

EXPOSURE DRAFT

2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Australian Business Growth Fund Bill 2019

No. , 2019

(Treasury)

**A Bill for an Act about Commonwealth investment
in the Australian Business Growth Fund, and for
related purposes**

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1 **A Bill for an Act about Commonwealth investment**
2 **in the Australian Business Growth Fund, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act is the *Australian Business Growth Fund Act 2019*.

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Part 1 Preliminary

Section 2

1 **2 Commencement**

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

6

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

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

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

13 **3 Object of this Act**

14 The object of this Act is to increase investment in small and
15 medium Australian enterprises by the Commonwealth participating
16 in, and investing in (together with other persons), the Australian
17 Business Growth Fund in accordance with this Act.

18 **4 Simplified outline of this Act**

19 This Act authorises investment by the Commonwealth in the
20 Australian Business Growth Fund.

21 **5 Definitions**

22 In this Act:

23 *Australian Business Growth Fund* or *Fund*: see subsection 10(4).

1 **Commonwealth company** has the same meaning as in the *Public*
2 *Governance, Performance and Accountability Act 2013*.

3 **Corporations Act company** means a body corporate that is
4 incorporated, or taken to be incorporated, under the *Corporations*
5 *Act 2001*.

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

7 **eligible delegate**: see subsection 19(2).

8 **rules** means rules made under section 22.

9 **subsidiary** has the same meaning as in the *Corporations Act 2001*.

10 **6 Crown to be bound**

11 (1) This Act binds the Crown in each of its capacities.

12 (2) This Act does not make the Crown liable to be prosecuted for an
13 offence.

14 **7 Extension to external Territories**

15 This Act extends to every external Territory.

16 **8 Extra-territorial application**

17 This Act extends to acts, omissions, matters and things outside
18 Australia.

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Part 2 Commonwealth investment in the Australian Business Growth Fund

Section 9

1 **Part 2—Commonwealth investment in the**
2 **Australian Business Growth Fund**
3

4 **9 Simplified outline of this Part**

5 The Commonwealth may invest in a Corporations Act company
6 that is the Australian Business Growth Fund for the purpose of
7 providing small and medium Australian enterprises with access to
8 capital (within constitutional limits).

9 The Commonwealth may make arrangements relating to the
10 operations of the Fund, but must not control the Fund.

11 **10 Commonwealth investment in the Australian Business Growth**
12 **Fund**

- 13 (1) The Minister may, on behalf of the Commonwealth, do either or
14 both of the following:
15 (a) participate in forming a Corporations Act company;
16 (b) acquire shares (either by purchase or subscription) in a
17 Corporations Act company, or become a member of a
18 Corporations Act company;
19 in circumstances that would not result in the company becoming a
20 Commonwealth company.
- 21 (2) The Minister may, on behalf of the Commonwealth, acquire
22 debentures of a Corporations Act company.
- 23 (3) However, the Minister may not exercise the powers conferred by
24 this section in relation to more than one Corporations Act
25 company.
- 26 (4) For the purposes of this Act, if the Minister exercises a power
27 conferred by this section in relation to a company, that company is
28 the *Australian Business Growth Fund* (whether or not the

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1 company's name includes the words "Australian Business Growth
2 Fund").

3 **11 Arrangements relating to the operations of the Fund**

- 4 (1) The Minister may, on behalf of the Commonwealth, make
5 arrangements, relating to the operations of the Fund, with any of
6 the following:
- 7 (a) the Fund, or a Corporations Act company that is proposed to
8 become the Fund;
 - 9 (b) a member of the Fund, or a proposed member of the Fund;
 - 10 (c) a subsidiary of the Fund;
- 11 in circumstances that would not result in the Fund becoming a
12 Commonwealth company.
- 13 (2) An arrangement made under subsection (1) may provide for the
14 Commonwealth to make payments.

15 **12 Minister has powers etc. of the Commonwealth**

- 16 The Minister, on behalf of the Commonwealth, has all the rights,
17 responsibilities, duties and powers of the Commonwealth in
18 relation to the Commonwealth's capacity as:
- 19 (a) a member of the Fund; or
 - 20 (b) a shareholder in the Fund; or
 - 21 (c) a holder of debentures of the Fund; or
 - 22 (d) a party to an arrangement made under section 11.

23 **13 Constitutional limits**

- 24 (1) The Minister may exercise a power conferred on the Minister by
25 section 10, 11 or 12 only if arrangements of the kind referred to in
26 subsection (2) of this section have been made, or will be made
27 before the Fund makes any investment.
- 28 (2) The arrangements are arrangements requiring the Fund to apply
29 money received from the Commonwealth only:
- 30 (a) with respect to trade or commerce:

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Part 2 Commonwealth investment in the Australian Business Growth Fund

Section 14

- 1 (i) between Australia and places outside Australia; or
2 (ii) among the States; or
3 (iii) within a Territory, between a State and a Territory or
4 between 2 Territories; or
5 (b) with respect to a Territory.

6 Example: Arrangements could allow the Fund to apply money received from the
7 Commonwealth, for the purpose of generating a commercial return for
8 the Fund, in a small or medium Australian enterprise that is engaged
9 predominantly in trade or commerce between Australia and places
10 outside Australia.

11 (3) To avoid doubt, the Minister may exercise a power conferred by
12 section 10 or 11 for the purpose of making arrangements of the
13 kind referred to in subsection (2) of this section.

14 (4) If:

15 (a) the Commonwealth holds shares in or debentures of, or is a
16 member of, the Fund; and

17 (b) either of the following applies:

18 (i) arrangements of the kind referred to in subsection (2)
19 are unlikely to be made before the Fund makes any
20 investment;

21 (ii) arrangements of the kind referred to in subsection (2)
22 are no longer in force;

23 the Minister must, as soon as practicable, take such steps as are
24 necessary to divest the Commonwealth of its investment in the
25 Fund.

26 (5) Subsection (1) applies in relation to a right, responsibility or duty
27 conferred on the Minister by section 12 in the same way that
28 subsection applies in relation to a power conferred on the Minister
29 by that section.

30 **14 Fund not to become a Commonwealth company**

31 The Minister must ensure that the Fund does not become a
32 Commonwealth company.

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1 **15 Executive power**

2 This Part does not, by implication, limit the executive power of the
3 Commonwealth.

4 **16 Rules about the exercise of powers etc. under this Act**

- 5 (1) The rules may make provision for, or in relation to, the exercise of
6 rights, responsibilities, duties and powers by the Minister under
7 this Act.
- 8 (2) The Minister must not make a rule for the purposes of
9 subsection (1) that is inconsistent with this Act (including the
10 object of this Act).

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Part 3 Miscellaneous

Section 17

1 **Part 3—Miscellaneous**
2

3 **17 Simplified outline of this Part**

4 This Part contains miscellaneous provisions, including an
5 appropriation of the Consolidated Revenue Fund, delegation of the
6 Minister's powers under this Act, reporting on the operation of this
7 Act, and conducting a review of the operation of this Act.

8 This Part also contains the general rule-making power.

9 **18 Appropriation of Consolidated Revenue Fund**

10 The Consolidated Revenue Fund is appropriated to the extent of
11 \$100 million for the following purposes:

- 12 (a) paying the costs of, or incidental to, the formation of the
13 Fund under section 10;
- 14 (b) paying the costs of, or incidental to, the acquisition of shares
15 (either by purchase or subscription) in the Fund under
16 section 10;
- 17 (c) paying the costs of, or incidental to, the acquisition of
18 debentures of the Fund under section 10;
- 19 (d) paying amounts payable by the Commonwealth under an
20 arrangement made under section 11;
- 21 (e) paying or discharging any other costs, expenses or other
22 obligations incurred by the Commonwealth exclusively in
23 connection with the Fund.

24 **19 Delegations by the Minister**

- 25 (1) The Minister may, by written instrument, delegate to an eligible
26 delegate (see subsection (2)) all or any of the Minister's powers,
27 functions or duties under this Act (other than the Minister's powers
28 under section 22).

- 1 (2) An *eligible delegate* is:
2 (a) the Secretary of the Department; or
3 (b) an SES employee, or an acting SES employee, in the
4 Department; or
5 (c) an APS employee who holds, or is acting in, an Executive
6 Level 2, or equivalent, position in the Department.

7 Note: The expressions *SES employee*, *acting SES employee* and *APS*
8 *employee* are defined in section 2B of the *Acts Interpretation Act*
9 *1901*.

- 10 (3) Before delegating a power, function or duty under subsection (1),
11 the Minister must have regard to:
12 (a) if the power, function or duty is to be delegated to a person
13 holding or acting in a specified office or position—whether
14 the office or position is sufficiently senior for the person to
15 exercise the power, function or duty; or
16 (b) otherwise—whether the person has appropriate qualifications
17 or expertise to exercise the power, function or duty.
- 18 (4) A person exercising powers under a delegation under
19 subsection (1) must comply with any relevant rules made by the
20 Minister.

21 **20 Annual report**

22 The annual report prepared by the Secretary of the Department and
23 given to the Minister under section 46 of the *Public Governance,*
24 *Performance and Accountability Act 2013* for a period must
25 include a report on the operation of this Act during the period.

26 **21 Review of operation of this Act**

- 27 (1) The Minister must cause a review of the operation of this Act to be
28 undertaken as soon as possible after the third anniversary of the
29 commencement of this Act.
- 30 (2) The review must include a review of the effectiveness of this Act
31 in meeting the object of this Act.

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Part 3 Miscellaneous

Section 22

- 1 (3) The persons undertaking the review must give the Minister a
2 written report of the review.
- 3 (4) The Minister must cause a copy of the report of the review to be
4 tabled in each House of the Parliament within 15 sitting days of
5 that House after the report is given to the Minister.

6 **22 Rules**

- 7 (1) The Minister may, by legislative instrument, make rules
8 prescribing matters:
9 (a) required or permitted by this Act to be prescribed by the
10 rules; or
11 (b) necessary or convenient to be prescribed for carrying out or
12 giving effect to this Act.
- 13 (2) To avoid doubt, the rules may not do the following:
14 (a) create an offence or civil penalty;
15 (b) provide powers of:
16 (i) arrest or detention; or
17 (ii) entry, search or seizure;
18 (c) impose a tax;
19 (d) set an amount to be appropriated from the Consolidated
20 Revenue Fund under an appropriation in this Act;
21 (e) directly amend the text of this Act.