



Western Australia

Western Australian Future Health Research and Innovation Fund Act 2012

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Western Australian Future Health Research and Innovation Fund Act 2012

Contents

Part 1 — Preliminary provisions

1.	Short title	1
2.	Commencement	1
3.	Terms used	1
4.	Object of Act	3

Part 2 — Western Australian Future Health Research and Innovation Account

4A.	Establishment of Western Australian Future Health Research and Innovation Account	5
4B.	Amounts to be credited to FHRI Account	5
4C.	Application of FHRI Account	6
4D.	Requirements to be met before FHRI Account applied	8
4E.	Other provisions relating to FHRI Account	9
4F.	Delegation by Minister for Health and CEO	10
4G.	Advisory group to be established and maintained	11
4H.	Other provisions relating to advisory group	12
4I.	Conflicts of interest	14

Part 3 — Western Australian Future Health Research and Innovation Fund

5.	Establishment of Western Australian Future Health Research and Innovation Fund	16
7.	Credits to FHRI Fund from forecast royalty income	17
8.	Additional money to be credited to FHRI Fund	17
9.	Application of FHRI Fund	17
9A.	Annual reporting on FHRI Fund	18
9B.	Estimate of income to be laid before each House of Parliament in certain circumstances	18

Part 4 — Final provisions

10.	Manner and form of amendment or repeal during establishment period	20
10A.	Governance framework	20
12.	Regulations	22

Notes

	Compilation table	23
	Other notes	23

Defined terms

Western Australia

Western Australian Future Health Research and Innovation Fund Act 2012

**An Act to establish the Western Australian Future Health Research
and Innovation Account and the Western Australian Future Health
Research and Innovation Fund and for related purposes.**

[Long title inserted: No. 22 of 2020 s. 4.]

Part 1 — Preliminary provisions

[Heading inserted: No. 22 of 2020 s. 5.]

1. Short title

This is the *Western Australian Future Health Research and Innovation Fund Act 2012*.

[Section 1 amended: No. 22 of 2020 s. 6.]

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Terms used

In this Act —

advisory group means the advisory group established and maintained under section 4G(1);

amendment day means the day on which the *Western Australian Future Fund Amendment (Future Health Research and Innovation Fund) Act 2020* section 3 comes into operation;

arrangement means —

- (a) a contract, programme or scheme; or
- (b) any other type of arrangement;

CEO means the chief executive officer of the FHRI Account Department;

department means a department of the Public Service;

FHRI Account means the account called the Western Australian Future Health Research and Innovation Account established under section 4A;

s. 3

FHRI Account Department means the department principally assisting the Minister for Health in the administration of the FHRI Account;

FHRI Fund means the account called the Western Australian Future Health Research and Innovation Fund established under section 5;

FHRI Fund Department means the department principally assisting the Treasurer in the administration of the FHRI Fund;

forecast investment income, for a financial year, means the estimate that —

- (a) is of the income that will be derived during the financial year from the investment of money standing to the credit of the FHRI Fund; and
- (b) is set out in —
 - (i) the part of the budget papers for the financial year, tabled in the Legislative Assembly, that is titled “Economic and Fiscal Outlook”; or
 - (ii) if the regulations prescribe another part of those budget papers — that other part; or
 - (iii) if the budget papers for the financial year have not been tabled in the Legislative Assembly before the commencement of the financial year — the statement tabled under section 9B;

forecast royalty income, for a financial year, means the estimate of royalty income for that financial year set out in —

- (a) the part of the budget papers for the financial year, tabled in the Legislative Assembly, that is titled “Economic and Fiscal Outlook”; or
- (b) if the regulations prescribe another part of those budget papers — that other part;

Minister for Health —

- (a) means the Minister of the Crown to whom the administration of section 4A is for the time being committed by the Governor; and
- (b) includes a Minister of the Crown for the time being acting for or on behalf of the Minister referred to in paragraph (a);

Public Bank Account has the meaning given in the *Financial Management Act 2006* section 3;

qualifying activities means —

- (a) any type of —
 - (i) medical research; or
 - (ii) other research in the field of human health; or
 - (iii) medical innovation; or
 - (iv) other innovation in the field of human health;or
- (b) the commercialisation, or other utilisation or development, of any products or other outcomes of any research or innovation falling within paragraph (a).

[Section 3 amended: No. 22 of 2020 s. 7.]

4. Object of Act

The object of this Act is to provide a secure source of funding to support qualifying activities that contribute (directly or indirectly) to 1 or more of the following —

- (a) improving the financial sustainability of Western Australia's health system;
- (b) improving the health and wellbeing of Western Australians;
- (c) improving Western Australia's economic prosperity;

s. 4

- (d) advancing Western Australia to being, or maintaining Western Australia's position as, a national or international leader in any qualifying activities.

[Section 4 inserted: No. 22 of 2020 s. 8.]

Part 2 — Western Australian Future Health Research and Innovation Account

[Heading inserted: No. 22 of 2020 s. 9.]

4A. Establishment of Western Australian Future Health Research and Innovation Account

- (1) The Western Australian Future Health Research and Innovation Account is established for the purpose of supporting qualifying activities that contribute (directly or indirectly) to 1 or more of the things listed in section 4(a) to (d).
- (2) The FHRI Account is an agency special purpose account under the *Financial Management Act 2006* section 16.
- (3) The FHRI Account is to be administered by the Minister for Health.
- (4) Money standing to the credit of the FHRI Account is to be held in the Public Bank Account, subject to any investment of that money under the *Financial Management Act 2006* section 37(1).

[Section 4A inserted: No. 22 of 2020 s. 9.]

4B. Amounts to be credited to FHRI Account

- (1) The FHRI Account is to be credited under section 9(1).
- (2) The FHRI Account is also to be credited with the following —
 - (a) any income derived from the investment of money standing to the credit of the FHRI Account;
 - (b) any other money lawfully made available to the FHRI Account.

[Section 4B inserted: No. 22 of 2020 s. 9.]

s. 4C

4C. Application of FHRI Account

- (1) The Minister for Health may do the following —
 - (a) make arrangements that the Minister for Health considers will further, or facilitate the furthering of, the purpose referred to in section 4A(1);
 - (b) approve arrangements —
 - (i) that have already been made (whether by the Minister for Health or otherwise); and
 - (ii) that the Minister for Health considers will further, or facilitate the furthering of, the purpose referred to in section 4A(1).
- (2) The Minister for Health may apply money standing to the credit of the FHRI Account for the purposes of, or in relation to, an arrangement made or approved under subsection (1).
- (3) The regulations may prescribe other cases in which the Minister for Health may apply money standing to the credit of the FHRI Account if the Minister for Health considers that the application of the money will further, or facilitate the furthering of, the purpose referred to in section 4A(1).
- (4) Subsections (1) to (3) are subject to section 4D.
- (5) An arrangement made or approved under subsection (1) may involve the following —
 - (a) a person considered by the Minister for Health to be a person who —
 - (i) carries out or supports, or is to carry out or support, qualifying activities; or
 - (ii) facilitates, or is to facilitate, the carrying out of, or support for, qualifying activities; or
 - (iii) without limiting subparagraphs (i) and (ii), administers, or is to administer, a programme or scheme for supporting qualifying activities;

- (b) without limiting paragraph (a), a person who provides, or is to provide, services in relation to —
 - (i) the making or approving of other arrangements under subsection (1); or
 - (ii) the administration of other arrangements made or approved under subsection (1).
- (6) An arrangement made or approved under subsection (1) may involve payments to, or for the benefit of, a person falling within subsection (5)(a) or (b), including (without limitation) payments (in advance or otherwise) —
 - (a) to fund a programme or scheme that the person is administering or is to administer; or
 - (b) for the person's services.
- (7) An arrangement made or approved under subsection (1) may involve financial or other benefits being given to the State.
- (8) Subsections (5) to (7) do not limit the Minister for Health's discretion under subsection (1).
- (9) An arrangement may be approved under subsection (1)(b) whether it was made before, on or after amendment day.
- (10) When deciding the following matters, the Minister for Health must, as the Minister for Health considers appropriate, give priority to qualifying activities that relate to human coronaviruses with pandemic potential —
 - (a) what arrangements to make or approve under subsection (1) for operation during the financial year beginning on 1 July 2020;
 - (b) how money standing to the credit of the FHRI Account is to be applied during that financial year.

[Section 4C inserted: No. 22 of 2020 s. 9.]

s. 4D

4D. Requirements to be met before FHRI Account applied

- (1) Before making or approving arrangements under section 4C(1) that will operate during a financial year, or applying during a financial year money standing to the credit of the FHRI Account under section 4C, the Minister for Health must —
 - (a) direct the advisory group to make a recommendation on how money standing to the credit of the FHRI Account should be applied during the financial year under section 4C; and
 - (b) consider the advisory group's recommendation.
- (2) A direction under subsection (1)(a) may —
 - (a) include proposals for how money standing to the credit of the FHRI Account is to be applied during the financial year under section 4C; and
 - (b) require the advisory group's recommendation to state 1 of the following —
 - (i) that money standing to the credit of the FHRI Account should be applied during the financial year in accordance with the proposals;
 - (ii) that money standing to the credit of the FHRI Account should not be applied during the financial year in accordance with the proposals;
 - (iii) that money standing to the credit of the FHRI Account should be applied during the financial year in accordance with the proposals as the proposals are modified as specified in the recommendation.

- (3) Within 14 days after the day on which the Minister for Health receives a recommendation for the purposes of subsection (1)(a), the Minister for Health must cause the following documents to be laid before each House of Parliament —
- (a) a copy of the Minister for Health’s direction to the advisory group to make the recommendation;
 - (b) a copy of the recommendation.
- (4) Subsection (5) applies if —
- (a) at the beginning of the 14-day period referred to in subsection (3), a House of Parliament is not sitting; and
 - (b) in the Minister for Health’s opinion, the House will not sit before the end of the period.
- (5) If this subsection applies —
- (a) the Minister for Health must, before the end of the period, send the documents to the Clerk of the House; and
 - (b) when a document is sent to the Clerk it is taken to have been laid before the House; and
 - (c) the laying of a document that is taken to have occurred under paragraph (b) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the document.

[Section 4D inserted: No. 22 of 2020 s. 9.]

4E. Other provisions relating to FHRI Account

- (1) The Treasurer and the Minister for Health may, in writing, jointly direct that money standing to the credit of the FHRI Account be transferred to the credit of the FHRI Fund.
- (2) The Treasurer cannot give a direction in relation to the FHRI Account under the *Financial Management Act 2006* section 20(1).

s. 4F

- (3) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting requirements of departments apply to, and in relation to, the FHRI Account.
- (4) The administration of the FHRI Account is for the purposes of the *Financial Management Act 2006* section 52 to be regarded as a service of the FHRI Account Department.
- (5) Without limiting the *Financial Management Act 2006* section 61, the annual report for a financial year prepared under that section by the accountable authority of the FHRI Account Department is to contain information about the operation of the FHRI Account during the financial year.
- (6) The annual report is to include details of how money standing to the credit of the FHRI Account was applied during the financial year (if at all).

[Section 4E inserted: No. 22 of 2020 s. 9.]

4F. Delegation by Minister for Health and CEO

- (1) The Minister for Health may delegate to the CEO any function of the Minister for Health under section 4A or under section 4C (including any regulations made for the purposes of section 4C(3)).
- (2) The CEO may delegate to a public service officer in the FHRI Account Department any function that is delegated to the CEO under subsection (1).
- (3) A public service officer to whom a function is delegated under subsection (2) cannot delegate that function.
- (4) A delegation under this section must be in writing signed by the Minister for Health or the CEO (as the case requires).
- (5) A person exercising or performing a function that has been delegated to the person under this section is taken to do so in

accordance with the terms of the delegation unless the contrary is shown.

- (6) The *Health Legislation Administration Act 1984* section 9 does not apply to, or in relation to, any function under this Part (if it would otherwise do so).
- (7) This section does not limit the ability of the Minister for Health to exercise or perform a function through an officer or agent.

[Section 4F inserted: No. 22 of 2020 s. 9.]

4G. Advisory group to be established and maintained

- (1) The Minister for Health must establish and maintain an advisory group (to be given a name determined by the Minister for Health).
- (2) The function of the advisory group is as follows —
 - (a) as and when directed by the Minister for Health, to make a recommendation for a financial year for the purposes of section 4D(1)(a);
 - (b) as and when directed by the Minister for Health or the FHRI Account Department, to provide other advice or assistance in relation to 1 or both of the following —
 - (i) furthering, or facilitating the furthering of, the purpose referred to in section 4A(1);
 - (ii) other matters relating to any function of the Minister for Health under section 4A or section 4C (including any regulations made for the purposes of section 4C(3)).
- (3) The advisory group's members are to be as follows —
 - (a) the CEO, or a nominee of the CEO;
 - (b) the chief executive officer of the department that the Minister for Health considers is, apart from the FHRI Account Department, the department most closely

s. 4H

involved with qualifying activities, or a nominee of that chief executive officer;

- (c) 1 individual to be appointed by the Minister for Health as a community representative;
 - (d) 1 individual to be appointed by the Minister for Health whom the Minister for Health considers is an expert in qualifying activities that are research;
 - (e) 1 individual to be appointed by the Minister for Health whom the Minister for Health considers is an expert in qualifying activities that are innovation;
 - (f) at least 3 other individuals —
 - (i) each of whom is to be appointed by the Minister for Health; and
 - (ii) whom, taken together, the Minister for Health considers have a suitable variety and level of relevant expertise and experience.
- (4) At least 1 of the members must be considered by the Minister for Health to have experience in dealing with issues relating to the health of Aboriginal people living in Western Australia.
- (5) At least 1 of the members must be considered by the Minister for Health to have experience in dealing with issues relating to the health of people living in regional Western Australia.
- (6) A nominee under subsection (3)(a) or (b), or a member under subsection (3)(c) to (f), may be a public service officer or any other individual.

[Section 4G inserted: No. 22 of 2020 s. 9.]

4H. Other provisions relating to advisory group

- (1) A member of the advisory group under section 4G(3)(c) to (f) —
 - (a) holds office for the period, not exceeding 5 years, specified in their instrument of appointment (subject to

- any condition specified in that instrument under which the appointment may be ended before that period expires or under which the member may be suspended); and
- (b) is eligible for reappointment; and
 - (c) unless, or except to the extent that, their instrument of appointment specifies otherwise, is entitled to remuneration and allowances, and may be reimbursed expenses, as determined by the Minister for Health on the recommendation of the Public Sector Commissioner; and
 - (d) otherwise holds office on the conditions specified in their instrument of appointment.
- (2) The Minister for Health may do the following —
- (a) determine, as the Minister for Health considers appropriate, any matters relating to the operation or procedure of the advisory group (including (without limitation) its quorum and matters relating to voting);
 - (b) without limiting paragraph (a), designate a member of the advisory group as its chairperson.
- (3) Subject to subsection (2), the advisory group —
- (a) may determine its own procedure; and
 - (b) without limiting paragraph (a), may perform its function through sub-groups of its members; and
 - (c) may perform its function despite any vacancy in its membership.
- (4) Despite subsections (2) and (3), a member of the advisory group under section 4G(3)(a) or (b) is a non-voting member and cannot be the chairperson.
- (5) If a member of the advisory group under section 4G(3)(c) to (f) is unable or unavailable to act because of suspension, illness, absence or other cause, the Minister for Health may appoint another individual (subject to the requirements of the relevant

s. 4I

provision of section 4G(3)(c) to (f)) as an alternate member to act temporarily in the member's place.

- (6) While acting in accordance with the appointment, the alternate member is, and has any entitlement of, a member of the advisory group under section 4G(3)(c) to (f).
- (7) An act or omission of an alternate member cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.
- (8) Subsection (9) applies to an individual who is, or has been, a member of the advisory group.
- (9) No civil liability attaches to the individual for anything that the individual has done, or omitted to do, in good faith —
 - (a) in the performance, or purported performance, of the advisory group's function; or
 - (b) otherwise as a member of the advisory group.

[Section 4H inserted: No. 22 of 2020 s. 9.]

4I. Conflicts of interest

- (1) For each member of the advisory group under section 4G(3)(c) to (f), the conditions referred to in section 4H(1)(d) must include a condition that does the following —
 - (a) requires the member to disclose any actual, or potential, material conflict of interest that the member has arising out of the advisory group's function;
 - (b) specifies when, how and to whom the disclosure must be made;
 - (c) specifies any other steps that the member must take in relation to the conflict of interest.
- (2) The Minister for Health must ensure that a condition of the kind described in subsection (1) applies to any alternate member appointed under section 4H(5).

- (3) In cases where the Minister for Health considers it appropriate for a condition to apply, the Minister for Health must ensure that a condition similar to that described in subsection (1) applies to any person, other than a public service officer, who has a role of providing assistance to the advisory group.
- (4) The CEO must do the following —
- (a) keep a record of —
 - (i) each disclosure that is made by a member of the advisory group, or another person, under a condition that applies to the member or person as required under subsection (1), (2) or (3); and
 - (ii) any other steps that are taken in relation to any actual, or potential, conflict of interest that is disclosed;
 - (b) make a summary of the record available, on request, for inspection.
- (5) The regulations may prescribe how a summary of the record is to be made available under subsection (4)(b).

[Section 4I inserted: No. 22 of 2020 s. 9.]

Part 3 — Western Australian Future Health Research and Innovation Fund

[Heading inserted: No. 22 of 2020 s. 10.]

5. Establishment of Western Australian Future Health Research and Innovation Fund

- (1) The Western Australian Future Fund that was established under this section on 30 November 2012 is discontinued.
- (1A) The Western Australian Future Health Research and Innovation Fund is established for the purpose of funding the FHRI Account under section 9(1).
- (2) The FHRI Fund is taken to have been determined by the Treasurer to be a Treasurer's special purpose account under the *Financial Management Act 2006* section 10(e).
- (3) The FHRI Fund is to be administered by the Treasurer.
- (3A) Money standing to the credit of the Western Australian Future Fund immediately before amendment day stands to the credit of the FHRI Fund.
- (4) Money standing to the credit of the FHRI Fund is to be held in the Public Bank Account, subject to any investment of that money under the *Financial Management Act 2006* section 37(1).
- (5) Despite subsection (4), money standing to the credit of the FHRI Fund may be invested in gold.

[Section 5 amended: No. 22 of 2020 s. 11.]

[6. *Deleted: No. 22 of 2020 s. 12.]*

7. Credits to FHRI Fund from forecast royalty income

In each financial year that starts on or after amendment day —

- (a) the FHRI Fund is to be credited with an amount equal to 1% of the forecast royalty income for the financial year; and
- (b) that amount is to be charged to the Consolidated Account, which is to the extent necessary appropriated accordingly.

[Section 7 amended: No. 22 of 2020 s. 13.]

8. Additional money to be credited to FHRI Fund

In addition to the amounts credited to the FHRI Fund under section 7, the following amounts are to be credited to the FHRI Fund —

- (a) any income derived from the investment of money standing to the credit of the FHRI Fund;
- (b) any amount that is the subject of a joint direction of the Treasurer and the Minister for Health under section 4E(1);
- (c) any other money lawfully made available to the FHRI Fund.

[Section 8 inserted: No. 22 of 2020 s. 14.]

9. Application of FHRI Fund

- (1) In each financial year that starts on or after amendment day, an amount equal to the forecast investment income for the financial year is to be charged to the FHRI Fund and credited to the FHRI Account.
- (2) Otherwise, money standing to the credit of the FHRI Fund —
 - (a) is to be held in perpetuity to the credit of the FHRI Fund; and
 - (b) cannot be applied for any purpose.

s. 9A

- (3) The Treasurer cannot give a direction in relation to the FHRI Fund under the *Financial Management Act 2006* section 20(1).
- (4) The *Financial Management Act 2006* section 12 does not apply to money standing to the credit of the FHRI Fund.

[Section 9 inserted: No. 22 of 2020 s. 14.]

9A. Annual reporting on FHRI Fund

- (1) Without limiting the *Financial Management Act 2006* section 61, the annual report for a financial year prepared under that section by the accountable authority of the FHRI Fund Department is to contain information about the operation of the FHRI Fund during the financial year.
- (2) The annual report is to include details of the amount charged to the FHRI Fund during the financial year under section 9(1).

[Section 9A inserted: No. 22 of 2020 s. 14.]

9B. Estimate of income to be laid before each House of Parliament in certain circumstances

- (1) If the budget papers for a financial year will not be tabled in the Legislative Assembly before the commencement of the financial year, the Treasurer must, before the commencement of the financial year, cause a statement setting out an estimate of the income that will be derived during the financial year from the investment of money standing to the credit of the FHRI Fund to be laid before each House of Parliament.
- (2) If subsection (1) requires the Treasurer to cause a document to be laid before a House of Parliament and the House is not sitting, the Treasurer may give the document to the Clerk of the House.
- (3) A document given to the Clerk of a House under subsection (2) is taken to have been laid before the House.

- (4) The laying of a document before a House that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the document.

[Section 9B inserted: No. 22 of 2020 s. 14.]

Part 4 — Final provisions

[Heading inserted: No. 22 of 2020 s. 15.]

10. Manner and form of amendment or repeal during establishment period

- (1) In this section —

establishment period means the period starting on amendment day and ending on 30 June 2032.

- (2) A Bill to repeal or amend section 7, 8 or 9 or this section must not be presented for assent by or in the name of the Queen during the establishment period unless the second and third readings of the Bill have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and Legislative Assembly respectively.

- (3) A Bill assented to consequent upon its presentation in contravention of subsection (2) is of no effect as an Act.

[Section 10 amended: No. 22 of 2020 s. 16.]

10A. Governance framework

- (1) In this section —

FHRI scheme means the scheme of this Act for supporting, and facilitating support for, qualifying activities through —

- (a) the operation of the FHRI Account and the FHRI Fund; and
- (b) the exercise and performance of related functions by the Minister for Health, the Treasurer, the advisory group and others;

governance framework means the framework referred to in subsection (2);

priorities means the priorities referred to in subsection (3)(b);

strategic arrangement means an arrangement that is made or approved under section 4C(1) and that the Minister for Health considers to be of strategic importance to the operation of the FHRI scheme;

strategic document means a document, other than the strategy or priorities, that is prepared under the governance framework and that the Minister for Health considers to be of strategic importance to the operation of the FHRI scheme;

strategy means the strategy referred to in subsection (3)(a).

- (2) The Minister for Health must prepare and maintain a framework for the governance of the FHRI scheme.
- (3) The governance framework must (without limitation) do the following —
 - (a) provide for the preparation and maintaining of a strategy for the operation of the FHRI scheme;
 - (b) provide for the setting of priorities for the operation of the FHRI scheme;
 - (c) include a framework for the making and approving of arrangements under section 4C(1) and the administration of arrangements made or approved.
- (4) The Minister for Health must cause the following to be laid before each House of Parliament —
 - (a) a copy of each of the following —
 - (i) the governance framework;
 - (ii) the strategy;
 - (iii) the priorities;
 - (iv) if a document listed in subparagraphs (i) to (iii) is modified or replaced — the modified or new document;
 - (b) a copy of each strategic document and, if a strategic document is modified, a copy of the modified document;

s. 12

- (c) details of each strategic arrangement and, if a strategic arrangement is modified, details of the modified arrangement.
- (5) The CEO must ensure that the current version of each of the following is publicly available on a website maintained by, or on behalf of, the FHRI Account Department —
 - (a) the governance framework;
 - (b) the strategy;
 - (c) the priorities;
 - (d) each strategic document;
 - (e) the details of each strategic arrangement.

[Section 10A inserted: No. 22 of 2020 s. 17.]

[11. Deleted: No. 22 of 2020 s. 18.]

12. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

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Notes

This is a compilation of the *Western Australian Future Health Research and Innovation Fund Act 2012* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Western Australian Future Fund Act 2012</i> ¹	50 of 2012	29 Nov 2012	s. 1 and 2: 29 Nov 2012 (see s. 2(a)); Act other than s. 1 and 2: 30 Nov 2012 (see s. 2(b))
<i>Western Australian Future Fund Amendment (Future Health Research and Innovation Fund) Act 2020</i>	22 of 2020	27 May 2020	s. 1 and 2: 27 May 2020 (see s. 2(a)); Act other than s. 1 and 2: 24 Jun 2020 (see s. 2(b))

Other notes

¹ Now known as the *Western Australian Future Health Research and Innovation Fund Act 2012*; short title changed (see note under s. 1).

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
advisory group	3
amendment day	3
arrangement	3
CEO	3
department	3
establishment period	10(1)
FHRI Account	3
FHRI Account Department	3
FHRI Fund	3
FHRI Fund Department	3
FHRI scheme	10A(1)
forecast investment income	3
forecast royalty income	3
governance framework	10A(1)
Minister for Health	3
priorities	10A(1)
Public Bank Account	3
qualifying activities	3
strategic arrangement	10A(1)
strategic document	10A(1)
strategy	10A(1)