higher Education Endowment Fund**

- (1) If an amount is debited from the Fund Account for a purpose mentioned in subsection 16(4), the Finance Minister may, by writing, direct that a specified amount is to be:
  - (a) debited from the Future Fund Special Account; and
  - (b) credited to the Fund Account;on a specified day.
- (2) The specified amount must not exceed the amount debited from the Fund Account as mentioned in subsection (1).
- (3) A direction under subsection (1) is not a legislative instrument.

### **19 Transfers from the Higher Education Endowment Fund to the Future Fund**

- (1) If an amount is debited from the Future Fund Special Account for a purpose mentioned in subclause 2(2) of Schedule 2 to the *Future Fund Act 2006*, the Education Minister may, by writing, direct that a specified amount is to be:
  - (a) debited from the Fund Account; and
  - (b) credited to the Future Fund Special Account;on a specified day.
- (2) The specified amount must not exceed the amount debited from the Future Fund Special Account as mentioned in subsection (1).
- (3) A direction under subsection (1) is not a legislative instrument.

## **Part 3—Investment of the Higher Education Endowment Fund**

### **20 Simplified outline**

The following is a simplified outline of this Part:

- The Future Fund Board of Guardians is responsible for deciding how to invest the Higher Education Endowment Fund.
- Investments of the Higher Education Endowment Fund will consist of financial assets.
- Investments of the Higher Education Endowment Fund will be held in the name of the Future Fund Board.
- The Future Fund Board of Guardians is bound by a Higher Education Endowment Fund Investment Mandate given to it by the responsible Ministers.

### **21 Objects of investment of the Fund**

- (1) The main object of the acquisition by the Future Fund Board of a financial asset as an investment of the Fund is to enhance the Commonwealth's ability to:
  - (a) make grants of financial assistance to eligible higher education institutions in relation to capital expenditure; and
  - (b) make grants of financial assistance to eligible higher education institutions in relation to research facilities.
- (2) The ancillary objects of the acquisition by the Future Fund Board of a financial asset as an investment of the Fund are to enhance the ability of the Commonwealth and the Future Fund Board to:
  - (a) discharge costs, expenses, obligations and liabilities; and
  - (b) make payments;

as mentioned in paragraphs 16(1)(c) to (i) and 16(4)(a) to (g).

## **22 Investment of the Fund**

- (1) The Future Fund Board may invest amounts standing to the credit of the Fund Account in any financial assets.
- (2) Investments under subsection (1) are to be made in the name of the Future Fund Board.
- (3) Investments under subsection (1) are taken to be investments of the Fund.
- (4) This section does not authorise the acquisition of a derivative.

Note: For acquisition of derivatives, see section 31.

## **23 Management of investments of the Fund**

- (1) Income derived from an investment of the Fund is to be credited to the Fund Account.
- (2) A return of capital, or any other financial distribution, relating to an investment of the Fund is to be credited to the Fund Account.
- (3) The Future Fund Board may realise an investment of the Fund.
- (4) Upon realisation of an investment of the Fund, the proceeds of the investment are to be credited to the Fund Account.
- (5) At any time before an investment of the Fund matures, the Future Fund Board may authorise the re-investment of the proceeds upon maturity in a financial asset investment with the same entity. The new investment is taken to be an investment of the Fund.
- (6) Section 39 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Fund.

## **24 Higher Education Endowment Fund Investment Mandate**

- (1) The responsible Ministers may give the Future Fund Board written directions about the performance of its Higher Education

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Endowment Fund investment functions, and must give at least one such direction.

Note 1: **Higher Education Endowment Fund investment function** is defined in section 5.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 3: See also section 53 (additional obligations of responsible Ministers).

- (2) Subsection (1) has effect subject to section 25.
- (3) In giving a direction under subsection (1), the responsible Ministers must have regard to:
- (a) maximising the return earned on the Fund over the long term, consistent with international best practice for institutional investment; and
  - (b) enhancing the Commonwealth's ability to:
    - (i) make grants of financial assistance to eligible higher education institutions in relation to capital expenditure; and
    - (ii) make grants of financial assistance to eligible higher education institutions in relation to research facilities; and
  - (c) any Maximum Grants Rules that are in force; and
  - (d) such other matters as the responsible Ministers consider relevant.
- (4) Directions under subsection (1) are to be known collectively as the **Higher Education Endowment Fund Investment Mandate**.
- (5) A direction under subsection (1) may set out the policies to be pursued by the Future Fund Board in relation to:
- (a) matters of risk and return; and
  - (b) the allocation of financial assets.
- A policy relating to the allocation of financial assets must not be inconsistent with a policy relating to matters of risk and return.
- (6) Subsection (5) does not limit subsection (1).
- (7) Subsection (5) has effect subject to section 25.

- (8) The Higher Education Endowment Fund Investment Mandate prevails over subsection (12) to the extent of any inconsistency.
- (9) The responsible Ministers must not give a direction under subsection (1) that is inconsistent with this Act (other than subsection (12)).
- (10) A direction under subsection (1) must not take effect before the 15th day after the day on which it is given.
- (11) A direction under subsection (1) is a legislative instrument.
- Note 1: Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 44 of that Act.
- Note 2: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 54 of that Act.
- (12) In the performance of its Higher Education Endowment Fund investment functions, the Future Fund Board must seek to:
- (a) maximise the return earned on the Fund over the long term, consistent with international best practice for institutional investment; and
  - (b) enhance the Commonwealth's ability to:
    - (i) make grants of financial assistance to eligible higher education institutions in relation to capital expenditure; and
    - (ii) make grants of financial assistance to eligible higher education institutions in relation to research facilities.
- Note: *Higher Education Endowment Fund investment function* is defined in section 5.
- (13) Subsection (12) has effect subject to:
- (a) this Act; and
  - (b) a direction under subsection (1).

## **25 Limitation on Higher Education Endowment Fund Investment Mandate**

- (1) The responsible Ministers must not give a direction under subsection 24(1) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring the Board to:
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- (a) invest an amount standing to the credit of the Fund Account in a particular financial asset; or
- (b) acquire a particular derivative; or
- (c) allocate financial assets to:
  - (i) a particular business entity; or
  - (ii) a particular activity; or
  - (iii) a particular business.

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

**26 Future Fund Board to be consulted on Higher Education Endowment Fund Investment Mandate**

- (1) Before giving the Future Fund Board a direction under subsection 24(1), the responsible Ministers must:
  - (a) send a draft of the direction to the Future Fund Board; and
  - (b) invite the Future Fund Board to make a submission to the responsible Ministers on the draft direction within a time limit specified by the responsible Ministers; and
  - (c) consider any submission that is received from the Future Fund Board within that time limit.

(2) If:

- (a) the responsible Ministers give the Future Fund Board a direction under subsection 24(1); and
- (b) the Future Fund Board made a submission to the responsible Ministers on a draft of the direction within the time limit specified by the responsible Ministers;

the submission is to be tabled in each House of the Parliament with the direction.

Note: For tabling of the direction, see section 38 of the *Legislative Instruments Act 2003*.

(3) A time limit specified under this section must be reasonable.

**27 Compliance with Higher Education Endowment Fund Investment Mandate**

- (1) The Future Fund Board must take all reasonable steps to comply with the Higher Education Endowment Fund Investment Mandate.
- (2) As soon as practicable after the Future Fund Board becomes aware that it has failed to comply with the Higher Education Endowment Fund Investment Mandate, the Future Fund Board must give the responsible Ministers a written statement:
  - (a) informing the responsible Ministers of the failure to comply with the Higher Education Endowment Fund Investment Mandate; and
  - (b) setting out the action that the Future Fund Board proposes to take in order to comply with the Higher Education Endowment Fund Investment Mandate.
- (3) If the responsible Ministers are satisfied that the Future Fund Board has failed to comply with the Higher Education Endowment Fund Investment Mandate, the responsible Ministers may, by written notice given to the Future Fund Board, direct the Future Fund Board:
  - (a) to give the responsible Ministers, within a period specified in the notice, a written explanation for the failure to comply with the Higher Education Endowment Fund Investment Mandate; and
  - (b) to take action specified in the notice, within a period specified in the notice, in order to comply with the Higher Education Endowment Fund Investment Mandate.
- (4) The Future Fund Board must comply with a direction under subsection (3).
- (5) A failure to comply with:
  - (a) the Higher Education Endowment Fund Investment Mandate; or
  - (b) a direction under subsection (3);does not affect the validity of any transaction.
- (6) A direction under subsection (3) is not a legislative instrument.

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**28 Future Fund Board must not trigger the takeover provisions of the *Corporations Act 2001***

- (1) Subsections 606(1A) and (2A) and section 611 of the *Corporations Act 2001* do not apply to an acquisition by the Future Fund Board if the acquisition is the result of the performance by the Future Fund Board of its Higher Education Endowment Fund investment functions.
- (2) A failure by the Future Fund Board to comply with section 606 of the *Corporations Act 2001* (as modified by this section) does not affect the validity of any transaction.

Note: See also section 39 of the *Future Fund Act 2006* (application of the *Corporations Act 2001*).

**29 Borrowing**

- (1) The Future Fund Board must not borrow money for a purpose in connection with the Fund unless the borrowing is authorised by subsection (2) or (3).
- (2) The Future Fund Board is authorised to borrow money for a purpose in connection with the Fund if:
  - (a) the purpose of the borrowing is to enable the Future Fund Board to cover settlement of a transaction for the acquisition of one or more financial assets; and
  - (b) at the time the relevant acquisition decision was made, it was likely that the borrowing would not be needed; and
  - (c) the period of the borrowing does not exceed 7 days; and
  - (d) if the borrowing were to take place, the total amount borrowed by the Future Fund Board would not exceed 10% of the balance of the Fund.
- (3) The Future Fund Board is authorised to borrow money for a purpose in connection with the Fund if the borrowing takes place in such circumstances (if any) as are specified in the regulations.

**30 Higher Education Endowment Fund investment policies**

- (1) The Future Fund Board must formulate written policies to be complied with by it in relation to the following matters in connection with the Fund:
  - (a) the investment strategy for the Fund;
  - (b) benchmarks and standards for assessing the performance of the Fund;
  - (c) risk management for the Fund;
  - (d) a matter relating to international best practice for institutional investment;
  - (e) a matter specified in the regulations.

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

- (2) The Future Fund Board must ensure that policies formulated under subsection (1) are consistent with the Higher Education Endowment Fund Investment Mandate.

*Publication of policies*

- (3) The Future Fund Board must cause copies of policies formulated under subsection (1) to be published on the Internet.
- (4) The Future Fund Board must ensure that the first set of policies formulated under subsection (1) is published on the Internet as soon as practicable after the commencement of this section.

*Review of policies*

- (5) The Future Fund Board must conduct periodic reviews of policies formulated under subsection (1).
- (6) If there is a change in the Higher Education Endowment Fund Investment Mandate, the Future Fund Board must review any relevant policies formulated under subsection (1).

*Compliance with policies*

- (7) The Future Fund Board must take all reasonable steps to comply with policies formulated under subsection (1).

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

### *Policies*

- (9) A policy formulated under subsection (1) is not a legislative instrument.

## **31 Derivatives**

- (1) The Future Fund Board may acquire a derivative for the purpose of:
- (a) protecting the value of an investment of the Fund (other than a derivative); or
  - (b) protecting the return on an investment of the Fund (other than a derivative); or
  - (c) achieving indirect exposure to financial assets (other than derivatives) for a purpose in connection with the Fund; or
  - (d) achieving transactional efficiency for a purpose in connection with the Fund;
- but must not acquire a derivative for the purpose of:
- (e) speculation; or
  - (f) leverage.
- (2) The acquisition of a derivative under subsection (1) must be consistent with the investment strategy embodied in a policy formulated by the Future Fund Board under subsection 30(1).
- (3) A derivative acquired under subsection (1) is to be held in the name of the Future Fund Board.
- (4) A derivative acquired under subsection (1) is taken to be an investment of the Fund.

## **32 Additional financial assets**

If, as a result of:

- (a) the Future Fund Board's holding of an investment of the Fund; or

- (b) the exercise of any rights or powers conferred on the Future Fund Board in its capacity as the holder of an investment of the Fund;

the Future Fund Board becomes the holder of a financial asset, that financial asset is taken to be an investment of the Fund.

### **33 Securities lending arrangements**

- (1) The Future Fund Board may enter into securities lending arrangements for a purpose in connection with the Fund.
- (2) Any money received by the Future Fund Board under a securities lending arrangement entered into under subsection (1) is to be credited to the Fund Account.
- (3) To avoid doubt, a securities lending arrangement entered into under subsection (1) may provide for the Future Fund Board to realise an investment of the Fund.
- (4) If, as the result of the operation of a securities lending arrangement entered into under subsection (1), the Future Fund Board becomes the holder of a financial asset, that financial asset is taken to be an investment of the Fund.

### **34 Investment managers**

- (1) The Future Fund Board may engage one or more investment managers for purposes in connection with the Fund.
- (2) The Future Fund Board must not:
  - (a) invest amounts under subsection 22(1); or
  - (b) acquire derivatives under subsection 31(1); or
  - (c) enter into a securities lending arrangement under subsection 33(1); or
  - (d) realise financial assets that are investments of the Fund;unless the Future Fund Board does so:
  - (e) through an investment manager engaged by the Future Fund Board under subsection (1) of this section; or
  - (f) in a manner approved, in writing, by the responsible Ministers.

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- (3) The Future Fund Board must ensure that any investment manager engaged by the Future Fund Board under subsection (1) operates within this Act.
- (4) The Future Fund Board must ensure that any investment manager engaged by the Future Fund Board under subsection (1) reports to:
  - (a) the Future Fund Board; and
  - (b) the Agency;on the state of the investments of the Fund at such times and in such manner as the Future Fund Board determines.

### 35 Custody of securities

Section 40 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the Fund.

### 36 Refund of franking credits

If:

- (a) the Future Fund Board receives a refund of a tax offset under the *Income Tax Assessment Act 1997*; and
  - (b) the tax offset is attributable to an investment of the Fund;
- the refund is to be credited to the Fund Account.

Note 1: See also section 84B of the *Future Fund Act 2006*.

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

### 37 Realisation of non-financial assets

- (1) If an asset held by the Future Fund Board as an investment of the Fund ceases to be a financial asset:
  - (a) the Future Fund Board must realise the asset as soon as practicable after the Future Fund Board becomes aware of the cessation; and
  - (b) this Act (other than this section) applies in relation to the asset (including in relation to the realisation of the asset) as if the asset had remained a financial asset, and an investment of the Fund, until the realisation.

- (2) If an asset acquired by the Future Fund Board, purportedly as an investment of the Fund, is not a financial asset:
- (a) the Future Fund Board must realise the asset as soon as practicable after the Future Fund Board becomes aware that the asset is not a financial asset; and
  - (b) this Act (other than this section) applies in relation to the asset (including in relation to the realisation of the asset) as if the asset had been a financial asset, and an investment of the Fund, from the time of its acquisition by the Future Fund Board until the realisation.

### **38 Additional function of the Future Fund Board**

The functions of the Future Fund Board include the function of investing amounts in accordance with this Act.

## **Part 4—Grants of financial assistance to eligible higher education institutions**

### **Division 1—Introduction**

#### **39 Simplified outline**

The following is a simplified outline of this Part:

- The Higher Education Endowment Fund Advisory Board is established.
- The function of the Higher Education Endowment Fund Advisory Board is to advise the Education Minister about the following matters:
  - (a) making grants of financial assistance to eligible higher education institutions in relation to capital expenditure;
  - (b) making grants of financial assistance to eligible higher education institutions in relation to research facilities.
- The Education Minister may authorise:
  - (a) grants of financial assistance to eligible higher education institutions in relation to capital expenditure; and
  - (b) grants of financial assistance to eligible higher education institutions in relation to research facilities.
- The total amount of grants authorised in a financial year must not exceed the maximum grants amount calculated in accordance with the Maximum Grants Rules.

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- The terms and conditions on which financial assistance is granted to an eligible higher education institution are to be set out in a written agreement between the Commonwealth and the institution.

## **Division 2—Higher Education Endowment Fund Advisory Board**

### **40 Higher Education Endowment Fund Advisory Board**

- (1) The Higher Education Endowment Fund Advisory Board is established.
- (2) The Advisory Board consists of such persons as the Education Minister from time to time appoints, by writing, to the Advisory Board.
- (3) The Education Minister may terminate a person's appointment to the Advisory Board.
- (4) The Education Minister may give the Advisory Board written directions as to:
  - (a) the way in which the Advisory Board is to carry out its function; and
  - (b) procedures to be followed in relation to meetings.
- (5) A direction under subsection (4) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 44 of that Act.

Note 2: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 54 of that Act.

### **41 Function of the Advisory Board**

- (1) The function of the Advisory Board is to advise the Education Minister about matters referred to it by the Education Minister.
- (2) Each matter referred to the Advisory Board must be a matter that relates to:
  - (a) making grants of financial assistance to eligible higher education institutions in relation to capital expenditure; or
  - (b) making grants of financial assistance to eligible higher education institutions in relation to research facilities.

#### **42 Remuneration and allowances**

- (1) A member of the Advisory Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is determined by the Education Minister.
- (2) A member of the Advisory Board is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **43 Disclosure of interests**

- (1) This section applies to a member of the Advisory Board who has a material personal interest in a matter being considered, or about to be considered, by the Advisory Board.
- (2) The member must, as soon possible after the relevant facts have come to the member's knowledge:
  - (a) disclose the nature of the interest at a meeting of the Advisory Board; and
  - (b) disclose the nature of the interest to the Education Minister.
- (3) A disclosure under paragraph (2)(a) must be recorded in the minutes of the meeting.
- (4) The Education Minister must terminate the appointment of a member of the Advisory Board if the member fails, without reasonable excuse, to comply with subsection (2).
- (5) Subsection (4) does not limit subsection 40(3).

#### **44 Resignation**

- (1) A member of the Advisory Board may resign his or her appointment by giving the Education Minister a written resignation.

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**Division 2** Higher Education Endowment Fund Advisory Board

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- (2) The resignation takes effect on the day it is received by the Education Minister or, if a later day is specified in the resignation, on that later day.

## **Division 3—Authorisation of grants**

### **45 Authorisation of grants**

- (1) The Education Minister may, by writing, authorise a grant of financial assistance to an eligible higher education institution in relation to capital expenditure.
- (2) The Education Minister may, by writing, authorise a grant of financial assistance to an eligible higher education institution in relation to a research facility.
- (3) Subsection (1) does not limit subsection (2).
- (4) Subsection (2) does not limit subsection (1).
- (5) An instrument under subsection (1) or (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the instrument.

### **46 Limits on authorisation of grants**

- (1) The Education Minister must not authorise a grant under section 45 during a financial year unless the Education Minister has been given a statement under subsection 48(1) in relation to the financial year.  

Note: A statement under subsection 48(1) sets out the result of the Future Fund Board's calculation of the maximum grants amount in relation to the financial year.
- (2) The total amount of grants authorised under section 45 during a financial year must not exceed the result set out in the statement given to the Education Minister under subsection 48(1) in relation to the financial year.
- (3) The Education Minister must not authorise a grant under section 45 before 1 July 2008.

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**47 Maximum Grants Rules**

- (1) The responsible Ministers may, by writing, make rules for ascertaining the maximum amount that can be debited from the Fund Account during a financial year for the following purposes:
- (a) making grants of financial assistance to eligible higher education institutions in relation to capital expenditure;
  - (b) making grants of financial assistance to eligible higher education institutions in relation to research facilities;
- and must make at least one such rule before 1 July 2008.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: See also section 53 (additional obligations of responsible Ministers).

- (2) Rules under subsection (1) are to be known as the ***Maximum Grants Rules***.

*Criteria etc.*

- (3) Subject to subsection (5), in making rules under subsection (1), the responsible Ministers must have regard to:
- (a) the objective that, over the medium to long term, grants authorised under section 45 should not result in the balance of the Fund falling below the real value of the Government contributions to the Fund Account; and
  - (b) the objective of moderating volatility in maximum grants amounts from financial year to financial year;
- and must not have regard to any other matters.

Note: For ***medium to long term***, see subsection (8).

- (4) The responsible Ministers must not make rules under subsection (1) that are inconsistent with this Act.

*Accumulated nominal earnings*

- (5) The maximum amount that can be debited from the Fund Account during a financial year for the following purposes:
- (a) making grants of financial assistance to eligible higher education institutions in relation to capital expenditure;

(b) making grants of financial assistance to eligible higher education institutions in relation to research facilities; must not exceed the accumulated nominal earnings of the Fund as at the start of the financial year.

Note: For *accumulated nominal earnings*, see section 49.

*Consultation*

- (6) Before making rules under subsection (1), the responsible Ministers must:
- (a) consult the Education Minister; and
  - (b) consult the Future Fund Board in relation to any implications for the performance of Future Fund Board's Higher Education Endowment Fund investment functions.

*Legislative instrument*

- (7) Rules made under subsection (1) are legislative instruments, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the rules.

*Medium to long term*

- (8) For the purposes of this section, the *medium to long term* is a period of 5 years or longer.

#### **48 Calculation of maximum grants amount**

- (1) As soon as practicable after the start of:
- (a) the financial year beginning on 1 July 2008; and
  - (b) each later financial year;
- the Future Fund Board must:
- (c) calculate, in accordance with the Maximum Grants Rules, the maximum amount that can be debited from the Fund Account during the financial year for the following purposes:
    - (i) making grants of financial assistance to eligible higher education institutions in relation to capital expenditure;

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- (ii) making grants of financial assistance to eligible higher education institutions in relation to research facilities; and
  - (d) give the Education Minister a written statement setting out the result of the calculation; and
  - (e) give each responsible Minister a copy of the statement.
- (2) A statement, or a copy of a statement, given under subsection (1) may be accompanied by such comments (if any) about the calculation as the Future Fund Board considers relevant.

**49 Accumulated nominal earnings**

For the purposes of this Act, the *accumulated nominal earnings* of the Fund as at the start of a financial year is:

- (a) if the balance of the Fund as at the start of the financial year exceeds the total of the Government contributions to the Fund Account that were made before the start of the financial year—the amount of the excess; or
- (b) otherwise—nil.

## **Division 4—Terms and conditions of grants**

### **50 Terms and conditions of grants of financial assistance to eligible higher education institutions**

- (1) This section applies if an amount is to be debited from the Fund Account for the purpose of making a grant of financial assistance to an eligible higher education institution as mentioned in paragraph 16(1)(a) or (b).
- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the eligible higher education institution.
- (3) An agreement under subsection (2) may be entered into by the Education Minister on behalf of the Commonwealth.

## Part 5—Reporting obligations

### 51 Nominated Minister may require Future Fund Board to prepare reports or give information

#### *Reports*

- (1) The nominated Minister may, by written notice given to the Future Fund Board, require the Future Fund Board to:
  - (a) prepare a report about one or more specified matters relating to the performance of the Future Fund Board's functions under this Act; and
  - (b) give copies of the report to the nominated Minister within the period specified in the notice.

#### *Information*

- (2) The nominated Minister may, by written notice given to the Future Fund Board, require the Future Fund Board to:
  - (a) prepare a document setting out specified information relating to the performance of the Future Fund Board's functions under this Act; and
  - (b) give copies of the document to the nominated Minister within the period specified in the notice.

#### *Compliance*

- (3) The Future Fund Board must comply with a requirement under subsection (1) or (2).

#### *Publication of reports and documents*

- (4) The nominated Minister may cause to be published (whether on the Internet or otherwise):
  - (a) a report under subsection (1); or
  - (b) a document under subsection (2).

*Reports and documents*

- (5) A report under subsection (1) is not a legislative instrument.
- (6) A document under subsection (2) is not a legislative instrument.

**52 Keeping the responsible Ministers informed etc.**

- (1) The Future Fund Board must keep the responsible Ministers informed of the operations of the Future Fund Board under this Act.
- (2) The Future Fund Board must give the nominated Minister such reports, documents and information in relation to those operations as are appropriate.

## Part 6—Miscellaneous

### 53 Higher Education Endowment Fund Investment Mandate and Maximum Grant Rules—additional obligations of responsible Ministers

#### *Higher Education Endowment Fund Investment Mandate*

- (1) If the responsible Ministers propose to:
- (a) give a direction under subsection 24(1); or
  - (b) vary or revoke a direction given under subsection 24(1);
- the responsible Ministers must:
- (c) consider whether they should:
    - (i) make rules under subsection 47(1); or
    - (ii) vary or revoke rules made under subsection 47(1); and
  - (d) consult the Future Fund Board about whether the responsible Ministers should:
    - (i) make rules under subsection 47(1); or
    - (ii) vary or revoke rules made under subsection 47(1).

#### *Maximum Grant Rules*

- (2) If the responsible Ministers propose to:
- (a) make rules under subsection 47(1); or
  - (b) vary or revoke rules made under subsection 47(1);
- the responsible Ministers must:
- (c) consider whether they should:
    - (i) give a direction under subsection 24(1); or
    - (ii) vary or revoke a direction given under subsection 24(1);  
and
  - (d) consult the Future Fund Board about whether the responsible Ministers should:
    - (i) give a direction under subsection 24(1); or
    - (ii) vary or revoke a direction given under subsection 24(1).

**54 Nominated Minister**

- (1) As soon as practicable after the commencement of this Act, the responsible Ministers must, by writing, determine that one of them is to be the *nominated Minister* for the purposes of this Act.
- (2) A determination under subsection (1) may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (3) A determination under subsection (1) is not a legislative instrument.
- (4) The nominated Minister may give the other responsible Minister:
  - (a) a report under subsection 51(1) or 52(2); or
  - (b) a document under subsection 51(2) or 52(2); or
  - (c) any other information or document obtained by the nominated Minister under this Act.
- (5) As soon as practicable after receiving:
  - (a) a report under subsection 51(1) or 52(2); or
  - (b) a document under subsection 51(2) or 52(2); or
  - (c) any other document or information under this Act;the nominated Minister must give a copy of the report, document or other document or information, as the case may be, to the Education Minister.

**55 Delegation by the Education Minister**

- (1) The Education Minister may, by writing, delegate any or all of his or her powers under section 15, 19, 45 or 50 to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Education Minister.

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**56 Delegation by the Finance Minister**

- (1) The Finance Minister may, by writing, delegate his or her power under section 18 to:
  - (a) an SES employee, or acting SES employee, in the Agency; or
  - (b) the Chair.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Finance Minister.

**57 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted to be prescribed by this Act; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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*[Minister's second reading speech made in—  
House of Representatives on 16 August 2007  
Senate on 12 September 2007]*

(157/07)

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