

20 September 2021

Senate Standing Committee on Finance and Public Administration
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
fpa.sen@aph.gov.au

Dear Madam or Sir

Re: Investment Funds Legislation Amendment Bill 2021

Industry Super Australia (ISA) is a research and advocacy body for Industry SuperFunds. ISA manages collective projects on behalf of 13 industry super funds with the objective of maximising the retirement savings of nearly five million industry super members.

Consistent with our submission to the Treasury consultation on *Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021 (Attachment 1)*, ISA supports policy settings that strike a balance between transparency and ensuring institutional investors can maximise returns for their clients, or, in the case of industry super funds, their members.

In considering the *Investment Funds Legislation Amendment Bill 2021* (the Bill) the committee should be aware it will introduce an unlevel playing field where the Future Fund will be able to operate at a competitive advantage to superannuation funds of millions of Australians potentially diminishing their retirement savings.

Objective of the Bill

Among other things, a key objective of the Bill is to exempt the Future Fund from Freedom of Information (FOI) disclosure of commercially sensitive investment information. The rationale advanced in the Explanatory Memorandum (EM) is that the release of such information may adversely impact on the successful execution of the investment strategy of the fund.

Although the scope of such commercially sensitive information is not set out it is reasonable to conclude unlisted asset valuations would be exempt from FOI disclosure. Such valuations are utilised internally by investment funds to appropriately value assets for audited financial accounts and to review the performance of assets and assess whether a change in strategy is required.

Private (unlisted) market investments

Sophisticated institutional investors with sufficient scale invest in private markets to better diversify their investment portfolios by having exposure to a larger universe of assets than can be found in listed markets. Often such investments are highly sought after due to their particular characteristics including stable cashflows, lower volatility, direct management control and opportunities for future growth.

Significant value can be generated for investors by selling these assets in opportune market conditions with buyers paying what they value the asset at without visibility of internal valuations. Such sales are often well in excess of the carrying value of the asset.

The Future Fund like most industry super funds allocate around one third of their portfolios to private market investments, underpinning a significant source of returns.

Regulatory double standard

Industry super funds operate in the same capital markets as the Future Fund. This legislation would undermine the sole purpose of industry funds to maximise the retirement savings of their millions of members if it were implemented alongside the government's proposed portfolio holdings disclosure (PHD) regime¹. The PHD changes would cause funds to disclose commercially sensitive information that risks lowering returns for their members.

Policy settings that apply inconsistent disclosure regimes in the market would in effect give some participants an unfair advantage over, and to the detriment of, others. This should be avoided in the best financial interests of superannuation fund members.

In pursuing changes that exempt the Future Fund from certain FOI disclosures, the government would be fully aware of the impact of the disclosure of commercially sensitive information on Future Fund investments otherwise it wouldn't be seeking them. When asked about the issues and risks of unintended consequences arising from periodic disclosure of specific values, former Future Fund CEO David Neal gave the following testimony to the House of Representatives Economics Committee²:

We had this conversation a lot at the Future Fund, with the government incidentally, when I was there and I argued long and hard for the freedom of information to be changed so that the Future Fund did not have to disclose, wasn't at risk of having to disclose that information, and I'm delighted to see that might happen, because it's not in the interests of the tax payer for the Future Fund to potentially be forced to disclose the value of their investments and that's why when I was there I wanted the FOI rules to be changed.

He went on to say:

If it creates an adverse outcome, in that case for the taxpayer, in my case, and in superannuation funds' case, superannuation members, then we'd clearly need to be careful with that which is why (valuation) ranges make sense.

¹ See: <https://treasury.gov.au/consultation/c2021-200177>.

² House of Representative Economics Committee, public hearing of the Inquiry into Common Ownership & Capital Concentration in Australia, 20 September 2021.

As the Future Fund grows in scale it is entirely reasonable that it would seek to protect taxpayers from any adversity arising from disclosure of commercially sensitive information that could risk lowering returns for taxpayers. This is especially acute as the Future Fund seeks to increase taxpayers' exposure to unlisted property and infrastructure.³

Recommendation

The solution to the double standards created by this Bill is to not necessarily reject it but for the committee to seek information from Government about the disparity and recommend that regulatory disclosures should be reasonably aligned so the interests of taxpayers as well as superannuation fund members are served. In this regard the proposed portfolio holdings regime for superannuation funds should allow reasonable flexibility around the disclosure of unlisted asset valuations.

While ISA is supportive of measures to ensure the Future Fund can retain the ability to meet its investment objectives in the interests of taxpayers, it is difficult to support a bill that would give it an unfair competitive advantage over industry funds that may soon be required to publicly disclose the sort of commercially sensitive information the Future Fund would be exempt from disclosing, as it would be to the detriment of the retirement savings of millions of Australians (industry fund members).

Aligning disclosure regimes to avoid an unfair competitive advantage by ensuring the PHD does not disadvantage super fund members would be consistent with comments from the Minister for Finance who speaking on this Bill said "it will simply align the treatment of the Future Fund under the FOI Act with that of other entities that deal regularly with commercial information."⁴ On this basis it would be an adverse outcome for the government to establish inconsistent policy settings that arise out of the effects of this bill and the proposed PHD regime.

The government is well aware of this inconsistency and should fix it to avoid destroying the hard earned retirement savings of millions of working Australians.

ISA would welcome the opportunity to expand on this submission at a future hearing of the committee.

Matthew Linden
Deputy Chief Executive

³ Future Fund, A Year in Review 2021, see, for example, page 18.

⁴ [The Guardian, 26 August 2021, 'Calculated response': Coalition moves to protect Future Fund from FOI laws.](#)