

Department of Finance

Response to Question on Notice

SENATE FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Inquiry into the Investment Funds Legislation Amendment Bill 2021

Hearing of 28 September 2021

Question on Notice 1 (Proof Hansard page 39)

Senator McKIM: Thank you. I'll just ask you to take the following on notice, please. When did the department first become aware that there was consideration being given to amending the FOI Act to provide for the exemption in this legislation? What was the form of that first awareness of the department? Was it something that came up internally through the department, or did it come externally, and in particular did it come from the Future Fund? Please detail all of the key decision-making points in regard to this—that is, as it percolated up through the department, who made what decision and when. When was the final decision made or the final recommendation to cabinet made for this amendment to be drafted? Please provide a synopsis of all engagement between the department and the Future Fund in regard to this amendment. Just for clarity, and to make sure that it's not too onerous a request, I'm only asking with regard to the FOI amendments in the legislation before the committee, not the other non-FOI-related amendments.

Mr Williamson: Certainly, Senator. We'll see what we can do.

Response

The proposal to amend the *Freedom of Information Act 1982* (FOI Act) to provide a partial exemption for documents relating to the Future Fund Board's investment activities was first raised publicly over a decade ago.

On 25 November 2009, the then Minister for Finance and Deregulation, the Hon Lindsay Tanner MP, announced that “the Government has therefore decided to grant an exclusion under Schedule 2 of the FOI Act for Future Fund Board documents in respect of acquiring, realising or managing investments of the Future Fund Board.” The speech is provided at [Attachment A](#).

Since that time the proposal has been under periodic consideration and discussion, subject to the priorities of successive Governments and the availability of an appropriate legislative vehicle. The Investment Funds Legislation Amendment Bill 2021 provides the legislative opportunity to create the exemption.

THE HON LINDSAY TANNER MP
MINISTER FOR FINANCE AND DEREGULATION
MEMBER FOR MELBOURNE

Address to the National Press Club of Australia
Canberra

12:30pm, 25 November 2009

The Future Fund: Delivering for Australia

CHECK AGAINST DELIVERY

Thank you for having me here to speak today, the third time I have addressed the Press Club since the election of the Rudd Labor Government two years ago.

Looking back, the vastly different economic circumstances in which I have delivered each of these three speeches are quite remarkable.

At the time of my first address, in February 2008, inflation was well outside the RBA's target range.

The RBA increased interest rates by a quarter of a percentage point on the day of my address, and increased them a further quarter of a percentage point a month later to their peak of 7.25 per cent.

Just over one year later, in March this year, I addressed you one week after the ABS reported that the Australian economy had contracted 0.6 per cent in the December quarter.

Today I stand before you with Australia having avoided a recession, due in part to the success of the Government's stimulus policies.

While dangers to the economy still remain, we can now start to look forward to calmer economic times ahead.

The Treasurer plans to release the third intergenerational report before the Budget in May.

This report is likely to show that the ageing of the population continues to present significant pressures to the Budget, with rising health, pension and aged care costs the main drivers.

It was in this context that the previous Liberal Government established the Future Fund in 2006, with the purpose of meeting public sector unfunded superannuation liabilities.

Unfunded superannuation liabilities are forecast to reach \$162 billion by 2020, hitting the budget bottom line to the tune of \$7.1 billion each year.

The Future Fund acts as an insurance policy to offset the impact of these rising costs. The Future Fund will ensure that our children will not have to worry about paying the bill for public sector superannuants.

Through our saving and investment today, we are relieving them of a future fiscal burden.

The Future Fund is still very new. It's hardly surprising that it sometimes attracts ill-informed commentary.

Kenneth Davidson recently suggested that the Future Fund was financed by the sale of all Commonwealth property, except the War Memorial and Parliament House.

While the Commonwealth sold a number of office buildings in the late 1990s and early 2000s, none of the proceeds from those sales went into the Future Fund.

And the Commonwealth continues to own many substantial property assets, including the buildings occupied by the Department of Finance and Department of Treasury here in Canberra.

The total Commonwealth property and land portfolio is valued at around \$28 billion.

The Future Fund has also been criticised for investing overseas through asset managers domiciled in the Cayman Islands.

Given the structure of the industry and complexity of international tax law, this is common practice and often difficult to avoid.

And the Cayman Islands is changing: it's negotiating a tax information treaty with Australian, and joined the OECD list of jurisdictions that have substantially implemented the internationally agreed tax standard.

The Government's decision to appoint former Treasurer Peter Costello to the Future Fund Board has also been criticised.

It's understandable that partisan Labor supporters disapprove, but the Future Fund is too important to be a political battleground.

Mr Costello is uniquely well positioned to contribute to the Board, both as the creator of the Future Fund and as a repository of extensive knowledge regarding the Australian and global economy.

Australia was able to establish a sovereign wealth fund as a result of the surge in revenue from the mining boom.

This is not unusual.

Many of the sovereign wealth funds established around the world owe their origins to large surges in revenue from resources, particularly oil.

Australia's future depends on our ability to invest wisely. We have been blessed with unprecedented income flows arising from global demand for our resources.

While that demand will fluctuate, many believe Australia's good fortune will continue.

That means it's vital we save much of any proceeds that eventuate, and invest them wisely.

In early stages of the mining boom, there was much debate about the nature of investment we required.

Should we invest in upgrading infrastructure, to allow higher economic growth?

Or should we invest more widely and indirectly to help offset mounting budget liabilities?
The answer is that we must do both.

The Howard Government failed to actively invest in infrastructure, and the Rudd Government is now working hard to restore the balance.

The former Government did make the right call when it created the Future Fund.

The decision had bipartisan support when it was made, and the Rudd Government has not altered any of the fundamental features of the Future Fund during its time in office.

Responsible governments around the world have taken the view that the nature of windfalls from resources booms means they should be invested in future prosperity, not squandered on short term gimmicks.

In spite of creating the Future Fund, which was largely financed by the sale of Telstra, the Howard Government squandered much of the proceeds of the mining boom.

The Rudd Government is determined not to make the same mistake.

In its first Budget the Government established three nation building funds to be managed by the Future Fund.

While meeting unfunded superannuation liabilities is an important goal, we also need to invest in infrastructure to increase long term productive capacity in the economy.

The Future Fund now manages a total of \$85.68 billion on behalf of the Government.

That is almost \$4000 for every man, woman and child in Australia.

The prospect of a new mining boom is already generating suggestions of another sovereign wealth fund to hold offshore assets and dampen the distorting impact of the boom on the Australian economy.

Such speculation is entirely premature.

A resumption of mining boom tax revenues is by no means certain.

Any windfall increases in revenue will need to be dedicated to returning the Budget to surplus and paying down debt.

With the Future Fund now fully operational, future Australian governments are well placed to pursue an offshore fund option should they choose too.

Any such choice will not present for some years, if at all.

When I became the responsible Minister in December 2007 the Future Fund was still very much in its establishment phase.

During the past two years it has diversified its investments, and taken over management of the three nation building funds.

The tumultuous two years on the financial markets have presented significant challenges and opportunities as the Future Fund has built its portfolio.

In 2008-09 the Future Fund recorded an operating loss, excluding the Fund's holding of Telstra shares, of \$2.4 billion.

This translates into a nominal return of minus 4.2 per cent.

When compared to the dramatic declines of world markets and the losses of domestic and international superannuation funds, the Future Fund has performed relatively well.

It is also in some ways fortuitous that the Future Fund has been in the process of acquiring financial assets and establishing its portfolio during a period when prices were not inflated by the effects of an asset bubble.

This bodes well for the returns from the Fund in future.

The performance of the Future Fund in the first quarter of 2009-10 reflects the improving market conditions.

The return for the quarter ending 30 September 2009 (ex Telstra) was 5.6 per cent. This is good news, as the Fund moves out of its establishment phase.

The transition out of the establishment phase is also a good time to evaluate some of the policy settings affecting the Future Fund.

While the Government continues to support the framework put in place by the previous Government it is appropriate to reconsider some specific aspects of that framework.

The *Freedom of Information Act 1982* (FOI Act) applies to the Future Fund.

The Future Fund is of the view that some of its information, which if made publicly available, would place at risk the return that could be earned for the Funds or limit the range of investments the Board can access.

The possibility of disclosure of sensitive information under the FOI Act has created some uncertainty for other entities entering into arrangements with the Future Fund.

The Government has therefore decided to grant an exclusion under Schedule 2 of the FOI Act for Future Fund Board documents in respect of acquiring, realising or managing investment of the Future Fund Board.

This exclusion is not dissimilar to the exclusion granted to the Reserve Bank, including for its open market operations, and to a number of Commonwealth agencies for their commercial operations.

I understand that announcing the removal of certain activities from FOI laws at the Press Club is akin to announcing a reduction in judicial discretion at a meeting of lawyers, but I would assure you that this will not impinge, in any significant way, upon the documents that the Future Fund will continue to release under FOI Act.

Sensitive documents regarding specific investment decisions would almost invariably be granted exemption under the current FOI Act, at least until the sensitivities attached no longer did so.

The purpose of the exclusion is to provide certainty to the Board and its investment partners through knowing that those documents are automatically excluded.

FOI applications may still be lodged and applicants will be able to seek a review of any exclusion decision to satisfy themselves that the documents in question were properly excluded.

The Board's activities will continue to be subject to transparency and scrutiny through a number of means, including Senate hearings, publication of its investment policies and performance, and annual reports.

The Government's expectation is that sensitive documents will be disclosed, including under FOI, once the sensitivities attached to those documents no longer apply.

These arrangements provide an appropriate balance between maximising returns and the transparency and accountability required of a Government investment fund.

When I first meet with David Murray, the Chair of the Future Fund, the day after I was sworn in as a Minister in December 2007, I was conscious of the importance of establishing a culture of independence for the Fund.

When a Government agency is responsible for investing tens of billions of dollars of taxpayer's funds, there is always a temptation for the Government to intervene in individual investment decisions.

This would be a mistake, not just in terms of the negative impact on the market of such intervention but also for taxpayers.

Earnings from a fund subject to heavy Government intervention will invariably be lower than a fund that is allowed to independently invest in the best financial interests of taxpayers.

When commentators or members of the public raise the spectre of the Government directing the Future Fund to invest in a particular asset or a large infrastructure project, it is important to reiterate the independence of the Board in making investment decisions.

It is in this spirit that today the Government is announcing that we will be working with the Future Fund to examine options for an alternative employment framework, which could allow Future Fund employees to be removed from coverage of the *Public Service Act*.

Such an employment framework would aim to reinforce the independence of the Board, but still provide values and standards for the Agency, particular with respect to its responsibilities relating to public money.

The Government's decision to examine these options reflects a greater understanding of the nature of the Future Fund.

Like the Reserve Bank, it is substantially different from other Public Service entities.

Being primarily responsible for investment management, the Agency operates within financial markets in a largely commercial environment.

Removing the Fund from the *Public Service Act* would enhance its independence from Government and make it easier to recruit specialised fund managers.

The importance of the Future Fund's operational independence is crucial in the context of the Government's current negotiations with Telstra.

The Future Fund owns 10 per cent of Telstra, and is its largest single shareholder.

When the previous Government transferred its remaining 17 per cent stake in Telstra to the Future Fund in 2007, it issued a Ministerial Direction stating that the shares would be subject to an escrow period until November 2008.

This meant the Board was unable to sell the shares during this period.

In the first transaction following the expiration of the escrow period, the Future Fund sold part of its shareholding worth \$2.37 billion in August this year.

The Australian Government had no involvement in this decision.

Nor did the Future Fund have any prior access to or knowledge of Government plans in relation to Telstra or the national broadband network.

The Government's negotiations with Telstra on structural separation mean that the Future Fund's activities must be absolutely independent of the Government.

The existence of a power of ministerial direction regarding the Future Fund's Telstra shares casts doubt over this independence.

With this in mind, today I want to make it absolutely clear that the Government will not be directing the Board in relation to its Telstra shareholdings as is allowed under the *Future Fund Act*, including the exercising of its voting rights in relation to any shareholder vote on structural separation.

Nor will the Government discuss with the Board its intentions in relation to the use of its voting rights.

The Future Fund will make its decisions with only one issue in mind: shareholder value.

The Government's strong commitment to the independence of the Future Fund ensures that we are acting in accordance with the Santiago Principles, which provide a framework of governance, transparency and accountability for sovereign wealth funds.

Through the efforts of Future Fund Chairman, David Murray AO, Australia has been at the forefront of the development of the Santiago Principles and the establishment of the International Forum of Sovereign Wealth Funds.

The Santiago Principles can be seen to be both a catalyst and a guidepost for all sovereign wealth funds to consider whether their structure and operations meet best practice.

The purpose of the International Forum of Sovereign Wealth Funds is to exchange views on issues of common interest, and encourage an understanding and adherence to the Santiago Principles and sovereign wealth fund activities.

Mr Murray was elected Chair of the IFSWF, recognising his commitment to developing and improving the international investment environment for sovereign wealth funds.

This is also a reflection of the regard with which Australia and the Future Fund are held among sovereign wealth funds around the world.

I am pleased to announce that the Future Fund, along with the Australian Government, will be hosting the second meeting of the IFSWF in May 2010.

I look forward to working with Mr Murray in delivering a successful meeting and in further raising the profile of the IFSWF, and in turn of Australia and the Future Fund.

The expertise that both the Future Fund and the Department of Finance and Deregulation have developed is now allowing Australia to reach out to other countries in our region and assist in their establishment of sovereign wealth funds.

For example, the Papua New Guinea Government is exploring the creation of a sovereign wealth fund to receive some of the expected \$35 billion in revenue flowing from the PNG LNG project.

The Australian Government is committed to helping the PNG Government, should it commit to establishing its own sovereign wealth fund, by sharing our experience on the structure and operation of sovereign wealth funds and technical advice on the application of the Santiago Principles.

PNG has begun discussions with my Department, along with DFAT and AUSAID, on options for assistance.

With Australia's experience, and our strong commitment to assist Papua New Guinea to develop its economy, I am confident we will provide advice and assistance of great value.

The Future Fund has come a long way since its establishment three years ago.

Under the excellent leadership of its Chair, David Murray, and its General Manager, Paul Costello, the Fund has developed the culture, expertise and reputation which make it a vital asset for Australia.

The reforms announced today will put the Future Fund on a stronger footing, and help the Fund deal with the challenges and opportunities ahead.

They will strengthen its independence, and ensure that it can deliver maximum returns on the investment of Australia's wealth.

Department of Finance

Response to Question on Notice

SENATE FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Inquiry into the Investment Funds Legislation Amendment Bill 2021

Hearing of 28 September 2021

Question on Notice 2 (Proof Hansard page 40)

CHAIR: The Future Fund wouldn't be the only government entity that we apply this principle to, would it, where we say: 'We're going to create an employment framework separate from the Public Service Act to enable that entity to be a more competitive employer'?

Mr Dilley: There are a significant number of entities in the Commonwealth that have employment arrangements other than the Public Service Act. In the financial industry, broadly, within the Commonwealth, the Reserve Bank of Australia and ASIC come to mind, but there are others.

CHAIR: Perhaps on notice you might like to provide that list of other entities to the committee so that we have that information when we are compiling our report. The changes to the—

Mr Dilley: We can do that, yes.

Response

The Flipchart of PGPA Act Commonwealth entities and companies lists the Commonwealth entities and companies that do not engage staff under the Public Service Act 1999 (PS Act). The flipchart is available online at:

<https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/pgpa-act-flipchart-and-list>

The following 11 (of 98) non-corporate Commonwealth entities do not engage staff under the PS Act:

- Australian Signals Directorate
- Australian Federal Police
- Australian Secret Intelligence Service
- Australian Security Intelligence Organisation
- Office of the Official Secretary to the Governor-General
- Australian Prudential Regulation Authority
- Australian Securities and Investments Commission
- Department of Parliamentary Services
- Department of the House of Representatives
- Department of the Senate
- Parliamentary Budget Office

The following 11 (of 98) non-corporate Commonwealth entities can engage staff under their enabling legislation as well as the PS Act:

- Federal Court of Australia
- Office of the Director of Public Prosecutions
- Office of the Inspector-General of Intelligence and Security
- Department of Defence
- Australian Electoral Commission
- Australian Institute of Criminology
- Office of National Intelligence
- Australian Institute of Family Studies
- Australian Bureau of Statistics
- Office of Auditing and Assurance Standards Board
- Office of the Australian Accounting Standards Board

The following 47 (of 71) corporate Commonwealth entities do not engage staff under the PS Act:

- Cotton Research and Development Corporation
- Director of National Parks
- Fisheries Research and Development Corporation
- Grains Research and Development Corporation
- Regional Investment Corporation
- Rural Industries Research and Development Corporation
- Sydney Harbour Federation Trust
- Wine Australia
- Coal Mining Industry (Long Service Leave Funding) Corporation
- Army and Air Force Canteen Service (Frontline Defence Services)
- Australian Military Forces Relief Trust Fund
- Royal Australian Air Force Veterans' Residences Trust Fund
- Royal Australian Air Force Welfare Trust Fund
- Royal Australian Navy Central Canteens Board
- Royal Australian Navy Relief Trust Fund
- Australian Curriculum, Assessment and Reporting Authority
- Australian National University
- Commonwealth Superannuation Corporation
- Export Finance and Insurance Corporation (Export Finance Australia)
- Tourism Australia
- Australian Sports Commission (Australian Institute of Sport)
- Australian Institute of Marine Science
- Australian Nuclear Science and Technology Organisation
- Australian Renewable Energy Agency
- Clean Energy Finance Corporation
- Commonwealth Scientific and Industrial Research Organisation
- Airservices Australia
- Australia Council
- Australian Broadcasting Corporation
- Australian Film, Television and Radio School
- Australian Maritime Safety Authority

- Australian Postal Corporation
- Civil Aviation Safety Authority
- National Gallery of Australia
- Northern Australia Infrastructure Facility
- Special Broadcasting Service Corporation
- Anindilyakwa Land Council
- Central Land Council
- Indigenous Business Australia
- Indigenous Land and Sea Corporation
- Northern Land Council
- Tiwi Land Council
- Wreck Bay Aboriginal Community Council
- Australian Hearing Services (Hearing Australia)
- Australian Reinsurance Pool Corporation
- National Housing Finance and Investment Corporation
- Reserve Bank of Australia

The following 6 (of 71) corporate Commonwealth entities can engage staff under their enabling legislation as well as the PS Act:

- Comcare
- Australian Digital Health Agency
- Australian Institute of Health and Welfare
- Infrastructure Australia
- National Transport Australia
- Screen Australia

The following 17 (of 18) Commonwealth companies do not engage staff under the PS Act:

- AAF Company
- Australia Strategic Policy Institute Ltd
- RAAF Welfare Recreational Company
- Australian Institute for Teaching and School Leadership Limited
- ASC Pty Ltd
- Australia Naval Infrastructure Pty Ltd
- Australian Sports Foundation Limited
- Snowy Hydro Limited
- Australian Rail Track Corporation Limited
- Bundanon Trust
- Creative Partnerships Australia Ltd
- Moorebank Intermodal Company Limited
- NBN Co Limited
- WSA Co Ltd
- National Australia Day Council Limited
- Outback Stores Pty Ltd
- Financial Advisor Standards and Ethics Authority Ltd