

Future Fund Exemptions

Submission by the Australian Council of Trade Unions to the
Senate Finance and Public Administration Committee inquiry
into the Investment Funds Legislation Amendment Bill 2021

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The ACTU, formed in 1927, is the peak body for Australian unions and is the only national union confederation in Australia. For more than 90 years, the ACTU has played the leading role in advocating for the rights and conditions of working people and their families. The ACTU is made up of 39 affiliated unions and trades and labour councils, and we represent almost 2 million working people across all industries. As peak body for working people, we welcome the opportunity to provide our view on the Investment Funds Legislation Amendment Bill 2021 (the Bill).

In making this submission the ACTU notes and supports the Community and Public Sector Union's submission to this inquiry and reiterates the concerns it raises.

The Investment Funds Legislation Amendment has several goals; two objectives are of particular interest to the union movement. The first would exempt the investment activities of the Future Fund from Freedom of Information Requests, while the second would permit the Chair to determine the conditions of employment for staff at the future fund.

By seeking to exempt the Future Fund from certain market-sensitive disclosure requirements, the Government is acknowledging that doing so could be detrimental for the beneficiaries of the investment. The Future Fund is an important vehicle for the Australian people to both invest for the efficient funding of public sector retirement liabilities, as well as to steward various funds through their capitalisation and draw-down periods. It has grown to be a significant investor in the market with more than \$225 billion in funds under management, rivalling the largest investors in Australia. As a sovereign wealth fund, its assets, investment standards, and activities must be transparent to the public and best practice.

The Government proposition to exempt the investment activities and functions of the Future Fund Board and Management Agency from Freedom of Information Requests is inconsistent with its expectations of superannuation funds. In the explanatory memorandum, the Government has stated that the exemption from these disclosure requirements would protect the Future Fund from revealing 'confidential, competitive and commercially sensitive information.'¹ Highly detailed and overly prescriptive disclosure would, in the Government's view present 'the risk of negative impacts on investment outcomes, reduced access to investment opportunities and it could also prejudice investment managers in their dealing with other market participants.'²

This position is inconsistent with the Government's proposal to require superannuation funds to disclose every position and investment valuation, under the exposure draft of the Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021. Under the proposed regulations, superannuation funds would be required to disclose internal valuations of unlisted assets and

¹ The Parliament of the Commonwealth of Australia, 'Explanatory Memorandum: Investment Funds Legislation Amendment Bill 2021' (House of Representatives, 2021), para. 114.

² The Parliament of the Commonwealth of Australia, para. 116.

values and positions taken in derivatives markets at regular intervals. Doing so could, according to the by the Government's own admission, risk 'negative impacts on investment outcomes' and 'reduced access to investment opportunities' for superannuation funds, jeopardising the superannuation savings of millions of working Australians and leaving Australians worse off in retirement.

As all investment activity of the Future Fund is exempt from FOI, it is entirely up to the Chair and management of the Fund what they disclose and in what nature. It is incumbent upon the Government to explain why this regime is suitable for the Future Fund and its direct beneficiaries but unsuitable for superannuation funds and the millions of Australian workers relying on their superannuation savings to fund their retirement. Otherwise, as the Government has stated through its proposition and arguments for the passage of the Bill, workers could be left worse off with less in retirement due to overly prescriptive disclosure requirements.

The union movement also has concerns about provisions in the Bill to allow the Chair to employ workers outside the norms and conditions of the Australian Public Service. The stated objective of the Bill which 'better aligns the framework with norms in the financial services industry' is a startling objective so soon after the damning findings of the Banking Royal Commission.³ The culture of greed and corruption which Commissioner Hayne found to have permeated the financial services industry and which led to detrimental outcomes for working people is one to avoid at all costs.

The Bill would allow for the Chair to set and change the values of the organisation, the code of conduct, and the employment frameworks. The APS Code of Conduct requires public service staff to act honestly, with integrity, use Commonwealth resources properly, avoid conflicts of interests, and to ensure that information is used for the public good. The APS Values require public servants to be ethical, impartial, accountable, and respectful. The Government has not explained why it considers the APS values and Code of Conduct are bad, and why it prefers the "norms" of the financial services industry, so damningly exposed by the Banking Royal Commission, to be preferable.

The Bill allows the Chair to set conditions of employment and processes for employment which could conflict with the codes of conduct and values of the Australian Public Service. These processes would allow the Chair of the Future Fund the apparently unilateral ability to set working conditions for employees of the agency. This could be disastrous for the employment security of some staff at the Future Fund. In seeking to emulate the excesses of the financial services industry, however, it could lead to exorbitant bonuses or lavish gifts for executives and staff favoured by the Chair. The Chair could further circumvent the rigorous employment processes prevailing in the

³ The Parliament of the Commonwealth of Australia, p. 4.

Public Service, which require appointments to be merits-based, to appoint and promote politically aligned candidates to high-paying positions within the Future Fund.

If the Commonwealth's bargaining policy is hampering the ability for the public service to attract and retain talented staff, then that policy should be repealed across the public sector. The cumulative effect of wage freezes, wage restraint policies and aggressive bargaining-down of rights and conditions of employment is putting public servants well behind prevailing private sector wages and is placing a handbrake on the economic recovery. That the Future Fund is experiencing these constraints is representative of the broader problems with the bargaining policy.

It is concerning that the wages and conditions of investment staff may be exempt from public disclosure, due to the FOI changes in the same Bill, further obscuring the expenditure of public money.

The ACTU supports the CPSU's position that the Future Fund should not be removed from the Public Service Act.

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