



Investment Funds Legislation Amendment Bill 2021

CPSU SUBMISSION

21 SEPTEMBER 2021

Senate Finance and Public Administration Committees
PO Box 6100
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Canberra ACT 2600

By email: fpa.sen@aph.gov.au

Dear Committee Secretary

Inquiry into Investment Funds Legislation Amendment Bill 2021

As the primary union representing Australian Public Service (APS) employees, the Community and Public Sector Union (CPSU) is committed to providing a strong voice for our members in key public policy and political debates. The CPSU welcomes the opportunity to make a submission to this inquiry into the Investment Funds Legislation Amendment Bill 2021.

The CPSU does not support the removal of Future Fund Management Agency (Future Fund) staff from Public Service Act coverage or the proposed partial exemption of the agency from the Freedom of Information (FOI) Act 1982. We also support the ACTU submission to this inquiry and echo the concerns it raises.

The stated objective of this Bill is to 'better aligns the framework with norms in the financial services industry'. Essentially, the Government is arguing the Public Service Act prevents the Future Fund from offering employment conditions necessary to recruit, retain and reward staff. CPSU does not accept that argument.

The Future Fund, along with other Departments and agencies, does need the ability to attract and retain skills and expertise that are in high demand or are specialist positions. However, we submit it is the Commonwealth's workplace bargaining policy, which also applies to non-APS government agencies, that is the real problem rather than coverage by the Public Service Act.¹

The APS can struggle to compete with the private sector on pay. This difficulty has been exacerbated by the cumulative effect of:

- Effective wage freezes (resulting from a protracted APS bargaining round from 2014-2017);

¹ APSC (2020). Public Sector Workplace Relations Policy 2020. Retrieved from <https://www.apsc.gov.au/initiatives-and-programs/workplace-relations/public-sector-workplace-relations-policy-2020#application-of-this-policy-and-agency-responsibilities>

- The 6-month wage deferral decision of government in April 2020; and
- Successive wage restraint policies in the APS, including the 2% wage cap and the current cap of the annual seasonally adjusted Wage Price Index for the Private sector, which requires agencies to offer unknown wage increases over the life of enterprise agreements or Public Service Act determinations.

These decisions on wages undermined strategies to attract and retain the staff and skills that the APS needs.

The Commonwealth's bargaining policy also creates issues for workplace conditions.

Innovating on workplace conditions was once the natural advantage of the public sector, and the APS used to have a competitive advantage on conditions. Flexible working conditions, achieved through enterprise bargaining when agencies and their Ministers had the flexibility to negotiate without veto by the Australian Public Service Commission (APSC), previously allowed the APS to compete with the private sector on non-monetary benefits. This has included:

1. Flex time and EL TOIL;
2. Maternity and primary carer's leave of 14 weeks and above;
3. Supporting partner leave;
4. A minimum of 15.4% superannuation guaranteed for all funds, including when employees exercise choice;
5. Strong consultation provisions and workplace representation; and
6. A range of agency-specific initiatives.

These conditions formed part of a package that allowed the APS to compete with the private sector for skills.

However, the "no enhancements" rule in the current bargaining policy effectively freezes enterprise agreement conditions at a point in time, preventing agencies from continuing to adapt and improve on the non-monetary package available to APS employees. The APS is therefore no longer innovating on the overall employment package through enterprise bargaining and has foregone its natural advantage against the private sector. The private sector is now increasingly taking the lead. There is currently a risk that the APS falls behind as private sector employers increasingly adopt flexible working arrangements to promote gender balance and attract and retain employees.

Problems with the bargaining policy have been raised by other Commonwealth agencies that also seek to attract staff that work in the financial services industry. For example, the Australian Prudential Regulatory Authority (APRA) Review noted that while APRA is not part of the APS, APRA has experienced difficulty in attracting and retaining highly-skilled staff, the APRA Review calling for the removal of the requirement to subject APRA's employees to the bargaining policy.² Similarly, the Australian Securities and Investment Commission (ASIC) Capability Review cited salary increases, terms and conditions for all non-SES staff being subject to government's bargaining policy and it not allowing ASIC to lift salary bands to meet the market.³

² APRA Capability Review (2019). Retrieved from https://treasury.gov.au/sites/default/files/2019-07/190715_APRA%20Capability%20Review.pdf

³ ASIC Capability Review (2015). Retrieved from <https://treasury.gov.au/sites/default/files/2019-03/ASIC-Capability-Review-Final-Report.pdf>

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Unless the bargaining policy constraints that limit improvements in wages and conditions are removed, the inability to offer competitive salary and conditions that match market conditions shall remain. Removing Public Service Act coverage will not address labour market issues and will only raise concerns about the impartiality and accountability of employment processes.

The CPSU also notes the Australian Public Service Commission is currently conducting a review of the APS classification system. The CPSU has made detailed submissions to the review. Addressing the need to recruit for specialist and high demand positions is one of the issues being dealt with, and it is anticipated the APSC will make recommendations that go to that issue.

The CPSU further notes the proposal to remove Future Fund staff from the Public Service Act undermines the *APS Workforce Strategy 2025* objective of a “compelling employee value proposition that is well positioned to attract top Australian talent to choose a career with the APS.”

For the reasons above, the CPSU submits the proposal to remove the Future Fund from coverage by the Public Service Act should not proceed.

The CPSU is also strongly of the view that transparency and accountability is a basic principle of good government. Agencies should be covered by the FOI Act 1982 unless there is a national security reason not to be. There is no justification for the exemption of investment activities and functions of the Future Fund Board and Management Agency from freedom of information requests. It 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.

The CPSU is happy to provide information on the matters raised in this submission and supplementary information on other relevant issues.

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