



DisabilityCare Australia Fund Act 2013

No. 37, 2013

An Act to establish the DisabilityCare Australia 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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DisabilityCare Australia Fund Act 2013

No. 37, 2013

An Act to establish the DisabilityCare Australia Fund, and for related purposes

[Assented to 28 May 2013]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *DisabilityCare Australia Fund Act 2013*.

Section 2

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 May 2013
2. Sections 3 to 8	1 July 2013.	1 July 2013
3. Parts 2, 3 and 4	The later of: (a) 1 July 2014; and (b) the commencement of Schedule 1 to the <i>Medicare Levy Amendment (DisabilityCare Australia) Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2014 (paragraph (a) applies)
4. Part 5	1 July 2013.	1 July 2013
5. Section 52	The later of: (a) 1 July 2014; and (b) the commencement of Schedule 1 to the <i>Medicare Levy Amendment (DisabilityCare Australia) Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2014 (paragraph (a) applies)
6. Section 53	1 July 2013.	1 July 2013

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
7. Sections 54 to 56	The later of: (a) 1 July 2014; and (b) the commencement of Schedule 1 to the <i>Medicare Levy Amendment (DisabilityCare Australia) Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2014 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up the DisabilityCare Australia Fund, which consists of:
 - (a) the DisabilityCare Australia Fund Special Account; and
 - (b) the investments of the DisabilityCare Australia Fund.
- The main purposes of the DisabilityCare Australia Fund Special Account are:
 - (a) to transfer amounts to the COAG Reform Fund in order to reimburse the States and Territories for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*; and

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(b) to debit amounts in order to reimburse the Commonwealth for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*.

- The Future Fund Board is responsible for deciding how to invest the DisabilityCare Australia Fund.
- Investments of the DisabilityCare Australia Fund will consist of financial assets.
- The Future Fund Board is bound by a DisabilityCare Australia Fund Investment Mandate given to it by the responsible Ministers.
- This Act also sets up the DisabilityCare Australia Transitional Special Account, which will fund the implementation of the *National Disability Insurance Scheme Act 2013* in its initial period of operation.

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

4 Definitions

In this Act:

acquire includes acquire by way of issue.

Agency means the Future Fund Management Agency.

Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

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 DisabilityCare Australia Fund means the sum of:

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

COAG Reform Fund means the COAG Reform Fund established by section 5 of the *COAG Reform Fund Act 2008*.

debenture has the same meaning as in the *Corporations Act 2001*.

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

DisabilityCare Australia Fund means the DisabilityCare Australia Fund established by section 10.

DisabilityCare Australia Fund investment function of the Future Fund Board means:

- (a) a function or power conferred on the Future Fund Board by section 27, 28, 34, 36, 38 or 39; or
- (b) a right or power conferred on the Future Fund Board in its capacity as the holder of an investment of the DisabilityCare Australia Fund.

DisabilityCare Australia Fund Investment Mandate has the meaning given by subsection 29(4).

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DisabilityCare Australia Fund Special Account means the DisabilityCare Australia Fund Special Account established by section 11.

DisabilityCare Australia Transitional Special Account means the DisabilityCare Australia Transitional Special Account established by section 48.

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 same meaning as in the *Nation-building Funds Act 2008*.

Future Fund Board means the Future Fund Board of Guardians.

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

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

modifications includes additions, omissions and substitutions.

National Disability Insurance Department means the Department administered by the National Disability Insurance Minister.

National Disability Insurance Minister means the Minister who administers the *National Disability Insurance Scheme Act 2013*.

National Disability Insurance Scheme Launch Transition Agency means the National Disability Insurance Scheme Launch Transition Agency established by section 117 of the *National Disability Insurance Scheme Act 2013*.

person includes a partnership.

Note: See also subsection 2C(1) 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.

Treasury Department means the Department administered by the Treasurer.

value, of an investment of the DisabilityCare Australia 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.

5 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.

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6 Extension to external Territories

This Act extends to every external Territory.

7 Extra-territorial application

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

8 Object

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

- (a) to reimburse the States and Territories for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*; and
- (b) to reimburse the Commonwealth for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*; and
- (c) to fund the implementation of the *National Disability Insurance Scheme Act 2013* in its initial period of operation.

Part 2—DisabilityCare Australia Fund

Division 1—Introduction

9 Simplified outline

The following is a simplified outline of this Part:

- This Part sets up the DisabilityCare Australia Fund.
- The DisabilityCare Australia Fund consists of:
 - (a) the DisabilityCare Australia Fund Special Account; and
 - (b) the investments of the DisabilityCare Australia Fund.
- The Treasurer may determine that amounts are to be credited to the DisabilityCare Australia Fund Special Account.
- Amounts may be debited from the DisabilityCare Australia Fund Special Account in accordance with the purposes of the DisabilityCare Australia Fund Special Account.
- The main purposes of the DisabilityCare Australia Fund Special Account are:
 - (a) to transfer amounts to the COAG Reform Fund in order to reimburse the States and Territories for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*; and
 - (b) to debit amounts in order to reimburse the Commonwealth for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*.

Part 2 DisabilityCare Australia Fund

Division 1 Introduction

Section 9

- The Finance Minister is responsible for authorising debits (the amounts of which will be credited to the COAG Reform Fund) on the recommendation of the National Disability Insurance Minister.

Division 2—Establishment of the DisabilityCare Australia Fund etc.

10 Establishment of the DisabilityCare Australia Fund

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

11 Establishment of the DisabilityCare Australia Fund Special Account

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

Note: 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 DisabilityCare Australia Fund

12 Credits to Special Account—determinations by the Treasurer

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

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

- (2) In making a determination under subsection (1), the Treasurer must have regard to the object of this Act.
- (3) A determination under subsection (1) is not a legislative instrument.

13 Maximum amount of credits for States and Territories for a financial year

- (1) For the financial year mentioned in column 1 of an item in the following table, the maximum amount of credits for States and Territories is the amount mentioned in column 2 of that item:

Maximum amount of credits for States and Territories		
Item	Column 1 Financial year	Column 2 Maximum amount of credits for States and Territories
1	2014-2015	\$825.000 million
2	2015-2016	\$853.875 million
3	2016-2017	\$883.761 million
4	2017-2018	\$914.692 million
5	2018-2019	\$946.706 million

Maximum amount of credits for States and Territories		
Item	Column 1 Financial year	Column 2 Maximum amount of credits for States and Territories
6	2019-2020	\$979.841 million
7	2020-2021	\$1014.136 million
8	2021-2022	\$1049.630 million
9	2022-2023	\$1086.367 million
10	2023-2024	\$1124.390 million

- (2) The consequences of the maximum amount of credits for States and Territories for a financial year being a particular amount are set out in section 19.

Division 4—Debits of amounts from the DisabilityCare Australia Fund, etc.

14 Purposes of the DisabilityCare Australia Fund Special Account—main purposes

Each of the following is a purpose of the DisabilityCare Australia Fund Special Account:

- (a) to transfer amounts to the COAG Reform Fund in order to reimburse the States and Territories for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*;
- (b) to debit amounts in order to reimburse the Commonwealth for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*.

15 Purposes of the DisabilityCare Australia Fund Special Account—purposes related exclusively to the investments etc. of the DisabilityCare Australia Fund

Each of the following is a purpose of the DisabilityCare Australia Fund Special Account:

- (a) paying the costs of, or incidental to, the acquisition of financial assets under section 27;
- (b) paying expenses of an investment of the DisabilityCare Australia Fund;
- (c) paying the costs of, or incidental to, the acquisition of derivatives under section 36;
- (d) 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 39(1);
- (e) 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 DisabilityCare Australia Fund;

- (f) paying a premium in respect of a contract of insurance entered into by the Future Fund Board exclusively in connection with the DisabilityCare Australia Fund;
- (g) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Future Fund Board exclusively in connection with the DisabilityCare Australia Fund.

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

16 Purposes of the DisabilityCare Australia Fund Special Account— purposes not related exclusively to the DisabilityCare Australia Fund

Each of the following is a purpose of the DisabilityCare Australia Fund Special 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 15(e); or
 - (ii) paragraph 2(1)(g) of Schedule 2 to the *Future Fund Act 2006*; or
 - (iii) paragraph 18(1)(j) of the *Nation-building Funds Act 2008*; or
 - (iv) paragraph 136(1)(j) of the *Nation-building Funds Act 2008*; or
 - (v) paragraph 137(e) of the *Nation-building Funds Act 2008*; or
 - (vi) paragraph 218(1)(f) of the *Nation-building Funds Act 2008*;
- (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 15(f); or
 - (ii) paragraph 2(1)(h) of Schedule 2 to the *Future Fund Act 2006*; or

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- (iii) paragraph 18(1)(k) of the *Nation-building Funds Act 2008*; or
 - (iv) paragraph 136(1)(k) of the *Nation-building Funds Act 2008*; or
 - (v) paragraph 137(f) of the *Nation-building Funds Act 2008*; or
 - (vi) paragraph 218(1)(g) of the *Nation-building Funds Act 2008*;
- (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 section 15; or
 - (ii) a paragraph of subclause 2(1) of Schedule 2 to the *Future Fund Act 2006*; or
 - (iii) a paragraph of subsection 18(1) of the *Nation-building Funds Act 2008*; or
 - (iv) a paragraph of subsection 136(1) of the *Nation-building Funds Act 2008*; or
 - (v) a paragraph of section 137 of the *Nation-building Funds Act 2008*; or
 - (vi) a paragraph of subsection 218(1) of the *Nation-building Funds Act 2008*;
- (d) paying remuneration, and other employment-related costs and expenses, in respect of members of the staff of the Agency;
- (e) 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*;
- (f) 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 Reimbursing the Commonwealth—transfer to general CRF

- (1) The Finance Minister may, by writing, direct that a specified amount is to be debited from the DisabilityCare Australia Fund Special Account.
- (2) A direction under subsection (1) is not a legislative instrument.
- (3) The Finance Minister must give a copy of a direction under subsection (1) to the Treasurer and the National Disability Insurance Minister.

18 Reimbursing the States and Territories—channelling of State/Territory grants payments through the COAG Reform Fund

- (1) The Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the DisabilityCare Australia Fund Special Account; and
 - (b) credited to the COAG Reform Fund;on a specified day.
- (2) The direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making a specified grant of financial assistance in relation to reimbursing the States and Territories for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*.
- (3) Two or more directions under subsection (1) may be set out in the same document.
- (4) A direction under subsection (1) is not a legislative instrument.
- (5) The Finance Minister must give a copy of a direction under subsection (1) to the Treasurer and the National Disability Insurance Minister.

Section 19

19 Reimbursing the States and Territories—limit on annual debits based on maximum amount of credits for States and Territories

- (1) The total amount of debits from the DisabilityCare Australia Fund Special Account under section 18 in a financial year must not exceed the maximum amount of credits for States and Territories for the financial year under section 13 (taking into account the increase, if any, under a previous operation of subsection (4)).
- (2) If a direction under subsection 18(1) would, apart from this section, result in a contravention of subsection (1), the direction is invalid.
- (3) Subsection (4) applies if the total amount of debits from the DisabilityCare Australia Fund Special Account under subsection 18(1) in a financial year falls short of the maximum amount of credits for States and Territories for the financial year under section 13 (taking into account the increase, if any, under a previous operation of subsection (4)).
- (4) Increase the maximum amount of credits for States and Territories for the *next* financial year by the amount of the shortfall.

20 Reimbursing the States and Territories—recommendations about grants payments

A grant must not be specified under subsection 18(2) unless the National Disability Insurance Minister has recommended the specification of the grant.

21 Reimbursing the States and Territories—debit from the COAG Reform Fund

Scope

- (1) This section applies if:
 - (a) the Finance Minister gives a direction under subsection 18(1) for a purpose in relation to a grant of financial assistance to a State or Territory; and

- (b) the amount specified in the direction is credited to the COAG Reform Fund.

Debit from the COAG Reform Fund

- (2) The Treasurer must ensure that, as soon as practicable after the amount is credited, the COAG Reform Fund is debited for the purposes of making the grant.

22 Reimbursing the States and Territories—grant to a State or Territory

Scope

- (1) This section applies if:
 - (a) an amount is to be debited from the COAG Reform Fund for the purpose of making a grant of financial assistance to a State or Territory; and
 - (b) the grant is a grant of financial assistance in relation to reimbursing the States and Territories for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*; and
 - (c) the grant is covered by subsection 21(2).

Note: Subsection 21(2) deals with grants channelled through the COAG Reform Fund.

Terms and conditions

- (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 State or Territory.
- (3) An agreement under subsection (2) may be entered into by a Minister on behalf of the Commonwealth.

Section 23

23 Future Fund Board must ensure that there is sufficient money in the DisabilityCare Australia Fund Special Account to cover authorised debits etc.

The Future Fund Board must take all reasonable steps to ensure that the amount of money standing to the credit of the DisabilityCare Australia Fund Special Account is sufficient to cover the debit of amounts authorised, or proposed to be authorised, under section 17 or 18.

Note: This may require the Future Fund Board to realise an investment of the DisabilityCare Australia Fund in accordance with section 28.

Division 5—Inter-fund transfers

24 Transfers from the DisabilityCare Australia 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 Finance Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the DisabilityCare Australia Fund Special 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 DisabilityCare Australia Fund

25 Simplified outline

The following is a simplified outline of this Part:

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

26 Objects of investment of the DisabilityCare Australia Fund

- (1) The main object of the acquisition by the Future Fund Board of a financial asset as an investment of the DisabilityCare Australia Fund is to enhance the Commonwealth's ability:
 - (a) to reimburse the States and Territories for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*; and
 - (b) to reimburse the Commonwealth for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*.
- (2) The ancillary objects of the acquisition by the Future Fund Board of a financial asset as an investment of the DisabilityCare Australia 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 15(a) to (g) and 16(a) to (f).

27 Investment of the DisabilityCare Australia Fund

- (1) The Future Fund Board may invest amounts standing to the credit of the DisabilityCare Australia Fund Special 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 DisabilityCare Australia Fund.
- (4) This section does not authorise the acquisition of a derivative.

Note: For acquisition of derivatives, see section 36.

28 Management of investments of the DisabilityCare Australia Fund

- (1) Income derived from an investment of the DisabilityCare Australia Fund is to be credited to the DisabilityCare Australia Fund Special Account.
- (2) A return of capital, or any other financial distribution, relating to an investment of the DisabilityCare Australia Fund is to be credited to the DisabilityCare Australia Fund Special Account.
- (3) The Future Fund Board may realise an investment of the DisabilityCare Australia Fund.
- (4) Upon realisation of an investment of the DisabilityCare Australia Fund, the proceeds of the investment are to be credited to the DisabilityCare Australia Fund Special Account.
- (5) At any time before an investment of the DisabilityCare Australia 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 DisabilityCare Australia Fund.

Section 29

- (6) Section 39 of the *Financial Management and Accountability Act 1997* does not apply to an investment of the DisabilityCare Australia Fund.

29 DisabilityCare Australia Fund Investment Mandate

- (1) The responsible Ministers may give the Future Fund Board written directions about the performance of its DisabilityCare Australia Fund investment functions, and must give at least one such direction.

Note 1: *DisabilityCare Australia Fund investment function* is defined in section 4.

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

- (2) Subsection (1) has effect subject to section 30.
- (3) In giving a direction under subsection (1), the responsible Ministers must have regard to:
- (a) maximising the return earned on the DisabilityCare Australia Fund, consistent with international best practice for institutional investment; and
 - (b) enhancing the Commonwealth's ability:
 - (i) to reimburse the States and Territories for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*; and
 - (ii) to reimburse the Commonwealth for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*; and
 - (c) such other matters as the responsible Ministers consider relevant.
- (4) Directions under subsection (1) are to be known collectively as the ***DisabilityCare Australia 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 30.
- (8) The DisabilityCare Australia 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 DisabilityCare Australia Fund investment functions, the Future Fund Board must seek to:
 - (a) maximise the return earned on the DisabilityCare Australia Fund, consistent with international best practice for institutional investment; and
 - (b) enhance the Commonwealth's ability:
 - (i) to reimburse the States and Territories for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*; and
 - (ii) to reimburse the Commonwealth for expenditure incurred in relation to the *National Disability Insurance Scheme Act 2013*.
 - Note: *DisabilityCare Australia Fund investment function* is defined in section 4.
- (13) Subsection (12) has effect subject to:
 - (a) this Act; and
 - (b) a direction under subsection (1).

Section 30

30 Limitation on DisabilityCare Australia Fund Investment Mandate

- (1) The responsible Ministers must not give a direction under subsection 29(1) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring the Future Fund Board to:
 - (a) invest an amount standing to the credit of the DisabilityCare Australia Fund Special 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).

31 Future Fund Board to be consulted on DisabilityCare Australia Fund Investment Mandate

- (1) Before giving the Future Fund Board a direction under subsection 29(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 29(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.

32 Compliance with DisabilityCare Australia Fund Investment Mandate

- (1) The Future Fund Board must take all reasonable steps to comply with the DisabilityCare Australia Fund Investment Mandate.
- (2) As soon as practicable after the Future Fund Board becomes aware that it has failed to comply with the DisabilityCare Australia 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 DisabilityCare Australia Fund Investment Mandate; and
 - (b) setting out the action that the Future Fund Board proposes to take in order to comply with the DisabilityCare Australia Fund Investment Mandate.
- (3) If the responsible Ministers are satisfied that the Future Fund Board has failed to comply with the DisabilityCare Australia 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 DisabilityCare Australia 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 DisabilityCare Australia Fund Investment Mandate.
- (4) The Future Fund Board must comply with a direction under subsection (3).
- (5) A failure to comply with:
- (a) the DisabilityCare Australia Fund Investment Mandate; or
 - (b) a direction under subsection (3);
- does not affect the validity of any transaction.

Section 33

- (6) A direction under subsection (3) is not a legislative instrument.

33 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 DisabilityCare Australia 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*).

34 Borrowing

- (1) The Future Fund Board must not borrow money for a purpose in connection with the DisabilityCare Australia 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 DisabilityCare Australia 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 DisabilityCare Australia Fund.
- (3) The Future Fund Board is authorised to borrow money for a purpose in connection with the DisabilityCare Australia Fund if the borrowing takes place in such circumstances (if any) as are specified in the regulations.

35 DisabilityCare Australia 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 DisabilityCare Australia Fund:
 - (a) the investment strategy for the DisabilityCare Australia Fund;
 - (b) benchmarks and standards for assessing the performance of the DisabilityCare Australia Fund;
 - (c) risk management for the DisabilityCare Australia 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 DisabilityCare Australia 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 DisabilityCare Australia 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).

Section 36

- (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.

36 Derivatives

- (1) The Future Fund Board may acquire a derivative for the purpose of:
- (a) protecting the value of an investment of the DisabilityCare Australia Fund (other than a derivative); or
 - (b) protecting the return on an investment of the DisabilityCare Australia Fund (other than a derivative); or
 - (c) achieving indirect exposure to financial assets (other than derivatives) for a purpose in connection with the DisabilityCare Australia Fund; or
 - (d) achieving transactional efficiency for a purpose in connection with the DisabilityCare Australia 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 35(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 DisabilityCare Australia Fund.

37 Additional financial assets

If, as a result of:

- (a) the Future Fund Board's holding of an investment of the DisabilityCare Australia 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 DisabilityCare Australia Fund;
the Future Fund Board becomes the holder of a financial asset, that financial asset is taken to be an investment of the DisabilityCare Australia Fund.

38 Securities lending arrangements

- (1) The Future Fund Board may enter into securities lending arrangements for a purpose in connection with the DisabilityCare Australia 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 DisabilityCare Australia Fund Special 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 DisabilityCare Australia 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 DisabilityCare Australia Fund.

39 Investment managers

- (1) The Future Fund Board may engage one or more investment managers for purposes in connection with the DisabilityCare Australia Fund.
- (2) The Future Fund Board must not:
 - (a) invest amounts under subsection 27(1); or
 - (b) acquire derivatives under subsection 36(1); or
 - (c) enter into a securities lending arrangement under subsection 38(1); or
 - (d) realise financial assets that are investments of the DisabilityCare Australia Fund;unless the Future Fund Board does so:

Section 40

- (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.
- (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 DisabilityCare Australia Fund at such times and in such manner as the Future Fund Board determines.

40 Custody of securities

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

41 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 DisabilityCare Australia Fund;

the refund is to be credited to the DisabilityCare Australia Fund Special 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*.

42 Realisation of non-financial assets

- (1) If an asset held by the Future Fund Board as an investment of the DisabilityCare Australia 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 DisabilityCare Australia Fund, until the realisation.
- (2) If an asset acquired by the Future Fund Board, purportedly as an investment of the DisabilityCare Australia 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 DisabilityCare Australia Fund, from the time of its acquisition by the Future Fund Board until the realisation.

43 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—Reporting obligations etc.

44 Finance Minister to prepare report on balance of DisabilityCare Australia Special Account etc.

- (1) At the end of each quarter starting on or after 1 July 2014, the Finance Minister must cause a report to be prepared setting out:
 - (a) the balance of the DisabilityCare Australia Fund at the end of the quarter; and
 - (b) the total States' and Territories' share of the DisabilityCare Australia Fund.
- (2) The Finance Minister must cause the report to be published on the internet as soon as practicable after the end of the quarter.
- (3) In this section:

quarter means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October of a year.

45 Finance Minister may require Future Fund Board to prepare reports or give information

Reports

- (1) The Finance 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 Finance Minister within the period specified in the notice.

Information

- (2) The Finance 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 Finance 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 Finance 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.

46 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 Finance Minister such reports, documents and information in relation to those operations as are appropriate.

47 Finance Minister may give reports to other Ministers etc.

The Finance Minister may give:

- (a) the Treasurer; or
 - (b) the National Disability Insurance Minister;
- any of the following:
- (c) a report under subsection 45(1) or 46(2);

Part 4 Reporting obligations etc.

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- (d) a document under subsection 45(2) or 46(2);
- (e) any other information or document obtained by the Finance Minister under this Act.

Part 5—DisabilityCare Australia Transitional Special Account

Division 1—Establishment of the DisabilityCare Australia Transitional Special Account

48 Establishment of the DisabilityCare Australia Transitional Special Account

- (1) The DisabilityCare Australia Transitional Special Account is established by this section.
- (2) The DisabilityCare Australia Transitional Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

Note: 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 2—Credits of amounts to the DisabilityCare Australia Transitional Special Account

49 Credits to Special Account—determinations by National Disability Insurance Minister

- (1) The National Disability Insurance Minister may, by writing, determine that:
- (a) a specified amount is to be credited to the DisabilityCare Australia Transitional Special Account on a specified day; or
 - (b) a specified amount is to be credited to the DisabilityCare Australia Transitional Special Account in specified instalments on specified days.

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

- (2) In making a determination under subsection (1), the National Disability Insurance Minister must have regard to the object of this Act.
- (3) A determination under subsection (1) is not a legislative instrument.

Division 3—Debits of amounts from the DisabilityCare Australia Transitional Special Account

50 Purposes of the DisabilityCare Australia Transitional Special Account—General

Each of the following is a purpose of the DisabilityCare Australia Transitional Special Account:

- (a) making payments in relation to the payment or discharge of any expenses, charges and obligations incurred or undertaken by the National Disability Insurance Scheme Launch Transition Agency in relation to the *National Disability Insurance Scheme Act 2013*, so long as the payments are authorised under subsection 51(1);
- (b) making payments in relation the payment or discharge of any expenses, charges and obligations incurred or undertaken by the National Disability Insurance Department, on behalf of the Commonwealth, in order to administer the *National Disability Insurance Scheme Act 2013*, so long as the payments are authorised under subsection 51(1);
- (c) making payments to the National Disability Insurance Scheme Launch Transition Agency, so long as the payments are authorised under subsection 51(2).

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

Division 4—Payments

51 Authorisation of payments

- (1) The National Disability Insurance Minister may, by writing, authorise a payment in relation to any of the following:
 - (a) the payment or discharge of any expenses, charges and obligations incurred or undertaken by the National Disability Insurance Scheme Launch Transition Agency in relation to the *National Disability Insurance Scheme Act 2013*;
 - (b) the payment or discharge of any expenses, charges and obligations incurred or undertaken by the National Disability Insurance Department, on behalf of the Commonwealth, in order to administer the *National Disability Insurance Scheme Act 2013*.
- (2) The National Disability Insurance Minister may, by writing, authorise a payment to the National Disability Insurance Scheme Launch Transition Agency.
- (3) The National Disability Insurance Minister must authorise a payment under subsection (2) equal to the balance of the DisabilityCare Australia Transitional Special Account before:
 - (a) unless paragraph (b) applies—1 July 2014; or
 - (b) if the National Disability Insurance Minister considers that a later day is appropriate, having regard to the object of this Act—that later day.
- (4) An instrument under subsection (1) or (2) is not a legislative instrument.

Part 6—Miscellaneous

52 Delegation by the Finance Minister

Department

- (1) The Finance Minister may, by writing, delegate any or all of his or her powers under section 17, 18 or 24 to:
 - (a) the Secretary of the Finance Department; or
 - (b) an SES employee, or acting SES employee, in the Finance Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

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

Agency

- (3) The Finance Minister may, by writing, delegate any or all of his or her powers under section 24 to:
 - (a) the Chair; or
 - (b) an SES employee, or acting SES employee, in the Agency.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

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

53 Delegation by the National Disability Insurance Minister

- (1) The National Disability Insurance Minister may, by writing, delegate any or all of his or her powers under section 20, 49 or 51 to:
 - (a) the Secretary of the National Disability Insurance Department; or
 - (b) an SES employee, or acting SES employee, in the National Disability Insurance Minister Department.

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Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

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

54 Delegation by the Treasurer

The Treasurer may, by writing, delegate any or all of his or her functions under section 12 or subsection 21(2) to:

- (a) the Secretary of the Treasury Department; or
- (b) an SES employee, or acting SES employee, in the Treasury Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

55 Review of operation of Act

The responsible Ministers must cause a review of the operation of this Act to be undertaken before:

- (a) unless paragraph (b) applies—30 June 2024; or
- (b) if the responsible Ministers consider that another date is appropriate—that date.

56 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 15 May 2013
Senate on 16 May 2013]*

(115/13)

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