



Higher Education Endowment Fund (Consequential Amendments) Act 2007

No. 161, 2007

**An Act to deal with consequential matters relating
to the enactment of the *Higher Education
Endowment Fund Act 2007*, and for other purposes**

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

Contents

1	Short title	1
2	Commencement	2
3	Schedule(s)	2
Schedule 1—Amendments		3
Part 1—Amendments		3
<i>Future Fund Act 2006</i>		3
<i>Income Tax Assessment Act 1997</i>		16
Part 2—Transitional and application provisions		17



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No. 161, 2007

**An Act to deal with consequential matters relating
to the enactment of the *Higher Education
Endowment Fund Act 2007*, and for other purposes**

[Assented to 24 September 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Endowment Fund
(Consequential Amendments) Act 2007*.

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 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	24 September 2007
2. Schedule 1	At the same time as the <i>Higher Education Endowment Fund Act 2007</i> commences.	25 September 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Future Fund Act 2006

1 Title

Omit “related”, substitute “other”.

2 Subsection 3(1)

Before “object”, insert “main”.

3 Section 4

Omit:

- | |
|---|
| <ul style="list-style-type: none">• The Board is bound by an Investment Mandate given to it by the responsible Ministers. |
|---|

substitute:

- | |
|--|
| <ul style="list-style-type: none">• The Board is bound by a Future Fund Investment Mandate given to it by the responsible Ministers. |
|--|

4 At the end of section 4

Add:

Note: The Future Fund Board of Guardians has additional functions under the *Higher Education Endowment Fund Act 2007*.

5 Section 5

Insert:

business entity means:

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

6 Section 5

Insert:

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

7 Section 5

Insert:

Future Fund investment function of the Board means:

- (a) a function or power conferred on the Board by section 16, 17, 23, 25, 27 or 28; or
- (b) a right or power conferred on the Board in its capacity as the holder of an investment of the Fund.

8 Section 5

Insert:

Future Fund Investment Mandate has the meaning given by subsection 18(3).

9 Section 5

Insert:

Higher Education Endowment Fund means the Higher Education Endowment Fund established by section 11 of the *Higher Education Endowment Fund Act 2007*.

10 Section 5

Insert:

Higher Education Endowment Fund investment function has the same meaning as in the *Higher Education Endowment Fund Act 2007*.

11 Section 5

Insert:

Higher Education Endowment Fund matter means a matter that relates to the Board's functions under the *Higher Education Endowment Fund Act 2007*.

12 Section 5

Insert:

Higher Education Endowment Fund Special Account means the Higher Education Endowment Fund Special Account established by section 12 of the *Higher Education Endowment Fund Act 2007*.

13 Section 5 (definition of *investment function*)

Repeal the definition.

14 Section 5 (definition of *Investment Mandate*)

Repeal the definition.

15 Section 14

Omit:

- | |
|---|
| <ul style="list-style-type: none">• The Board is bound by an Investment Mandate given to it by the responsible Ministers. |
|---|

substitute:

- | |
|--|
| <ul style="list-style-type: none">• The Board is bound by a Future Fund Investment Mandate given to it by the responsible Ministers. |
|--|

16 Subsection 15(1)

Omit “2(a)”, substitute “2(1)(a)”.

17 Subsection 15(2)

Omit “2(c) to (m)”, substitute “2(1)(c) to (i), and paragraphs 2(2)(a) to (g).”.

18 Subsection 18(1)

Omit “investment functions”, substitute “Future Fund investment functions”.

Note: The headings to sections 18 and 19 are altered by inserting “**Future Fund**” before “**Investment**”.

19 After subsection 18(1)

Insert:

(1A) Subsection (1) has effect subject to section 18A.

20 Subsection 18(3)

Omit “Investment Mandate”, substitute “Future Fund Investment Mandate”.

21 After subsection 18(5)

Insert:

(5A) Subsection (4) has effect subject to section 18A.

22 Subsection 18(6)

Omit “Investment Mandate”, substitute “Future Fund Investment Mandate”.

23 Subsection 18(10)

Omit “investment functions”, substitute “Future Fund investment functions”.

24 Subsection 18(10) (note)

Omit “*Investment function*”, substitute “*Future Fund investment function*”.

25 Subsection 18(12)

Omit “Investment Mandate” (wherever occurring), substitute “Future Fund Investment Mandate”.

26 After section 18

Insert:

18A Limitation on Future Fund Investment Mandate

- (1) The responsible Ministers must not give a direction under subsection 18(1) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring the Board to:
- (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).

27 Section 20

Omit “Investment Mandate” (wherever occurring), substitute “Future Fund Investment Mandate”.

Note: The heading to section 20 is altered by inserting “**Future Fund**” before “**Investment**”.

28 At the end of subsection 21(2)

Add “if the acquisition is the result of the performance by the Board of its Future Fund investment functions”.

29 Section 22

Repeal the section.

30 Subsections 23(1) and (2)

After “borrow money”, insert “for a purpose in connection with the Fund”.

31 Subsection 23(3)

After “borrow money”, insert “for a purpose in connection with the Fund if the borrowing takes place”.

32 Subsection 24(1)

After “matters”, insert “in connection with the Fund”.

33 Subsections 24(2) and (6)

Omit “Investment Mandate”, substitute “Future Fund Investment Mandate”.

34 Paragraph 25(1)(c)

After “derivatives)”, insert “for a purpose in connection with the Fund”.

35 At the end of paragraph 25(1)(d)

Add “for a purpose in connection with the Fund”.

36 At the end of subsection 27(1)

Add “for a purpose in connection with the Fund”.

37 Subsections 27(2), (3) and (4)

After “arrangement”, insert “entered into under subsection (1)”.

38 At the end of subsection 28(1)

Add “for purposes in connection with the Fund”.

39 Paragraph 28(2)(c)

After “arrangement”, insert “under subsection 27(1)”.

40 At the end of paragraph 28(2)(d)

Add “that are investments of the Fund”.

41 Paragraph 28(2)(e)

After “Board”, insert “under subsection (1) of this section”.

42 Subsections 28(3) and (4)

After “engaged by the Board”, insert “under subsection (1)”.

43 At the end of section 28

Add:

- (5) Neither this Act nor the *Higher Education Endowment Fund Act 2007* prevents the same person from being engaged as an investment manager under both of the following provisions:
- (a) subsection (1) of this section;
 - (b) subsection 34(1) of the *Higher Education Endowment Fund Act 2007*.

44 Sections 30 and 31

Repeal the sections, substitute:

30 Refund of franking credits

If:

- (a) the 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.

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

45 At the end of section 33

Add:

Note: The Future Fund Board of Guardians has additional functions under the *Higher Education Endowment Fund Act 2007*.

46 At the end of paragraph 35(b)

Add “or the *Higher Education Endowment Fund Act 2007*”.

47 Subsection 54(1)

After “require the Board”, insert “to”.

48 Paragraph 54(1)(a)

Omit “to” (first occurring).

49 Paragraph 54(1)(a)

After “functions”, insert “under this Act”.

50 Paragraph 54(2)(a)

After “functions”, insert “under this Act”.

51 At the end of section 55

Add:

(3) Subsections (1) and (2) do not apply to the operations of the Board under the *Higher Education Endowment Fund Act 2007*.

52 Subsection 63(1)

Omit all the words after “doing”, substitute:

an act that:

(a) another provision of this Act; or

(b) the *Higher Education Endowment Fund Act 2007*;

requires the Board member to do.

53 After paragraph 63(2)(a)

Insert:

(aa) the *Higher Education Endowment Fund Act 2007*; or

54 Paragraph 81(1)(d)

Repeal the paragraph.

55 Paragraph 81(1)(e)

Omit “2(g)”, substitute “2(1)(f)”.

56 After paragraph 81(1)(e)

Insert:

(ea) the total amount debited from the Fund Account for the purpose mentioned in paragraph 2(2)(d) of Schedule 2; and

57 Paragraph 81(1)(f)

Omit “2(k)”, substitute “2(2)(e)”.

58 Paragraph 81(1)(g)

Omit “2(l)”, substitute “2(2)(f)”.

59 Paragraph 81(1)(h)

Omit “2(m)”, substitute “2(2)(g)”.

60 At the end of paragraph 81(1)(h)

Add “and”.

61 After paragraph 81(1)(h)

Insert:

- (i) the performance of the investments of the Higher Education Endowment Fund; and
- (j) the total amount debited from the Higher Education Endowment Fund Special Account for the purpose mentioned in paragraph 16(1)(f) of the *Higher Education Endowment Fund Act 2007*; and
- (k) the total amount debited from the Higher Education Endowment Fund Special Account for the purpose mentioned

in paragraph 16(4)(d) of the *Higher Education Endowment Fund Act 2007*; and

- (l) the total amount debited from the Higher Education Endowment Fund Special Account for the purpose mentioned in paragraph 16(4)(e) of the *Higher Education Endowment Fund Act 2007*; and
- (m) the total amount debited from the Higher Education Endowment Fund Special Account for the purpose mentioned in paragraph 16(4)(f) of the *Higher Education Endowment Fund Act 2007*; and
- (n) the total amount debited from the Higher Education Endowment Fund Special Account for the purpose mentioned in paragraph 16(4)(g) of the *Higher Education Endowment Fund Act 2007*;

62 Subsection 81(2)

Omit “(1)(d)”, substitute “(1)(e)”.

63 At the end of subsection 81(2)

Add “and (j) to (n)”.

64 At the end of section 81

Add:

- (4) As soon as practicable after receiving a report under this section, the nominated Minister must give a copy of the report to the Education Minister.

65 Section 84

Before “If”, insert “(1)”.

66 Paragraph 84(b)

Repeal the paragraph, substitute:

- (b) neither:
 - (i) another provision of this Act; nor
 - (ii) a provision of the *Higher Education Endowment Fund Act 2007*;

requires the amount to be credited to the Fund Account or the Higher Education Endowment Fund Special Account;

67 At the end of section 84

Add:

Transfer of amounts to the Higher Education Endowment Fund Special Account

- (2) If an amount is credited to the Fund Account under subsection (1), the nominated Minister may, by writing, direct that a specified amount is to be:
 - (a) debited from the Fund Account; and
 - (b) credited to the Higher Education Endowment Fund Special Account;on a specified day.
- (3) The specified amount must not exceed the amount credited to the Fund Account under subsection (1).
- (4) A direction under subsection (2) is not a legislative instrument.

68 After section 84

Insert:

84A Exemption from taxation

Income tax

- (1) To avoid doubt, for the purposes of section 50-25 of the *Income Tax Assessment Act 1997*, the Board is taken to be a public authority constituted under an Australian law.

Note: This means that the Board is exempt from income tax.

State/Territory taxes

- (2) To avoid doubt, the Board is not subject to taxation under a law of a State or Territory, if the Commonwealth is not subject to the taxation.

84B Franking credits

- (1) For the purposes of the *Income Tax Assessment Act 1997*, the Board is taken to be an exempt institution that is eligible for a refund.

Note: See Division 207 of the *Income Tax Assessment Act 1997* (franked distributions).

- (2) Subsection (1) has effect despite subsection 207-115(1) of the *Income Tax Assessment Act 1997*.
- (3) For the purposes of the *Income Tax Assessment Act 1997*, the Board's entitlement to a tax offset is to be determined as if any financial assets held by the Board were held by the Board in its own right.

84C Board must not have a significant stake in a foreign listed company

- (1) The Board must take all reasonable steps to ensure that it does not hold a stake in a foreign listed company of more than 20%.

Stake

- (2) The *Financial Sector (Shareholdings) Act 1998* applies for the purposes of determining the Board's stake in a foreign listed company, with the following modifications:
 - (a) assume that the Board does not have any associates;
 - (b) assume that any financial assets held by the Board were held by the Board in its own right;
 - (c) disregard paragraph 8(1)(c) of Schedule 1 to that Act;
 - (d) the modification set out in subsection (3).
- (3) For the purposes of determining the Board's stake in a foreign listed company, if, under a securities lending arrangement:
 - (a) at a particular time (the *disposal time*), the Board disposed of a financial asset (the *borrowed financial asset*) to another person (the *borrower*); and
 - (b) the Board may come under an obligation to:
 - (i) re-acquire the borrowed financial asset from the borrower at a later time; or
 - (ii) acquire an identical financial asset from the borrower at a later time;the borrowed financial asset is taken to be held by the Board during the period:
 - (c) beginning at the disposal time; and

- (d) ending when the obligation mentioned in paragraph (b) is discharged or can no longer arise.

Validity of transactions

- (4) A failure to comply with subsection (1) does not affect the validity of any transaction.

69 After subclause 8(1) of Schedule 1

Insert:

- (1A) A direction under subclause (1) in relation to financial assets must not direct the Board in relation to the investment of an amount credited to the Fund Account in respect of:
- (a) income derived from the financial assets; or
 - (b) a return of capital, or any other financial distribution, relating to the financial assets; or
 - (c) the proceeds of the realisation of the financial assets.

Note: For directions about the investment of amounts standing to the credit of the Fund Account, see section 18 (Future Fund Investment Mandate).

70 Clause 2 of Schedule 2

Before “The”, insert “(1)”.

Note: The following heading to new subclause 2(1) is inserted “*Superannuation purposes and purposes related exclusively to the Fund*”.

71 Clause 2 of Schedule 2

Omit “The purposes of the Fund Account are as follows”, substitute “Each of the following is a purpose of the Fund Account”.

72 Paragraphs 2(c) to (m) of Schedule 2

Repeal the paragraphs, substitute:

- (c) paying the costs of, or incidental to, the acquisition of financial assets under section 16;
- (d) paying expenses of an investment of the Fund;
- (e) paying the costs of, or incidental to, the acquisition of derivatives under section 25;
- (f) paying or discharging the costs, expenses and other obligations incurred by the Board under a contract between

the Board and an investment manager engaged under subsection 28(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 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 Board exclusively in connection with the Fund;
- (i) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Board exclusively in connection with the Fund.

73 At the end of clause 2 of Schedule 2 (after the notes)

Add:

Purposes not related exclusively to the Fund

- (2) 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 Board, where those costs, expenses or obligations are not covered by:
 - (i) paragraph (1)(g); or
 - (ii) paragraph 16(1)(g) of the *Higher Education Endowment Fund Act 2007*;
 - (b) paying a premium in respect of a contract of insurance entered into by the Board, where the premium is not covered by:
 - (i) paragraph (1)(h); or
 - (ii) paragraph 16(1)(h) of the *Higher Education Endowment Fund Act 2007*;
 - (c) paying or discharging any other costs, expenses, obligations or liabilities incurred by the Board, where the costs, expenses, obligations or liabilities are not covered by:
 - (i) a paragraph of subclause (1); or
 - (ii) a paragraph of subsection 16(1) of the *Higher Education Endowment Fund Act 2007*;
 - (d) paying remuneration and allowances of 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;
- (g) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in connection with the establishment or operation of the Agency.

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

74 Clause 3 of Schedule 2

Omit “2(a)”, substitute “2(1)(a)”.

Income Tax Assessment Act 1997

75 Subsection 30-25(2) (at the end of the table)

Add:

2.2.35 the Higher Education Endowment Fund the gift must be in money

76 At the end of section 30-25

Add:

- (3) A gift is made to the Higher Education Endowment Fund if, and only if, the gift is made to the Future Fund Board of Guardians for the purposes of the Higher Education Endowment Fund.

77 Subsection 30-315(2) (after table item 56)

Insert:

56A Higher Education Endowment Fund item 2.2.35

Part 2—Transitional and application provisions

78 Transitional—Investment Mandate

- (1) This item applies to a direction that:
 - (a) was given under subsection 18(1) of the *Future Fund Act 2006*; and
 - (b) was in force immediately before the commencement of this item.
- (2) The amendments of subsections 18(1), (3), (6), (10) and (12) of the *Future Fund Act 2006* made by this Schedule do not affect the continuity of the direction.

79 Transitional—borrowings

- (1) This item applies to a borrowing that:
 - (a) was authorised under subsection 23(2) or (3) of the *Future Fund Act 2006*; and
 - (b) was in existence immediately before the commencement of this item.
- (2) The *Future Fund Act 2006* has effect, after the commencement of this item, as if the borrowing had been authorised under subsection 23(2) or (3), as the case requires, of that Act as amended by this Schedule.

80 Transitional—investment policies

- (1) This item applies to policies that:
 - (a) were formulated under subsection 24(1) of the *Future Fund Act 2006*; and
 - (b) were in force immediately before the commencement of this item.
- (2) The policies have effect, after the commencement of this item, as if they had been formulated under subsection 24(1) of the *Future Fund Act 2006* as amended by this Schedule.

81 Transitional—derivatives

- (1) This item applies to a derivative that:
-

- (a) was acquired under subsection 25(1) of the *Future Fund Act 2006*; and
 - (b) was held by the Board immediately before the commencement of this item.
- (2) The *Future Fund Act 2006* has effect, after the commencement of this item, as if the derivative had been acquired under subsection 25(1) of that Act as amended by this Schedule.

82 Transitional—securities lending arrangements

- (1) This item applies to a securities lending arrangement that:
 - (a) was entered into under subsection 27(1) of the *Future Fund Act 2006*; and
 - (b) was in force immediately before the commencement of this item.
- (2) The *Future Fund Act 2006* has effect, after the commencement of this item, as if the securities lending arrangement had been entered into under subsection 27(1) of that Act as amended by this Schedule.

83 Transitional—investment managers

- (1) This item applies to an engagement of an investment manager if the engagement:
 - (a) was made under subsection 28(1) of the *Future Fund Act 2006*; and
 - (b) was in force immediately before the commencement of this item.
- (2) The engagement has effect, after the commencement of this item, as if it had been made under subsection 28(1) of the *Future Fund Act 2006* as amended by this Schedule.

84 Application of amendments—directions under subsection 18(1) of the *Future Fund Act 2006*

The amendments made by items 19, 21 and 26 apply in relation to a direction under subsection 18(1) of the *Future Fund Act 2006* that is given after the commencement of this item.

85 Application of amendment—directions under subclause 8(1) of Schedule 1 to the *Future Fund Act 2006*

The amendment made by item 69 applies in relation to a direction under subclause 8(1) of Schedule 1 to the *Future Fund Act 2006* that is given after the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 16 August 2007
Senate on 12 September 2007]*

(159/07)
