



**futurefund**

*Australia's Sovereign Wealth Fund*

**Submission to the Senate  
Finance and Public  
Administration Legislation  
Committee**

**Inquiry into the Investment Funds  
Legislation Amendment Bill 2021**

20 September 2021

## Introduction

This submission is provided to the Senate Finance and Public Administration Legislation Committee ("**Committee**") in relation to its inquiry into the Investment Funds Legislation Amendment Bill 2021 ("**Bill**").

The Future Fund Board of Guardians ("**Board**"), supported by the Future Fund Management Agency ("**Agency**") (together the "**organisation**"), were established by the *Future Fund Act 2006* to invest the assets of the Future Fund on behalf of the Commonwealth. The Future Fund was seeded with initial contributions from government of \$60.5bn.

Prudent investing by the Board and Agency over the last 15 years has seen the Future Fund grow to over \$196bn at 30 June 2021. Since establishment, the Board and Agency have also been given responsibility for the investment of a further five Commonwealth investment funds now valued at around \$49bn. In all the organisation invests nearly \$246bn on behalf of the Commonwealth of Australia.

The portfolios invested by the Board with the support of the Agency are the Commonwealth Government's largest financial asset.

While investment performance has been strong, the organisation has evolved significantly. The scale and complexity of the investment portfolios have grown, and this is compounded by the challenging and competitive long-term investment environment.

The Agency has grown significantly to 201 employed staff at 30 June 2021, with a further 80 people engaged through contract hire and additional resources provided through consultancy and project arrangements. The cap on the Agency's Average Staffing Level has been lifted to 350 from the FY22 year to reflect expected staffing needs.

The organisation competes for investment opportunities in highly competitive global financial markets, while the Agency recruits specialist investment, professional and operational staff primarily from the private sector globally.

## Focus of this submission

The Agency has contributed to and supports the submission to the Committee prepared by the Department of Finance ("**Department**").

We consider that the Department's submissions in respect of Schedule 1 (Staff of the Future Fund Management Agency), Schedule 3 (Medical Research Future Fund Act 2015) and Schedule 4 (Emergency Response Fund Act 2019) appropriately address those topics.

We also support the Department's submission in relation to Schedule 2 (Freedom of Information) and wish illustrate the importance of this proposed amendment by providing additional detail on the matters it addresses.

### ***Freedom of Information Act 1982 - rationale for a partial exemption for investment activities***

The Board, supported by the Agency, is responsible for deciding how to invest the assets of six Commonwealth investment funds and to maximise risk-adjusted returns in accordance with the relevant Investment Mandate Directions from Government.

The Board operates independently from Government, has a unique investment model and has developed a comprehensive investment program using a wide variety of strategies in order to operate efficiently in increasingly competitive international financial markets.

The proper and efficient conduct of the Board and Agency in seeking to maximise investment returns within the mandated risk constraints, is dependent on them being able to compete in global institutional investment markets on an equal footing with other market participants.

Under the enabling legislation for each fund, the Board and Agency are required to invest through external investment managers. This means that not only are the Board and Agency directly involved in identifying, pursuing, securing, managing and disposing of investments, but they maintain an extensive suite of relationships and contractual arrangements with over 120 private sector, commercially focused investment managers globally.

The Board and Agency (either directly or indirectly through the Board's subsidiary investment vehicles, investment managers and other service providers and counterparties) regularly produce, negotiate, receive and have access to documents which include confidential, competitive and commercially sensitive information. This includes documents relating to the evaluation of investments and investment managers, terms negotiated in the implementation of investment transactions, and the Board and Agency's view on international investment markets and strategies for investing the Funds.

The current general exemptions available under the *Freedom of Information Act 1982* ("**FOI Act**") are too narrow or unclear to be relied on in some circumstances and, even if they are available, it is administratively burdensome for a relatively small agency to have to process requests which are ultimately refused.

We note that exemptions exist currently under Part II of Schedule 2 to the FOI Act for a number of other entities that carry on commercial activities, such as Australian Postal Corporation, Comcare, CSIRO, Export Finance Australia, NBN Co and the Reserve Bank of Australia.

At the State level, there are also entities with similar functions to the Board and Agency which have exemptions from equivalent State-based FOI legislation. For example, the Victorian Funds Management Corporation has a full exemption from the Freedom of Information Act 1982 (Vic), QIC Limited and its subsidiaries have an exemption from the Right to Information Act 2009 (QLD) "...in relation to its functions, except so far as they relate to community service obligations.", and the NSW Treasury Corporation has an exemption from the Government Information (Public Access) Act 2009 (NSW) in respect of information relating to its "borrowing, investment and liability and asset management functions".

The granting of a partial exemption for the Board and Agency would be consistent with the treatment of these other commercial and investment entities in the government sector.

With this context the risk to the investment performance from disclosure of documents under the FOI Act has been recognised since at least 2009 and we provide the following perspectives

to illustrate why an exemption in respect of the investment activities of the Board and Agency is appropriate.

### **Potential negative impact on investment outcomes**

The potential public release of documents relating to the past, current or proposed investment strategies for the Funds (including related information, advice and analysis provided by the Agency and third parties to the Board) creates the risk that the organisation's ability to implement its strategies will be compromised. For example, if it became known that the Board was planning to acquire or dispose of a particular financial asset, or pursue a particular strategy for a particular financial asset class, the market price of the relevant asset could be affected in a way which would have a negative impact on the performance of the Funds. Given that the organisation currently manages over \$245bn on behalf of the Commonwealth, any negative impact can easily run into very large sums of money.

Further, under its Investment Mandate Directions from Government, the Board is obliged to minimise the potential for its operations to impact the volatility or efficient operation of Australian financial markets - which, given the size of the Funds, are some of the markets most likely to be impacted by any release of this type of information.

### **Access to investment opportunities compromised**

In our dealings to date, a number of potential co-investors, investment managers and other service providers have expressed concern about accepting the organisation as co-investors or clients, because we are subject to the FOI Act and cannot guarantee that we will be able to maintain the confidentiality of commercially sensitive information. Material time and resources are spent at times on extensive discussion and negotiations with investment partners about FOI disclosure issues and, in some instances, there has been a reduction in the amount and types of information that they are willing to provide. This has reduced our level of insight to, and risk management oversight of, the investments.

In addition to the above concerns, there may also have been circumstances of which we are not aware where we were not approached with an opportunity for these reasons. Again, missed opportunities or weakened risk management oversight can be very costly given the scale of the organisation's responsibilities.

### **Prejudice to investment managers' dealings with other market participants**

Investment managers who agree terms with the Board which reflect the attractiveness of the relationship may, in the event that these terms are disclosed pursuant to an FOI request, be unfairly prejudiced in their dealings with other market participants who then seek to replicate those terms. This risk may reduce the willingness of investment managers to negotiate commercially attractive terms with the Board.

A further example of a risk for investment managers is that any document outlining why an investment manager is not considered suitable for appointment by the Board, or why they are rated less favourably by the Board in comparison to other investment managers could, if disclosed, cause significant harm to the reputation of that manager and impact its ability to conduct its business. While this is generally undesirable, of greater concern is that this would likely impact the relationship with the manager and the manager's willingness to do business with the organisation in future.

## **Potential retail of our commercial information**

In addition, we periodically receive FOI requests from foreign-based commercial enterprises for very detailed financial information regarding all our investments in certain strategies. Given the nature of their business, we can only assume that they are requesting this information for commercial gain (such as by selling access to financial data on investments in various sectors). We spend a considerable amount of time assessing these requests and whether any FOI exemptions apply in each case.

## **Appropriate accountability mechanisms**

As set out in the submission by the Department we also note that the Board and Agency are subject to existing accountability arrangements that provide appropriate levels of scrutiny and oversight.

These include:

- publication of a Statement of Investment Policies providing investment information for each investment fund including appropriate details on the investment strategy and investment approach;
- a requirement to produce and table an annual report and audited financial statements in Parliament;
- the requirement to provide reports to the Minister upon request setting out specified information relating to the performance of the Board's functions under the Act. The Minister may also direct the Board to publish this information;
- scrutiny through Parliamentary questions to the Minister, and attendance at Senate Estimates hearings; and
- reporting and disclosure obligations under the *Public Governance, Performance and Accountability Act* framework.

The Board and Agency would also continue to be subject to the FOI Act in respect of non-investment activities.

## **Conclusion**

The Board and Agency have delivered significant financial benefits to the Commonwealth of Australia.

Robust arrangements exist for the scrutiny of the Board and Agency's operational and investment activities.

However, the application of the FOI Act in respect of investment activities presents a risk to the Board's and Agency's ability to operate in competitive global financial markets and to maximise risk-adjusted returns.

We believe that providing a partial exemption from the FOI Act to the Board and Agency will protect and further enhance their ability to pursue the object of the *Future Fund Act 2006*, namely to strengthen the Commonwealth's long-term financial position.