



## Future Fund Bill 2005

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## Future Fund Bill 2005

**Date Introduced:** 7 December 2005

**House:** House of Representatives

**Portfolio:** Finance and Administration

**Commencement:** Royal Assent or the date to be fixed by Proclamation, or at the latest 6 months after the day the Act receives Royal Assent.

### Purpose

The object of this Bill is to strengthen the Commonwealth's long-term financial position by establishing the Future Fund to meet unfunded Commonwealth superannuation liabilities. These liabilities are the superannuation benefits the Commonwealth is liable to pay that are not backed by money or other assets.

This Bill establishes:

- the Future Fund (the Fund),
- the Future Fund Board of Guardians (the Board), and
- the Future Fund Management Agency (the Agency).

### Outline of Proposed Measures

The Bill grants the Treasurer and the Finance Minister (the responsible Ministers<sup>1</sup>) the power to credit cash amounts to the Fund through a Special Account (established by the Bill) with the Reserve Bank of Australia (RBA). The Bill also allows the responsible Ministers to transfer financial assets (such as Telstra shares) into the Fund.<sup>2</sup>

### Purpose

The Bill quarantines all Fund assets for the purposes of making provision for the Commonwealth government's unfunded superannuation liabilities.<sup>3</sup> The Government's intention is not to draw upon the assets of the Fund before 1 July 2020.<sup>4</sup> However, withdrawals are allowed before that date, but only for the purpose of meeting unfunded superannuation liabilities.<sup>5</sup>

### Governance

The Fund will be overseen by a Board of Guardians, not directors as would be the case in a commercial entity. This appears to be similar to the arrangements that apply to the New Zealand Superannuation Fund that is also overseen by a Board of Guardians;<sup>6</sup>

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- the Chairman of the Board will be Mr David Murray, formally the long serving Chief Executive Officer of the Commonwealth Bank<sup>7</sup>
- it will have six part-time members, in addition to the Chair, and
- the remuneration of this Board will be set by the Remuneration Tribunal, or the responsible Ministers.<sup>8</sup>

The Board will be a body corporate having a separate legal identity from the Commonwealth. It will have the statutory responsibility for managing the investments of the Fund. It will hold the Fund's investments in its own name and make its investment decisions independent from the Commonwealth, but with the Commonwealth retaining beneficial ownership of the Fund's assets at all times.<sup>9</sup>

### Funding

The initial capital for the Fund will be a transfer of \$18 billion from the RBA.<sup>10</sup> The Government has not committed itself to providing additional funding apart from this amount.<sup>11</sup> Additional contributions to the Fund would be made only after all other Government spending commitments have been met. Further, the Explanatory Memorandum notes that there is considerable uncertainty around additional Government contributions to the Fund.<sup>12</sup>

### Investments

Some aspects of the Fund's investment policies follow. The Fund:

- will invest only in financial assets, including overseas financial assets.<sup>13</sup> However, the Treasurer has not committed the Fund to invest a specific portion of its resources in Australia, or overseas.<sup>14</sup> The Treasurer has said, however, that Australian investments would probably comprise the bulk of the Fund's investment holdings<sup>15</sup>
- will **not** directly invest in property, infrastructure or other projects. But it will be able to invest in pooled funds that invest in these asset classes<sup>16</sup>
- will **not** take control of listed companies or unlisted companies with more than 50 members<sup>17</sup>
- will invest in a wide portfolio of financial investments<sup>18</sup>
- will exercise its voting rights in relation to companies in which it holds shares,<sup>19</sup> and
- will **not** borrow, except for short-term borrowing associated with the settlement of transactions or any circumstances listed in regulations.<sup>20</sup>

The responsible Ministers must issue an investment mandate to the Board to provide strategic guidance on its expectations for the investment of the Fund. The directions making up this mandate must be tabled in Parliament, but will not be disallowable instruments under the provisions of the *Legislative Instruments Act 2003*.<sup>21</sup>

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The Bill requires that the responsible Ministers must invite the Board to make a submission on any draft directions given to it. The responsible Ministers must table these submissions in Parliament, along with the final investment mandate.<sup>22</sup>

#### Taxation

The income of the Board (effectively the investment income of the Fund) will not be subject to income tax. Nor will the transactions of the Fund be subject to a tax law of a state or territory, such as stamp duty, if the Commonwealth is not subject to that law.<sup>23</sup> But the Board will be subject to:

- notional fringe benefits tax, and
- goods and services tax.<sup>24</sup>

#### The Agency

The Future Fund Management Agency will be a statutory body under the *Public Service Act 1999*. The Chair of the Board will be this Agency's head. The Agency will provide executive support for the Board and will be responsible for the operational activities associated with the investment of the Fund.<sup>25</sup> The costs of running the Agency will be met from the Future Fund, but the Agency will still be subject to Parliamentary scrutiny through the budget and estimates process.<sup>26</sup>

The Fund's headquarters will be in Melbourne.<sup>27</sup>

#### Treatment of the Future Fund in the Budget

The Fund will form part of the general Government sector. This is consistent with the inclusion of superannuation expenses and liabilities in the general Government sector.

Fund earnings will be included in Budget revenue in the same way as, say, taxation revenue and dividends from government business enterprises. Any Fund earnings will therefore increase the Budget surplus.

Fund earnings will, however, be excluded from the underlying cash balance. This redefines the underlying cash balance because, in the normal course of events, income from investments—such as dividends from Telstra—is included in the underlying cash balance and can be spent for general government purposes. According to paragraph 2.12 of the Explanatory Memorandum, the rationale for excluding Fund earnings from the underlying cash balance is that the use of Fund earnings is to be quarantined from the Budget proper, that is, Fund earnings will not be available for general government spending.

As a separate legal entity, the Fund will have its own balance sheet. As noted, the Fund is restricted to investing in financial assets such as cash and shares. Hence these investments will appear in the Fund's balance sheet as an increase in financial assets. The

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government's equity in the Future Fund will appear in the general government balance sheet as an investment in financial assets.

#### The Future Fund and inter-generational transfers

The purpose of the Fund is to accumulate assets which will be used, in the future, to finance payments of Commonwealth unfunded superannuation liabilities. This entails an inter-generational transfer of resources, namely from the current to future generations. In effect, by running budget surpluses, the government is limiting the volume of the services it provides to the current generation. The resources not used to provide current generation services will be deposited in the Fund. Using the Fund to pay superannuation liabilities means that the government will not have to impose burdens on taxpayers in the future in order to pay for superannuation. Drawing from the Fund will thus free the resources needed to provide services to future generations, in particular, those needed by an ageing population.

## Background

The Government indicated in the 2002-03 Budget that it would consider the future of the Commonwealth Government Securities (CGS) market, in consultation with key stakeholders. Following a public review, the Government decided to maintain the CGS market rather than use budget surpluses to retire debt. As a result of this decision significant amounts of financial assets continue to be held on deposit with the Reserve Bank of Australia. These amounts significantly exceed the resources required to meet the Government's short-term liquidity needs.<sup>28</sup>

Over the past decade state governments have begun to reduce their outstanding unfunded superannuation liabilities by either closing their defined benefit superannuation schemes and/or making substantial capital injections into those schemes.<sup>29</sup> Internationally, several governments, including Norway, France, New Zealand and Ireland have established funds to meet the financial requirements of their ageing populations.<sup>30</sup>

Over the past few years the Government has faced calls to reduce or eliminate its unfunded superannuation liabilities.<sup>31</sup> Over time the Commonwealth Government has accumulated a sizable obligation (currently estimated at around \$90 billion<sup>32</sup>) arising from its liability to pay the superannuation entitlements for Commonwealth public sector employees (including military service personal) and employees of South Australian and Tasmanian railways (the Commonwealth took responsibility for these states' railways during the early 1970s). These liabilities arise mostly from the benefits payable from the Commonwealth's defined benefit superannuation schemes.<sup>33</sup> The Government has not set aside money to meet these liabilities as they have increased.

To restrict the growth of these unfunded liabilities (amongst other reasons) the Government has moved to close most of the Commonwealth public sector defined benefit

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superannuation schemes to new members. The Commonwealth Superannuation Scheme (CSS) and the Defence Force Retirement Benefits Scheme (DFRDB) were closed to new members in 1990. The Public Sector Superannuation Scheme (PSS) was closed to new members from 30 June 2005.<sup>34</sup> Further, the defined benefit part of the Parliamentary Contributory Superannuation Scheme was closed to new members before the October 2004 election.<sup>35</sup> The only significant government defined benefit superannuation scheme to remain open to new members is the Military Superannuation and Benefits Scheme (MSBS).<sup>36</sup>

Recently, the Government has experienced a period of strong cash surpluses. Further, these surpluses are expected to continue for the next 10 years. However, from about 2014–15 the federal budget is projected to slip into increasing deficits due to the effects of the structural ageing of the Australian population.<sup>37</sup>

These projections were made on the basis of policy settings as they existed at the time of the 2002–03 budget, and are sensitive to the underlying assumptions, such as the birth rate and the average age when workers retire from the workforce. Assumptions in these two areas alone appear to have changed in the time since the 2002–03 budget.<sup>38</sup> For example, the workforce participation rates for older males have slowly increased and the average number of births per woman has also slowly increased (but is not currently at the rate necessary for a stable population).

Finally, the majority of the money earmarked for the Fund is to come from further sales of Commonwealth government assets. The sale of the government's remaining shares in Telstra, and to a lesser extent, its health insurance fund, Medibank Private, has been widely canvassed.<sup>39</sup> Other Government assets that may be sold are the Australian Submarine Corporation and the Commonwealth's share in the Snowy Hydro-electric scheme.<sup>40</sup>

### Basis of policy commitment

On 10 September 2004, the Treasurer announced that a Future Fund would be established to fund the Commonwealth's unfunded superannuation liabilities. He also released a paper titled 'Investing in the Future' which outlined the proposed Fund.<sup>41</sup> The Government reconfirmed its commitment to establishing the Fund in the 2005–06 budget.<sup>42</sup>

### Position of significant interest groups/press commentary

Views Suggesting that the Fund is Undesirable

A number of commentators have argued that the establishment of a Future Fund is not desirable.

The Australian Chamber of Commerce and Industry (ACCI) has argued that a Future Fund is not the best use of the Government's surpluses. Rather they argue that:

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- the best use of any Budget surpluses is to reduce the tax burden
- the Future Fund will not add to overall national savings
- the 2002–03 Budget Paper No. 5 (Intergenerational Report) only weakly indicated the need for an intergenerational fund
- as the costs of public sector superannuation are projected to fall as a proportion of GDP it is not clear that these costs should be pre-funded
- it is not necessary to maintain the government securities secondary debt market, and
- it will be impossible for a government to refrain from interfering in the investment management of such a fund.<sup>43</sup>

One commentator suggests that the assets in the Fund would be used to finance public infrastructure.<sup>44</sup>

Some commentators are concerned that the main beneficiaries will be financial market operators (i.e. through fees and charges) and that the impact of the investment of the Fund's resources will be to reduce the rate of return on financial assets, by further raising their prices.<sup>45</sup>

Economist, Alex Erskine, and the former national secretary of the Australian Labour Party Bob Hogg, argue that the investment of the Fund's monies will be open to political direction and that the money would be better used to reduce income tax.<sup>46</sup>

A number of commentators have observed that the establishment of the Fund means that non-government workers will be taxed more highly, than might otherwise be the case, to pay for public servants' superannuation, which may not be politically acceptable with some sections of the community (see further discussion below).<sup>47</sup>

Some commentators argue that the closure of most Commonwealth defined benefit superannuation schemes to new members has reduced the problems of accumulating larger unfunded superannuation liabilities. These liabilities can be comfortably financed from expected revenues.<sup>48</sup>

The National Farmers' Federation considers that no additional contributions to the Future should be made until all reasonable calls on the Budget, including tax cuts, have been met.<sup>49</sup> The Federation notes that as a proportion of GDP spending on public sector superannuation is expected to fall fairly steadily from 0.6 per cent of GDP in 2001-02 to 0.3 per cent of GDP in 2041-42. In the light of this falling proportion they consider that the best contribution the government of the day can make to future generations, from a fiscal policy perspective, would be to ensure today's policies are directed at maximising future GDP. The Federation considers that locking aside a substantial proportion of public monies today to pay superannuation tomorrow may actually reduce budget flexibility. This would occur if the government's ability to boost long-term productivity growth was hampered by lack of access to this funding to deliver beneficial reforms.<sup>50</sup>

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The Director of the Centre for Independent Studies, Peter Saunders, considers that the resources earmarked for the Fund would be better employed in providing 'personalised future fund accounts' under the control of each individual. The purpose of these accounts would be to meet certain lifetime costs, such as health or reducing the impact of unemployment. The Centre's overall aim is to reduce the extent of the recirculation of tax revenue back to the individual in the form of family payments and other benefits.<sup>51</sup>

Views in support of the Fund

On the other hand several commentators have noted a number of reasons why a fund to meet future demands on the Commonwealth budget should be established.

The Organisation for Economic Co-operation and Development (OECD) has noted that in the Australian context channelling budget surpluses (and proceeds arising from asset sales) into the Fund will reduce the call on the budget in coming years. This will allow the allocation of future revenues to priority areas such as health.<sup>52</sup>

The establishment of such a fund promotes intergenerational equity. So far as it is possible, it is unfair to saddle a future generation of taxpayers with liabilities incurred by a previous generation.<sup>53</sup>

Currently, the government's financial assets are lopsided, consisting principally of deposits with the RBA and a 51 per cent shareholding in just one company, Telstra. The establishment of a Fund to hold these assets and future budget surpluses allows wider diversity of assets to be held and the possibility of achieving increased investment returns.<sup>54</sup>

The establishment of a Future Fund makes it easier for the government to operate a counter-cyclical fiscal policy, where resources can be withdrawn from the economy during prosperous times to avoid over-stimulation, without necessarily wasting such resources on inappropriate projects or recurrent spending.<sup>55</sup>

When the sale of the Government's remaining stake in Telstra goes ahead, the Fund could receive part of those shares. This would avoid fees and charges associated with the initial sale of these shares on Australian stock markets and reduce the downward pressure on the Telstra share price that the sale of such a large block of shares would cause. The Fund could then gradually sell these shares.<sup>56</sup>

The Investment and Financial Services Association (ISFA) has welcomed the introduction of legislation to establish the Future Fund. ISFA believes that such a Fund is a step in the right direction in dealing with the demographic challenge faced by Australian society and future generations. However, ISFA cautions that the Fund must work at arms length from the government, but considers that the Bill achieves this aim.<sup>57</sup> ISFA represents the institutional fund management industry, which can be expected to have a keen interest in managing the investments of the Fund.

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## Further Comment and Discussion

### Tax Revenues Paying Public Service Pensions

Concerns about taxpayers having to meet public servants' superannuation liabilities are misleading, for this will be the position whether the Fund is created or not. The Government has acknowledged its legal obligation to meet these liabilities irrespective of the existence of the Future Fund.<sup>58</sup>

Further, though budget surpluses may be placed in the Fund, its total assets will also be made up of investment earnings and proceeds from asset sales. Contributions from these sources are likely to dwarf contributions from budget surpluses. Therefore, the establishment of the Future Fund and the payment of public service pensions will not be solely funded by tax revenue.

### Funding the Future Fund

As noted above, the initial capital for the Fund will come from the \$18 billion that is currently on deposit with the RBA. The combination of this amount, expected surpluses from the 2005-06 and 2006-07 budgets, plus the likely proceeds of the sales of Commonwealth assets (including Telstra) suggest that the balance in the Future Fund could be \$62 billion by June 2007. An average yield of 6.5 per cent a year for the next 13 years (assuming no further contributions for budget surpluses) would see the Fund reach its target balance of \$140 billion by the set date of 1 July 2020.<sup>59</sup>

These calculations suggest that not all future budget surpluses will have to be diverted into the Future Fund in order for it to reach its target balance by the due date. But caution should be exercised when considering this point as these calculations most likely assumed a higher price for Telstra shares than has recently been the case.

### Should Unfunded Liabilities Be Left to take Care of Themselves?

A possible consequence of not beginning to meet these liabilities in a period of budget surpluses is that the general levels of taxation may have to rise. Both the Intergenerational Report and the more recent report of the Productivity Commission entitled 'The Economic Implications of an Ageing Australia' project a substantial increase in real income by 2042. Taking this as their starting point, some commentators note that the substantial numbers of Australians will share in this general rise in living standards. In this scenario the projected increased costs and shortfall in government revenue can be met from increased taxes. Such taxes will have little adverse effect on that future generation, compared to today's generation of taxpayers, due to the increase in real incomes and living standards.<sup>60</sup>

The current Treasury Secretary, Dr Ken Henry, has suggested that there are two reasons why this approach should not be taken. He agrees that Australians in 2042 will most likely have a higher real income than the current generation, but notes that the rate at which that income grows will be far slower than the rate at which it grows today. If it is hard enough

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to increase taxes in an environment with comparatively higher rates of growth in real income, Dr Henry questioned how much harder it will be to increase taxes in an environment where the rate of real income growth is far lower.<sup>61</sup>

Secondly, raising taxes may have some serious unintended consequences. Dr Henry notes that there are only three economic flows that can be taxed, labour income, capital income and consumption. He argues that:

- higher rates of tax on consumption (i.e. a higher GST rate) are not politically sustainable
- higher rates of tax on capital income would serve to dry up flows of international capital (which are likely to be vital in the future), and
- higher tax rates on labour income simply accelerates the withdrawal of labour into early retirement, thereby decreasing a source of revenue.<sup>62</sup>

Thus, raising taxes to pay for increased spending (amongst which are the payment of unfunded superannuation liabilities), may be self defeating.

#### Impact on Financial Markets

Concerns about the impact of the Fund on financial asset prices are based on the likely size of the Fund. As noted above, the Fund will be established with an initial transfer of \$18 billion from the Reserve Bank.<sup>63</sup> By 2020, after the proceeds of asset sales and future transfers from ongoing budget surpluses are taken into account the size of the Fund will be \$140 billion.<sup>64</sup>

These are large numbers, but they must be assessed against the background of the current and expected size of the superannuation industry and the potential impact that the Fund may have on Australian investment markets. By the end of the June quarter 2005, the total value of superannuation assets alone was about \$741.7 billion, with net inflows into superannuation funds running at about \$12.9 billion a quarter.<sup>65</sup> If all of the \$18 billion initial funding was invested at once the Fund would be around only 2.3 per cent of the total size of the superannuation industry at the end of the December Quarter 2005.<sup>66</sup> Further, it seems that the initial funding will not all be invested at once.<sup>67</sup>

By 2020 the total value of superannuation assets has been estimated to be between \$1 700 and \$2 280 billion.<sup>68</sup> Based on these figures, and taking the projected size of the Fund into account, in 2020 it will be between 5.7 and 7.6. per cent of the estimated total superannuation funds invested. The Fund will be a significant presence in Australian financial markets.

A recent paper has noted that if half of the projected initial assets of the Fund (\$18bn) were invested in Australian shares, it would represent only one per cent of total market capitalisation. Further, if the returns from Australian equities are insufficient then the Fund

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will invest in a wide range of other assets as well as in overseas markets.<sup>69</sup> Large as the Fund may be, it may not be large enough to significantly affect asset prices in the way feared by some commentators, and if such an effect did occur, then it is likely that the investment managers of the Fund would seek alternative investment opportunities.

#### Holding Telstra Shares?

There have been suggestions that if the sale price of the government's remaining stake in Telstra is too low, some or all these shares may be transferred into the Fund.<sup>70</sup> Transferring a significant proportion of the Telstra shareholding to the Fund may not act to support the general Telstra share price. The simple fact that the Fund holds a significant proportion of Telstra shares means that sales of the shares will have a depressing effect on the company's general share price.<sup>71</sup>

The Minister for Finance and Administration, Senator the Hon. Nick Minchin MP, has indicated that the Fund will hold a 'market weighted' position of Telstra shares (a fund holds a market weight in shares if the percentage of the shares in question in that fund's portfolio is the same as the percentage that the entity's shares are of the total Australian stock market, by market value). This would be about five per cent of the Fund's total portfolio, or about \$6 billion (based on a fund portfolio of \$140 billion). This implies that the Fund will have to sell the bulk of its holding of Telstra shares, if a substantial proportion of the government's remaining stake in Telstra was transferred into the Fund.<sup>72</sup>

#### Controlling Telstra?

A policy justification for the sale of the Government's remaining holding of Telstra shares is that there is a conflict between the Government's roles as owner and regulator.<sup>73</sup> Whatever the nature and extent of this conflict, it is reasonably clear that the conflict is more apparent when the Government is not only the *owner* but also the *vendor* of Telstra shares, a situation clearly of its own making. This is simply because the Government's role as regulator requires it to encourage competition in the telecommunications market, the concomitant of which is the reduction in Telstra's acknowledged monopoly power in that market. To make the obvious point, a reduction in Telstra's monopoly power will, all other things being equal, lead to a reduction in its share price which is contrary to the interests of the Government as *vendor*.

Then it is questionable whether, if enough Telstra shares are transferred to the Future Fund, either conflict is averted. That is, in the event that Telstra shares are transferred into the Fund, the potential level of influence that the Government might have over Telstra will depend on the directions given by the responsible Ministers in respect of those shares

Although the Commonwealth is at all times the beneficial owner of the Fund's assets, the Board is the operational controller of those assets. This means that it will be the Board that directly exercises the shareholder's rights of ownership although it may have to do so in response to a Ministerial direction.

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Under the Bill, the Government has two powers to direct to the Board in relation to investments held by the Fund.

One power, in **item 18** of **part 3**, applies to the management of the Fund generally and empowers the responsible Ministers to give directions about, for instance, matters of risk and return and the allocation of assets.

Several express controls exist over the exercise of this power. First, such a direction must be consistent with the Act (except that it may be inconsistent with the requirement to maximise the return on the Fund consistent with international best practice). Second, **item 19** of **part 3** provides that the responsible Ministers must provide a draft direction to the Board and invite the Board's submissions on it. The responsible Ministers must consider any such submission by the Board. On this last point, it may be noted that the requirement to "consider" something is lower than the requirement to "have regard to" a formulation used commonly in other legislation. However, as any submission by the Board must be tabled in Parliament, the scope for the responsible Ministers to "consider", but disregard, any submission is lessened. Third, a direction given in exercise of this power is a legislative instrument which is subject to parliamentary scrutiny but not disallowance. The individual provisions of **item 18** are dealt with at page 19.

The other power, in **clause 8**, of **schedule 1** applies only to financial assets that are transferred into the Fund (rather than being acquired by the Fund). This clearly contemplates Telstra shares and shares in any other Commonwealth entities that are corporatised and/or privatised, like Medibank Private. In relation to this class of assets, the Government has a very broad power to give directions "about the financial assets". The Bill lists, as examples of directions under this power, directions in relation to the time at which such investments may be realised and directions about the exercise of voting powers. However, this does not represent the full extent of the power.

There are fewer express controls over the exercise of this power although, like the power under **item 18** of **part 3**, its exercise must be consistent with the Act (except that it may be inconsistent with the usual requirement, under **item 18(10)** of **part 3**, to maximise the return on the Fund consistent with international best practice). First, such directions are not legislative instruments and are therefore not necessarily subject to parliamentary scrutiny (**clause 8(2)(11)** of **schedule 1**). These directions must, however, be published on the 'internet' (**clause 8(2)(10)** of **schedule 1**) (presumably meaning the world wide web). See commentary on this point at page 15. Secondly, unlike the power under **item 18** of **part 3**, it is not tempered by any requirement that the responsible Minister give a draft direction to the Board or consult in any other way.

In short, the power to give directions in relation to any Telstra shares that may be transferred into the Fund is very broad and largely unfettered.

Whether these powers to give directions to the Board are as extensive as the powers that the Government has as a shareholder in its own right is not obvious. First, there are limits

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on the scope of the powers themselves (although the power under **clause 8 of schedule 1** is broader than under **item 18 of part 3**) and secondly, they are held in check to some extent by the other duties and responsibilities of the Board. These governance issues are dealt with below. Further, the Minister for Finance and Administration has indicated that the Fund would not have a seat on Telstra's board in any circumstances.<sup>74</sup> Nonetheless, it is apparent that any Telstra shares held by the fund will not necessarily be at arm's length from the Government.

### Governance and Controlling Companies

In a recent paper the International Monetary Fund (IMF) noted that:

A number of useful lessons can be drawn from international experience regarding the governance structure and investment options for the [Future Fund] FF. In particular, to ensure proper governance, it will be critical to establish legislation that provides market-based and objective criteria to gauge the FF performance, operational independence from the government, and adequate reporting and accountability mechanisms.

The investment policy should take into account the implications for the government's balance sheet and the impact on the domestic capital market. While portfolio limits on foreign investments do not seem warranted for the FF, restrictions on holding controlling stakes in domestic entities and domestic government bonds may be appropriate.<sup>75</sup>

A table, compiled by the IMF comparing the proposed Fund with arrangements with similar functions in other countries is at Attachment 1.

The governance arrangement for the Board are extensive and are explained in more detail in the section of this digest dealing with the individual provisions. They are, however, substantially the same as the duties of directors under the Corporations Act.

### Investing in Infrastructure?

Several commentators and the Australian Labor Party (see below at page 15) have called for the Fund to concentrate on directly investing in infrastructure assets.<sup>76</sup> An unspoken assumption behind this call is that there is a shortage of funds available for investment in infrastructure within Australia, that should be made up by the Federal government. However, Mr Denis O'Neill, Chief Executive Officer for the Australian Council for Infrastructure Development, has noted that currently there is no shortage of money for infrastructure developments.<sup>77</sup> That said, this does not amount to a reason for the Fund to refrain from investing in infrastructure.

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Let Comsuper Manage it?

Some commentators question the need to establish a separate agency to manage the Fund. They suggest that the monies be paid into the current government superannuation schemes for Comsuper, the governments overall superannuation fund administrator, to manage.<sup>78</sup>

The Minister for Finance and Administration, Senator the Hon. Nick Minchin, has argued that the proper fiduciary responsibility for the management of the Fund is to the broad range of taxpayers, where the fiduciary responsibility for the management of the Commonwealth superannuation funds is to the schemes' members. Placing Fund monies in the existing Commonwealth superannuation schemes may open the Scheme's trustees to conflicts of interest in managing these funds, while at the same time managing superannuation moneys.<sup>79</sup>

A more practical reason for not letting Comsuper manage these monies may be that superannuation funds are subject to tax on their total income (contributions and investment earnings) where the income and earnings of the future fund will be tax free (see below). If Comsuper managed the Future Fund it may cause substantial administrative difficulties from a tax point of view.

Another reason for not having Comsuper manage the Fund may be the standard of professional experience that the Government is seeking in its management. Normally, superannuation trustees are chosen on the basis of their representation of interested parties to the particular superannuation fund, as much for their experience in investment matters. As the Fund will be larger than any Australian superannuation fund, it may be appropriate to have its managers solely qualified for its management by their investment experience.

Finally, the Fund's assets will not be superannuation assets in the conventional sense. That is, they will not be vested in particular individuals, and the Fund will not hold and invest the direct contributions of individuals. This point **may** lead to a different standard of care and diligence being required by the Board in the performance of its duties compared to that required by superannuation trustees in the performance of their tasks (see below for further discussion). For a more detailed discussion of this point see the material on **Item 56** at page 29 and following of this digest.

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**ALP/Australian Democrat/Greens policy position/commitments** In his address in reply to the 2005–06 Budget the current Leader of the Opposition, the Hon. Kim Beazley MP, noted that:

Labor has a different and better plan for a fund for the future, a fund to help rebuild Australia. Instead of the government's future fund, Labor would establish its Building Australia Fund, and allow the income streams from that fund to be applied for infrastructure purposes. This would lay our foundation for higher growth rates. Higher productivity and higher growth are the best and only ways to lay a strong foundation for the future. That is the right way to use the budget surpluses that would go into that fund. It is the right way to ensure that impediments to growth in the Australian economy are properly removed.<sup>80</sup>

Speeches made by the Leader of the Opposition and other ALP spokespersons have confirmed this position.<sup>81</sup>

The Shadow Treasurer, Mr Wayne Swan MP has also indicated that:

- the Fund should be a 'locked box', that is, its investment decisions should not be influenced by any political consideration, and
- that its operations should be subject to parliamentary oversight and be completely transparent.<sup>82</sup>

The Labor finance spokesman, Mr Lindsay Tanner MP, has noted that the provisions of the Bill give the Government a broad discretion to direct the investment mandate of the Fund. Mr Tanner claims that this broad discretion makes a mockery of the claim that the Bill secures the Fund from future political manipulation.<sup>83</sup> Further, Mr Tanner has claimed that the provisions of this Bill allow the government to effectively direct the Fund to invest in response to political rather than economic criteria in certain circumstances.<sup>84</sup>

In a recent speech on the possible sale of Telstra the leader of the Australian Democrats, Senator Lyn Allison noted that:

It is also clear that the government does not need to reduce debt. When it moved on from that argument for selling Telstra, it fabricated another one—another future fund, this one for so-called unfunded superannuation liabilities into the future. We do not think that is a good argument, either. There is no pressing need for us to suddenly fund future liabilities in superannuation. This has been done through revenue in the past and there is no pressing need at this point to change that system. We have this absurd situation where we are still talking about reducing this imaginary debt, despite the fact that we have one of the lowest national debts in the OECD.<sup>85</sup>

**Significant technical flaws** The Bill provides for many instruments to be 'published on the internet' whether or not they are also laid before both Houses as legislative instruments. Leaving aside the point that it must be the world wide web and not the internet that is meant, there is a more pertinent issue of the meaning of 'published' in this context.

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Specifically, the Bill does not say where or for how long these instruments should be available. It is not clear, for instance, whether the requirement of publication can be met by, for instance, momentary release on an unknown, password protected website. The Bill could be clearer in this regard.

**Item 25** prohibits the Board from acquiring a derivative for the purposes of speculation or leverage. But it permits the Board to acquire derivatives for hedging purposes.

Typically, derivatives are highly leveraged financial assets. That is, the amount paid for them is a small fraction of the value of the assets to which that derivative relates. Therefore, when the Board uses derivatives to achieve indirect exposure to a financial asset (**item 25(1)(c)**) it is entering into a leveraged position. This is an apparent contradiction to the ban of the Board uses derivatives to achieve a leveraged position in relation to a financial asset (**item 25(1)(f)**).

Under **item 69(1)** a Board member may notify the Board of a conflict of interest in relation to a financial asset held by the Fund. **Item 69(6)** the notification of a conflict of interest under **item 69(1)** ceases to have effect if the size of the interest in a financial asset held by the member increases. In these circumstances it could be argued that the potential for conflict of interest notified under **item 69(1)** has increased, so if the Board member felt it necessary to notify the Board of this interest, it could be argued that it is also necessary for that Board member to also notify the Board of an increase in the size of that interest.

## Main Provisions

The Bill is divided into three Schedules plus a lengthy initial group of provisions in six parts.

### Initial Provisions

#### Part 1 - Introduction

**Item 3** of **Part 1** notes that the object of the Act is to strengthen the Commonwealth's long-term financial position by establishing the Future Fund, and that the Fund will make provision for unfunded superannuation liabilities that will become payable during the period when an ageing population is likely to place significant pressure on the Commonwealth's finances.

This provision restricts the use of the Fund's resources to dealing with the Commonwealth's unfunded superannuation liabilities. Further details of the purposes of the Future Fund Account are in **item 2** of **schedule 2** (see below).

**Item 5** contains definitions used in the Bill. Notable amongst these definitions is that of 'unfunded superannuation liability', which is:

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- so much of a superannuation liability as is not attributable to the funded component of a superannuation benefit, or
- an amount payable by the Commonwealth under a South Australian railways arrangement; or
- an amount payable by the Commonwealth under a Tasmanian railways arrangement.

A 'funded' superannuation liability is one where assets have been put aside to meet that liability when it falls due. Most commonly the term refers to the superannuation liability arising from the amounts contributed by superannuation scheme members and the associated investment earnings of these contributions.

During the term of the Whitlam Government, the Commonwealth assumed responsibility for the South Australian and Tasmanian railway systems. This included the assumption of the responsibility for the superannuation benefits of employees of those railway systems.

The term 'unfunded superannuation liability' can mean any of the liabilities set out in the dot points above. It does not mean all of these liabilities added together. This becomes important when making payments from (debiting) the Fund Account. The Government can choose to pay any (or all) of the liabilities in any financial year under the provisions of **schedule 2**. This preserves a degree of flexibility in meeting the Commonwealth's superannuation obligations.

#### Financial Assets

**Item 6** defines the term 'financial assets' for the purposes of the Bill in two parts.

The first part of this definition is the same as the definition of a financial asset in 'GFS Australia'. This is referred to in **item 5** (Definitions) of **part 1** as the Australian Bureau of Statistics publication 'Australian System of Government Finance Statistics: Concepts, Sources and Methods' (GSF Australia). In the latest edition of GFS Australia the term financial asset is defined as:

An asset in the form of a financial claim on another economic unit, monetary gold or a statutory reserve deposit at the IMF.<sup>86</sup>

What this may mean is spelt out in the body of this publication. Attachment 2 contains extracts from the latest edition of GFS Australia that expand on the meaning of this term. Suffice to say that it covers an extremely broad range of financial assets.

As noted above, the Fund can only invest in financial assets. If the Board finds itself in the position of holding assets that cease to meet this definition, or assets that are no longer financial assets because of a change in this definition, it must divest itself of those assets as soon as practicable (see **item 32(1)** of **part 3**).

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The second limb of the definition of financial asset (**item 6, part 1**), is an asset specified in regulations for the purposes of the proposed paragraph. The purposes of these regulations will be to provide the Board with certainty and clarify when an asset is or is not, a financial asset for these purposes.<sup>87</sup>

## Part 2 – The Future Fund

**Item 11 of Part 2** provides for the establishment of the Future Fund, which consists of:

- the 'Future Fund Special Account' (see below; **item 12**), and
- the 'Investments of the Fund'

'Investments of the Fund' are defined as any financial asset in **item 16 of part 3**.

The Explanatory Memorandum notes that the term 'Investments of the Fund' includes derivatives acquired under **item 25 of part 3** and other financial assets the Board holds through securities lending arrangements or otherwise.<sup>88</sup>

The note to **item 16 in part 3** states that this provision 'does not authorise the acquisition of a derivative'. This does not, however, prevent the acquisition of derivatives since **item 25 of part 3** specifically allows the (limited) acquisition of derivatives. Further, a financial derivative is included in the definition of a financial asset in Attachment 2.

**Item 12** establishes the Future Fund Special Account and notes that this account is a special account for the purposes of the *Financial Management and Accountability Act 1997* (FMA). The definitions in **item 5 of part 1** refer to the Future Fund Special Account as simply the 'Fund Account'.

Under **section 5** of the FMA a 'special account' is an account established by an Act, other than the FMA. Under **section 21** of the FMA, authority automatically exists (i.e. money is appropriated) to transfer money from Consolidated Revenue Fund to the special account, providing the purposes of this special account are clearly identified in the Act that establishes that account.<sup>89</sup> A special account is little more than an accounting and administrative convenience where all receipts and spending relating to a particular activity are reconciled.

**Item 2 of Schedule 2** specifies the purposes of the Fund Account (see below).

## Part 3 – Investment of the Future Fund

### Management of the Fund in the Public Context

**Item 15 of Part 3** specifies that the main object of the Board's investment in financial assets is to enhance the ability of the Commonwealth to discharge its unfunded superannuation liabilities as mentioned in **item 2 of schedule 2**.

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**Item 16** allows the Board to invest amounts in the Fund Account in any financial asset. Such investments are to be made in the name of the Board. That is, the investments are made in the name of, and held by, the Board, not the Commonwealth or either of the responsible Ministers.

**Item 17** generally allows for income from the Fund's investments, and capital received from realised Fund investments, to be reinvested in the Fund Account.

**Paragraph 6** of **item 17** provides that **section 39** of the FMA does not apply to an investment of the Fund. **Section 39** of the FMA deals with the investment of 'public money'.

All public money must be credited to the Consolidated Revenue Fund.<sup>90</sup> By providing that **section 39** FMA does not apply the Fund's investments, they are removed from the definition of 'public money'. This allows the investments of the Fund to be reinvested and the income of these investments received into the Fund Account without having to first be re-credited to, and then paid out from, the Consolidated Revenue Fund.

Further, if **section 39** of the FMA did apply, the investments would have to be made in the name of either of the responsible Ministers. However, removal of the Fund's assets from the definition of public monies allows these investments to be made in the name of the Board. This is an additional device to ensure that investments are made at arms-length from the responsible ministers in particular and the Government in general.

#### Item 18 – Investment Mandate

As noted above at page 6 and following, concerns have been expressed that a government may give directions to the Board to invest in a particular manner that may owe more to political than investment considerations. This makes the provisions governing the directions that the responsible Ministers may give the Board of particular interest.

**Item 18(1)** of **Part 3** requires the responsible Ministers to give the Board at least one written direction, and provides that they may give more than one such direction.

**Item 18(2)** requires that such directions must have regard to:

- maximising the return earned on the Fund over the long term, consistent with international best practice for institutional investment, and
- such other matters as the responsible Ministers consider relevant.

For the purposes of this Bill there is no definition of what 'long term' or 'international best practice for institutional investment' may mean. Nor has there been any indication from the Government on what 'other' matters may be considered relevant for such directions. However, such a provision preserves a measure of flexibility for the responsible Ministers in giving directions to the Board.

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Under **item 18(3)** such directions will collectively known as the 'Investment Mandate'.

**Item 18(4)** provides examples of the kinds of directions that may be given under this power. These directions may set out policies in relation to risk and return and the allocation of assets. However, a policy relating to the allocation of financial assets must not be inconsistent with a policy relating to matters of risk and return. This too limits the matters on which the responsible Ministers can give directions. **Item 18(5)** provides that the requirements of **item 18(4)** do not limit directions given under **item 18(1)**. Further, **item 18(6)** provides that the Investment Mandate prevails over **item 18(10)** (see below).

One view of these provisions is that they give the responsible Ministers an almost unfettered ability to give what ever directions they see fit to the Board. For example, **item 18(4)(b)** potentially seems to give the responsible Ministers power to direct the Board to invest less in cash and more in Australian shares, which in turn may boost general share prices.

However, under **item 18(7)** all directions given under these provisions must be consistent with the Act (other than the requirements of **item 18(10)**, see further discussion below)). This means that they must be consistent with, for instance:

- the purposes of the Act noted in **item 3** of **part 1**,
- the subject matter of the directions that make up the investment mandate in **item 18(2)** above (i.e. maximising the long term return etc.),
- the purposes of the Fund Account in **item 2** of **schedule 2**. As previously noted, these purposes are to ensure that the Commonwealth's unfunded superannuation liabilities are able to be met by the specified dates, and
- the duties and responsibilities of the directors.

Thus any direction that required the Board to invest in financial assets that do not contribute to these outcomes, would cut across the whole purposes of the Act, and may not be valid directions.

This requirement acts as a barrier to responsible Ministers requesting that the Board make non-commercial investments, or investments that may be commercial but will not assist the Fund in meeting the objectives of the Act. This must be read against the apparently wider power of the responsible Ministers to give directions about financial assets that have been transferred into the Fund. This power found in **subclause 8(1)** of **schedule 1** would apply to any Telstra shares that are placed in the Fund. There is a discussion of this power at page 11 of this digest.

Under **item 18(8)** a direction does not come into force until the 15<sup>th</sup> day after the day on which it was given. This allows time for the Board to either seek modification of the direction or implement its requirements.<sup>91</sup>

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Under **item 18(9)** these particular directions are legislative instruments for the purposes of the *Legislative Instruments Act 2003*. Under **subsection 5(3)** of that Act an instrument is a 'legislative instrument' for the purpose of this Act if it is 'registered'. Under **section 4** of this Act the instrument is recorded on the register of Federal Instruments maintained by the Attorney General's Department. To be placed on this register an instrument has to be tabled in Parliament.

The note in **item 18(9)** indicates that **section 42** of the *Legislative Instruments Act 2003* does not apply to these directions. **Section 44(2)** of this Act specifies that Ministerial directions to any person or body are not subject to the requirements of **section 42** of the same Act. This means that these directions are not subject to a disallowance motion in Parliament.

**Item 18(10)** requires the Board to seek to maximise the return earned on the Fund over the long term, consistent with international best practice for institutional investment.

However, **item 18(11)** stipulates that **item 18(10)** has effect subject to this Act and a direction under **item 18(1)** (see above) and any direction under **subclause 8(1)** of **schedule 1**. As noted above at page 11 and above in this section, **subclause 8(1)** of **schedule 1** gives the responsible Ministers broad power to give directions in relation to financial assets that are transferred into the Fund (for instance, Telstra shares).

The Explanatory Memorandum states that the effect of these provisions is to ensure that the Board's duty to maximise returns is subordinate to the investment parameters set out by the Parliament and Government, particularly the responsible Ministers.<sup>92</sup>

#### Review of Investment Mandate

**Item 18(12)** of **Part 3** requires that before the first occasion on which an amount is debited (paid from) from the Fund Account for the purposes of discharging some or all of the Commonwealth's unfunded superannuation liability the responsible Minister must review the Investment Mandate in consultation with the Board.

Under **item 2** of **schedule 2** this can only occur either:

- after 1 July 2020; or
- where a withdrawal is made before that date, only when the assets of the Fund Account are equal to or greater than the projected unfunded superannuation liabilities at the start of the financial year in which the withdrawal is made.

#### Consultation on Investment Mandate

**Item 19** of **Part 3** requires the responsible Ministers to send a draft direction to the Board and invite the Board to make a submission on this direction to the responsible Ministers. If such a submission is made the responsible Ministers are required to consider this

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submission. **Item 19** also requires that when the responsible Ministers have issued a direction and the Board has made a submission, the responsible Ministers must table that submission, along with the relevant direction, in Parliament.

The time limit given to the Board to make such a submission must be reasonable. No specific guidance has been offered on what is a 'reasonable' time limit for the Board to make such a submission, the Explanatory Memorandum noting that this will be decided on a case by case basis.<sup>93</sup>

#### Compliance with Investment Mandate

**Item 20** of **Part 3** requires the Board to take all reasonable steps to comply with the Investment Mandate. Where the Board finds that it has not complied with this Mandate it is required to inform the responsible Ministers in writing of its failure to so comply.

Under the provisions of **item 20(3)** the responsible Ministers can direct the Board to comply with the Investment Mandate and the board is required to comply with such direction.

Third parties who have entered into transactions with the Board, and who are affected by any failure to comply with the Investment Mandate are protected by **item 20(5)**. This item specifies that a failure to comply with the Investment Mandate does not affect the validity of any transaction undertaken by the Board.

**Item 20(6)** specifies that a direction given to the Board under **item 20(3)** is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Explanatory Memorandum notes that this is because the directions given under **item 20(3)** are administrative in nature.<sup>94</sup>

#### Control of Companies

The purpose of **item 21** is to ensure that the Board does not trigger the takeover provisions of the *Corporations Act 2001*. **Section 606** of the Corporations Act prohibits some acquisitions of interests in voting shares while **section 611** contains exceptions to these prohibitions.

**Item 21(1)** exempts the Board from the requirements of **section 606** of the *Corporations Act 2001*, but only where an acquisition of shares is the result of a *transfer* of financial assets into the Fund under **items 6** or **7** of **schedule 1** of the Future Fund Bill.

**Section 606** of the *Corporations Act 2001* prohibits a person (in this case the Board) from acquiring an interest in the voting capital of either a listed or unlisted company with more than 50 members, where such an acquisition results in that person:

- increasing their share of the voting capital to more than 20 per cent of the total issued voting capital, or

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- increasing their share of the voting capital if they already have between 20 and 90 per cent of the total voting capital on issue.

**Items 6 and 7 of Schedule 1** of this Bill cover the transfer of Commonwealth financial assets to the Board or the gift of other financial assets to the Board.

In effect, **item 21(1)** allows the transfer or gift of financial assets to the Board without violating the provisions of **section 606** of the *Corporations Act 2001*. This would allow the transfer of the Commonwealth's controlling stakes, for example, in Telstra, or in other Commonwealth assets, to the Board to take place.

**Item 21(2)** provides that subsections **606(1A)** and **(2A)** and **section 611** of the *Corporations Act 2001* do not apply to the Board.

**Subsection 606(1A)** and **(2A)** allow a person to acquire an interest in the voting capital of either a listed, or unlisted company with more than 50 members, under the exemptions from the provisions of **section 606(1)**, set out in **section 611** of the *Corporations Act 2001*. In turn, this latter section allows for a person to acquire shares in pursuit of a takeover bid amongst other circumstances. These exceptions to the requirements of **subsection 606(1)** of the *Corporations Act* do not apply to the Board's acquisition of assets, except as dealt with in **item 21(1)** (see above).

The effect of **item 21(2)** is that the Board must restrict its purchases of equity in listed companies, and unlisted companies with more than 50 members, to no more than 20 per cent of the issued voting capital, where that acquisition is not by way of transfer of Commonwealth financial asset or the gift of a financial asset. **Item 21(2)** thus limits the control the Board may have over a particular company other than in the case where the financial asset is a transferred or gifted Commonwealth financial asset.

This restriction leaves open the question of whether the Board may nonetheless acquire a controlling stake in:

- an unlisted company with less than 50 members, or
- a trust, whether listed or unlisted.

The Explanatory Memorandum notes that these provisions allow the Board to acquire meaningful exposure to non-traditional asset classes such as private equity and infrastructure.<sup>95</sup> [The freedom to invest in these asset classes should not be read as the freedom to directly invest in infrastructure, as the Board may only purchase financial assets, not direct interests in real assets such as toll roads.]

The Explanatory Memorandum also notes that the Board is subject to the takeover provisions in chapters 6, 6A, 6B, 6C and 6D of the *Corporations Act 2001*.<sup>96</sup> These chapters control the behaviour of equity market participants during an 'on-market' takeover of a listed entity. It may be the case that the Board will hold interests in a company that is subject to a takeover offer. The Explanatory Memorandum confirms that the Board

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cannot act outside the normal rules relating to take-over activity in the Australian equity market.

#### Foreign Companies

**Item 22(1)** requires the Board to take all reasonable steps to ensure that it does not hold a stake of more than twenty per cent in a foreign listed company. This is consistent with the requirements of **item 21(2)**.

Again, this leaves the possibility open that the Board will be able to acquire a larger than twenty per cent stake in foreign unlisted companies or foreign trusts, whether listed or unlisted.

#### Borrowing

**Item 23** permits the Board to borrow up to ten per cent of the balance of the Fund, but only for a maximum of seven days, and only where:

- the borrowing was for the settlement of the acquisition of one or more financial assets, and
- the borrowing was not anticipated at the time the decision to acquire these financial assets was made.

#### Investment Policies

**Item 24** requires the board to formulate investment policies consistent with the Investment Mandate, and to publish these policies on the Internet as soon as practicable after the commencement of this item (the date fixed by Proclamation or six months after the Bill is given the Royal Assent, whichever comes first).

#### Derivatives

Derivatives are securities that derive their value from another security.<sup>97</sup> For example, the value of a futures contract over a particular company's shares derives its value from the value of that company's shares on the stock exchange on which those shares are traded.

**Item 25** prohibits the Board from acquiring a derivative for the purposes of speculation or leverage. But it permits the Board to acquire derivatives to:

- protect the value of a financial asset or the income from those assets (i.e. for hedging purposes), or
- achieving indirect exposure to financial assets, or
- achieving transactional efficiency.

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Typically, derivatives are highly leveraged financial assets. That is, the amount paid for them is a small fraction of the value of the assets to which that derivative relates. For example, a person buying a futures contract over 1000 BHP shares may only have to pay 5 per cent of the value of those shares, but has some control over those the entire value of those shares for the duration of the contract.

Therefore, when the Board uses derivatives to achieve indirect exposure to a financial asset (**item 25(1)(c)**) it is entering into a leveraged position. This is an apparent contradiction to the ban of the Board uses derivatives to achieve a leveraged position in relation to a financial asset (**item 25(1)(f)**).

**Item 28(2)** requires the Board to operate through an 'investment manager'. The term 'investment manager' is defined in **item 5 of part 1**.

#### Exemption from Income Tax

**Item 30** provides that the Board is a 'public authority' for the purposes of **section 50-25** of the *Income Tax Assessment Act 1997*. Under **section 50-1** of that Act a public authority is exempt from income tax. However, the Explanatory Memorandum confirms that the Board is subject to notional fringe benefits tax and the goods and services tax.<sup>98</sup>

This item also provides that the Board is not subject to taxation under a law of a State or Territory, if the Commonwealth is not subject to that law.

#### Franking Credits

Franking credits are a tax offset (or rebate) attached to dividends paid by entities, where the income of that entity has already been subject to company tax.

**Item 31** provides for the Board to receive a refund of any franking credits that may be attached to a dividend paid by an Australian company.

The Explanatory Memorandum notes that if this refund was not given to the Board, it would be biased towards investing in financial assets that had not previously been subject to company, or entity level, taxation, such as un-franked dividends, fixed interest investments, interest payments or trust distributions. The refund of franking credits to the Board (which itself is exempt from income tax) makes investment in companies paying a franked dividend a neutral proposition from a taxation point of view.<sup>99</sup>

#### Part 4 – The Board

**Item 34** establishes the Future Fund Board of Guardians.

**Items 35 and 36** specify the Board's functions and its ordinary powers.

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**Item 37** specifies that the Board is a body corporate. It is this item that gives the Board a separate legal identity from that of the Commonwealth.

#### Membership

**Item 38** provides for the Board to consist of six members, plus its Chair. The members are appointed by the responsible Ministers by way of a written instrument.

#### Qualifications

Under the provisions of **item 38(3)** the responsible Ministers must be satisfied that a Board member has substantial experience or expertise, and professional credibility and significant standing in at least one of the following fields:

- investing in financial assets
- the management of investment in financial assets, or
- corporate governance.

Under the requirements of **item 38(4)** a person is not eligible for appointment as a Board member if they are:

- a Commonwealth employee, or
- an employee of a Commonwealth company, or the holder of a full-time office under a Commonwealth law.

**Item 45** allows the responsible Ministers to specify other terms and conditions, not covered by this Bill, under which Board members hold this appointment.

Clearly, these provisions indicate that the Board members will be those experienced in the investment of financial assets, and who are not formally connected with the Commonwealth in any way. Further, acting Board members, or acting chairs of the Board appointed under the provisions of **Item 46** would also have to meet these requirements.

#### Comment on Board Member Qualifications

The above qualifications do not include a requirement for Board members to meet standards of fitness and propriety that are common for other groups having responsibility to manage large amounts of other people's money. For example, superannuation trustees have to meet the fitness and priority standards set out in regulation 4.14(4) of the Superannuation Industry (Supervision) Regulations 1994 which require a 'Regulated Superannuation Entity' (RSE) licensee to have characteristics that enable them to:

properly discharge the duties and responsibilities of an RSE licensee in a prudent manner.<sup>100</sup>

Such characteristics include, but are not limited to:

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(a) character, competence, diligence, experience, honesty, integrity and judgement; and

(b) educational or technical qualifications, knowledge and skills relevant to the duties and responsibilities of an RSE licensee.<sup>101</sup>

Additional information on the application of these requirements to superannuation fund trustees can be found in the Australian Prudential Regulation Authority Superannuation guidance note SGN 110.1 [‘Fit and Proper’](#).

The Bill’s qualifications for Board membership cover only some of these requirements. It may be the case that the responsible Ministers will cover these matters under the provisions of **item 45**. There appears to be no requirement for the responsible Ministers to make such determinations public.

#### Application of the *Corporations Act 2001*

**Item 39(1)** specifies that the Board is an 'exempt public authority'. Under **section 57A** of the *Corporations Act 2001* an 'exempt public authority' is not a corporation for the purposes of this Act. Further, **item 39(2)** provides that the Board is taken to be an 'instrumentality of the Crown' for the purposes of **section 5A** of the *Corporations Act 2001*.

The Explanatory Memorandum notes that this means that the Board is not bound by **chapter 5** (except part 5.8) of the *Corporations Act 2001*.<sup>102</sup> This is perhaps an inadvertent reversal of the correct position. In fact, as an instrumentality of the Crown, the Board is subject to chapter 5 but not to part 5.8. Chapter 5 deals generally with external administration of corporations. Part 5.8 of Chapter 5 of the Corporations Act deals with penalties.

The other consequence of the Board being an instrumentality of the Crown is that it is bound by chapters 6 (Takeovers), 6A (Compulsory acquisition and buyouts), 6B (Legal remedies in relation to takeovers, compulsory acquisition and buy-outs), 6C (Information about ownership of listed companies and managed investment schemes) and 6D (Fundraising) of the Corporations Act and is bound by a provision of chapters 6CA and 7 if specified in regulations under that Act. See brief discussion of this point in relation to **item 21** at page 22.

#### Term of Service and Payment

Under the provisions of **item 40** a Board member is appointed on a part-time basis and holds office for a maximum term of five years.

**Item 41** specifies that either the Remuneration Tribunal or the responsible Ministers will determine what the Board members are paid.

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### Termination of Appointment

The responsible Ministers may terminate the appointment of a Board member under the provisions of **item 44** (including that of the chair of the Board) because of their:

- misbehaviour
- mental or physical incapacity
- entry into bankruptcy
- entering into an arrangement with their creditors to repay their debts
- failure to disclose, without reasonable excuse, any interest that may conflict with the performance of their functions as a Board member
- not attending three consecutive Board meetings without leave of absence
- not performing their duties, or
- the responsible Ministers consider that their performance has been unsatisfactory for a considerable period of time.<sup>103</sup>

### Quorum at Meetings

Under the provisions of **item 49** five Board members form a quorum.

However, if one or more Board members cannot participate in the consideration of the matter before the Board due to the operation of **item 71** (conflict of interest provisions) then as few as three other Board members constitute a quorum in these circumstances

### Reports informing the responsible Ministers and the nominated Minister

Under the provisions of **item 54** the 'nominated Minister', which is one of the responsible Ministers nominated under the provisions of **item 83** for the purposes of this Act, may by written notice require the Board to prepare a report or give information about one or more specified matters. The Board must comply with all such requests.

Such reports are not legislative instruments for the purposes of the *Legislative Instruments Act 2003* and therefore are not required to be tabled in Parliament. But the nominated Minister may choose to publish any such report or other information.<sup>104</sup>

**Item 55** requires the Board to keep the responsible Ministers informed, in writing, about its operations. Matters to be notified may include (but are not limited to) significant investment results, concerns regarding fraud, and any non-compliance with the Board's policy on conflicts of interest.<sup>105</sup> The nominated Minister must receive appropriate reports, documents and information in relation to the Board's operations.

The appointment of the nominated Minister is dealt with under **item 83** of **part 6**. In practice the nominated Minister will have the most contact with the Board.

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## Duties of Board Members – Care and Diligence

The Explanatory Memorandum notes that **items 56 to 67** (Division 7 of the Bill) are modelled on **sections 2 to 27D** of the *Commonwealth Authorities and Companies Act 1997*, which are in turn based on parts of the *Corporations Act 2001*.<sup>106</sup>

**Item 56(1)** requires Board members to apply the degree of care and diligence that a 'reasonable person' would exercise if they were a Board member in its circumstances. This is similar to the requirements of **subsection 180(1)** of the *Corporations Act 2001*.

This standard of care can be contrasted with the 'prudent man rule' that outlines the standard of diligence and care that superannuation trustees must apply in their governance of superannuation monies. This rule requires trustees:

to exercise the degree of skill, care and diligence of an ordinary **prudent person dealing with the property of another for whom the person felt morally bound to provide**<sup>107</sup>

It may be argued that the application of the 'prudent man rule', to superannuation trustees sets a higher standard of care and diligence than the application the standards contained in **item 56(1)**. As the Fund will contain assets that will directly meet the superannuation benefits of Australian citizens it could be argued that it is appropriate to apply the same standard of diligence and care to the Board as applies to superannuation fund trustees.

On the other hand, the Future Fund differs from the ordinary superannuation fund in that:

- a superannuation fund contains benefits that are vested in individuals but the Future Fund will not
- a superannuation fund may well contain money directly contributed by an individual, where the Future Fund will not, and
- generally, if a superannuation fund makes a poor investment choice the member suffers the full weight of the mistake in the form of lower end benefits. But if the Board makes a mistake the Government initially bears the direct consequences through its responsibility to meet its unfunded superannuation liability irrespective of the assets contained in the Fund. Taxpayers bear the final cost of a Board mistake that leads to the Fund not accumulating enough assets to meet the Commonwealth's unfunded liabilities, through either higher taxes than might otherwise be the case or a reduced level of services.

These differences may justify the application of a lower standard of diligence and care on the part of the Board than that applying to a superannuation fund trustee.

**Item 56(2)** provides that a Board member will satisfy their duty of skill and care when making a business judgment, whether that duty is statutory, or a duty at common law or equity if they four — and only these four — conditions are met:

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- the judgment must be made in good faith and for proper purpose
- the director must not have a material interest in the subject matter of the judgment
- the director must have informed himself or herself about the subject matter of the judgment to the extent that they reasonably believe to be appropriate and
- the director must rationally believe that the judgment is in the best interests of the performing the functions of the Board.

This is similar to the provisions on **subsection 180(2)** of the *Corporations Act 2001*.

**Item 65** expressly allows a Board member to rely on the advice or information provided by experts when making decisions, as long as the Board member believes on reasonable grounds that the relevant expert is themselves competent and reliable. Such reliance will be taken to be a fulfilment of their duty under **item 56(1)**.

#### Insider Trading

**Items 58, 59, 61 and 62** require Board members, and Agency staff, not to use their position, or information gained by virtue of their position, to gain advantage for themselves or another person. Civil, and/or criminal, penalties may apply if these requirements are breached.

#### Interaction between duties under this Bill and other laws

**Item 64** provides that the above requirements have effect in addition to other rules of law governing the performance of their duties. For example, if a Board member or Agency staff member contravened the requirements of **items 58, 59 or 62**, action could be taken against them under the provisions of this Bill, as well as the provisions of the corporations' law or criminal law, as appropriate. However, any equitable or common law duties that are equivalent to the duty of care and diligence under **item 56(1)** are excluded to the extent that they require a person to satisfy more than the four conditions set out in **item 56(2)** above.

#### Conflict of Interest

Given the size and potential scope of Fund's investment activities it would be very difficult to appoint six suitably qualified Board members who did not have an interest either directly, or indirectly, in any of the potential investments undertaken by of the Board. This makes the conflict of interest provisions of the Bill very important.

**Item 68** requires a Board member to disclose, to other Board members, all 'material personal interests' in a matter that relates to the affairs of the Board. This item also requires such disclosures to be made as soon as practicable after the Board member becomes aware of the conflicting interest. This is consistent with **section 191** of the

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*Corporations Act 2001* that requires company directors to disclose all 'material personal interests'.

Comment

Neither the Explanatory Memorandum nor the Bill provides comment on what might be considered a 'material personal interest'. Members and Senators may find it useful for the government to include additional comment on what exactly this term means either by way of a supplemental explanatory memorandum or additional statement by the sponsoring Minister.

**Item 69(1)** allows (but does not require) a Board member to give other Board members a standing notice about an 'interest'. This notice need not be about a 'material personal interest' and need not relate to a matter being considered by the Board at that time. All such notifications must be tabled at the next Board meeting after the notice has been given and recorded in the minutes of that meeting.

**Item 69(5)(b)** effectively requires all new Board members to be informed about any standing notice relating to other Board members, upon joining the Board.

**Item 69(6)** requires that a particular standing notice ceases to have effect if the nature or extent of that interest materially increases. At this point the Board member to whom this notice relates **may** give a new notification under **item 69(1)**.

Comment

Under **item 69(1)** a Board member may notify the Board of a conflict of interest in relation to a financial asset held by the Fund. **Item 69(6)** the notification of a conflict of interest under **item 69(1)** ceases to have effect if the size of the interest in a financial asset held by the member increases. In these circumstances it could be argued that the potential for conflict of interest notified under **item 69(1)** has increased, so if the Board member felt it necessary to notify the Board of this interest, it could be argued that it is also necessary for that Board member to also notify the Board of an increase in the size of that interest.

On the other hand, if the Board member has disposed of this interest then it would be unnecessary to automatically provide a new notification under **item 69(1)**.

Interaction with other laws

**Item 70** ensures that other laws, such as equitable duties of trustees and fiduciaries, if applicable and any other statutory duties governing conflicts of interest operate along side, or in addition to, these provisions. For example the provisions of **sub-section 912A(1)** of the *Corporations Act 2001* would apply to members of the Board. This subsection requires financial service licensees to have adequate arrangements in place to deal with potential conflicts of interest in a financial services business. If a Board member was a member of a

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financial services business, that member would have to take appropriate steps to ensure that their interests as a participant in a financial services business did not conflict with their duties as a Board member.

#### Voting and Conflict of Interest

**Item 71** prevents a Board member who has a material personal interest in a matter being considered by the Board:

- being present while this matter is being considered, or
- voting on that matter.

However, such a Board member may participate in the consideration of this matter if:

- the Board members, who do not have a material personal interest in the matter being discussed and voted on, agree that this particular member may participate in this decision, or
- the responsible Ministers declare, in writing, that a Board member who has a material personal interest in a matter being voted on and/or discussed, may participate in this decision.

#### Comment

The first of the above points could, theoretically, lead to the mutual exchange of favours amongst Board members to enable their participation in decisions in which they have a material conflict of interest.

Tabling a report in Parliament on the Board members' decisions in respect of conflict of interest issues would address this concern.

#### Ministerial Orders Regarding Conflict of Interest

Under **item 72** the responsible Ministers may make a declaration allowing a Board member, having a material personal interest in a matter being considered by the Board, to participate in that discussion, and/or vote on the relevant resolution only if:

- the number of Board members entitled to be present and vote on the matter would be less than the quorum for a board meeting (see **item 49**), if the affected Board member were not allowed to vote, and
- the matter needs to be dealt with urgently.

Such declarations are not legislative instruments and therefore do not have to be tabled in Parliament.

**Item 72(4)** allows the responsible Ministers to make orders in writing enabling a class of Board members, who have a material personal interest in a matter before the Board, to

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participate in the discussion of this matter and to vote on any relevant resolution. But, under the provisions of **item 72(5)** all such orders must be published on the internet. See the discussion at page 15 about the requirement throughout the Bill that certain instruments be published on the internet.

#### Comment

As noted above, the provisions of **item 49** allow Board decisions to be taken by as few as three Board members, where other members are affected by the operation of **item 71**. It remains to be seen whether the provisions of **item 49** minimise the use of the responsible Minister's powers under **item 72**. Note also that the power of the Minister to issue such an order is not constrained by the same conditions as apply under **item 71**, viz, that the number of Board members entitled to be present and vote on the matter would be less than the quorum for a board meeting (see **item 49**), if the affected Board member were not allowed to vote, and the matter needs to be dealt with urgently.

### Part 5 – The Agency

#### Establishment and Functions

**Item 74** establishes the Future Fund Management Agency, which comprises the Chair of the Board and the staff of that Agency.

**Item 75** outlines the functions of the Agency, which are broadly to provide support for, and advice to, the Board. The Agency will also make arrangements to give effect to the Board's decisions.

**Item 75(2)** requires the Agency to act in accordance with any policies determined, and any directions given, by the Board.

**Item 76** notes that the Board Chair, under the Minister, is responsible for managing the Agency.

#### Comment

'The Minister' for the purposes of this item is not specifically identified in the Bill or the supporting Explanatory Memoranda. This person is most likely to be the 'nominated Minister', as this Minister has the responsibility for the day to day running of the Agency and immediate oversight of the Board. However, this is not clearly identified and further clarification may be required on the reporting responsibility of the Chair in respect of managing the Agency.

**Item 77** provides that the Agency's staff are Commonwealth public servants and that the Agency is a statutory agency for administrative purposes.

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**Item 79** ensures that the Chair is not subject to direction by the Board in relation to his or her functions under the FMA and the *Public Service Act 1999*.

#### Reports

**Item 80** provides for the Board and the Agency to be treated as a single entity for the purposes of accounting and reporting under the FMA.

**Item 81** requires the Chair to give the nominated Minister an annual report on the operations of the Board, Agency and Fund, as soon as practicable after the end of the relevant financial year. The nominated Minister must table this report in each House of Parliament within 15 sitting days of that House after receiving this report.

#### Comment

The requirement to provide annual reports is in line with the normal reporting requirements for other Commonwealth public service agencies. However, in view of the scope of the Fund's operations it may be more appropriate to provide interim reports on selected matters at more frequent intervals, as is the case with other agencies that manage Commonwealth finances. For example, the investment performance of the Public Sector Superannuation Scheme and the Commonwealth Superannuation Scheme is reported at roughly monthly intervals over the internet and the Department of Finance and Administration provides monthly statements on the Commonwealth's budgetary position.

#### Nominated Minister

**Item 83(1)** requires the responsible Ministers to decide, by written instrument, which one of them is to be the nominated Minister for the purposes of this Bill.

**Item 83(2)** allows for variation but not revocation of this instrument. This item modifies the operation of **section 33(3)** of the *Acts Interpretation Act 1901* which provides that a power in an Act to make an instrument includes a power to vary or revoke it.

**Item 83(3)** provides that a determination under Item 83(1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and thus is not required to be tabled in Parliament. However, it is inconceivable that the identity of the nominated Minister would not be a matter of considerable public interest and that it would be kept from Parliament.

**Item 85** provides for the Governor-General to make regulations in relation to this Act.

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## Schedule 1 – Credits of amounts, and transfers of financial assets, to the Future Fund

## Part 2

## Initial Transfer of \$18 billion

**Item 2 of Part 2** requires the responsible Ministers to determine that \$18 billion be credited to the Fund Account before 1 July 2006. This determination is irrevocable, and is not subject to disallowance by Parliament. Effectively, once this transfer is made these monies can only be withdrawn to meet the unfunded superannuation liabilities of the Commonwealth.

## Prevention of Overfunding

**Item 3** allows the transfer of additional amounts to the Fund Account, but only where:

- a 'target asset level declaration' is in force of a financial year (see **Schedule 3, Item 3**)
- the transfers do not result in the balance of the Fund Account exceeding the 'target amount' (see below), and
- the responsible Ministers make the transfers through determinations, and the amounts can be paid as a lump sum, or as instalments, on a specified day, or days, in the relevant financial year.

Under **items 3(2)** and **(3)** the sum of the balance of the Fund Account, and amounts transferred into this account cannot exceed the 'target asset level declaration'.

In **schedule 3, item 3** a target asset level declaration is a declaration containing the target asset level. This latter term, in **item 3(5)(b)** of this schedule, is the amount that, in the opinion of the designated actuary, can be expected to offset the present value of projected unfunded superannuation liabilities before the start of the relevant financial year.

Thus, by ensuring that the sum of the balance of the Fund Account and the amounts transferred into this Account in any financial year cannot exceed the target asset level declaration, **item 3 of schedule 1** ensures that such transfers do not overfund the Fund Account.

**Item 3(4)** allows the determination to transfer additional amounts into the Fund account to be revoked, but not varied. **Item 3(5)** ensures that such determinations are not subject to Parliamentary disallowance. However, these determinations are legislative instruments, and therefore must be tabled in Parliament.

As noted above, once amounts are credited to the Fund Account they cannot be withdrawn, save to meet Commonwealth unfunded superannuation liabilities. The Explanatory Memorandum notes that this power to revoke these determinations means that if the responsible Ministers wish to add additional amounts to the Fund Account during a

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particular financial year, where a determination made under **item 3(1)** is in force, they will have to revoke this determination and make a new one covering the additional amounts.<sup>108</sup>

Gifts

**Item 5** allows the Board to accept a gift of money, if the nominated Minister, by written notice, authorises the acceptance of that gift. All such gifts are to be credited to the Fund Account.

The Explanatory Memorandum notes that this provision would be used infrequently for residual amounts that may arise in the context of future asset sales. Such gifts would not be accepted where they caused the balance of the fund Account to exceed the 'target asset level' discussed above.<sup>109</sup>

### Part 3 – Transfers of financial assets to the Future Fund

**Item 6** of **Part 3** of **Schedule 1** allows the responsible Ministers to transfer Commonwealth owned financial assets to the Board. This transfer can only take place if:

- a target asset level declaration is in force, and
- the sum of:
  - the value of the Fund, and
  - the financial asset being transferred, and
  - any transfers to the Fund Account made under **items 2(1)** or **3(1)** of **schedule 1**

do not exceed the target asset level specified in the target asset level declaration that is then in force. These provisions also prevent the overfunding of the Fund Account.

Transferred Assets may be sold. **Item 6(4)** specifically allows the sale of financial assets held by the Board that have been transferred to it under these provisions.

### Transfer of Telstra Shares 'Not' a Telstra Sale Scheme

**Item 6(5)** specifically exempts the possible transfer of Telstra shares to the Fund from the definition of a 'Telstra Sale Scheme' for the purposes of the *Telstra Corporations Act 1991*. By amendments made to the Telstra Corporation Act (Telstra Act) by the Telstra (Transition to Full Private Ownership) Bill 2005, the Commonwealth is permitted to reduce its holding of Telstra shares below the previously mandated level of 50.1%. Such reduction was to be effected by a Telstra sale scheme. Under the Telstra Act, the Government has a power to give directions to Telstra for so long as it holds more than 15% of the issued shares in Telstra (i.e. as long as 85% of the shares are in the hands of others). Once more than 85% of Telstra shares are in the hands of others (the 85% sale day) the Commonwealth loses that power. The Telstra Act further provides that Telstra shares held by the Future Fund are deemed to be held by a person other than the

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Commonwealth for the purpose of determining when 85% of shares are held by others. So, if for example, the Commonwealth held 10% of Telstra shares in its own right and transferred 35.8% to the Future Fund, the latter amount would not count as its own for these purposes of determining whether it had the power to give directions to Telstra.

The Explanatory Memorandum suggests that this 'reinforces that any Telstra shares held by the Board are being managed at arms length from Government'.

Comment

This last statement needs further clarification. While it is true that the Commonwealth will cease to have a power to give direction to Telstra under the Telstra Act once its own holding (not including the Fund holding) drops below 15%, the Commonwealth will still have powers to give directions under this Bill about how, for instance, the voting rights attaching to Telstra shares are to be exercised. If there is a substantial proportion of issued Telstra shares in the Fund, this could, theoretically, give the Commonwealth considerable power over Telstra through the exercise of shareholder voting rights.

As noted above, the Government's holding of Telstra shares is not the only Commonwealth asset that may be sold. However, **Item 6(5)** indicates that the transfer of Telstra shares to the Board is contemplated by the Government.

**Item 6(6)** requires the nominated Minister to publish the details of the transfer on the Internet under the provisions of **item 6(1)** as soon as practicable after the transfer has taken place.

**Item 7** allows the gift of financial assets to the Board, subject to the approval of the nominated Minister, and only if the value of the gifted asset would not cause the balance of the Fund Account to exceed the then current 'target asset level'. All such assets can then be sold.

Ministerial Directions about transferred or gifted financial assets

**Item 8** allows the nominated Minister to give the Board written directions in relation to the financial assets either gifted or transferred to the Board. The scope of this power is broad and may include directions about;

- whether or not to realise these assets,
- the dates by which these assets could be realised, or
- the exercise of any associated voting rights by the Board.

These provisions do not limit the scope of any directions made under **item 8(1)**.<sup>110</sup> However, under **item 8(6)** such directions must be consistent with this Act

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Ministerial Directions can be inconsistent with Maximising Long term Returns

The one exception to the provisions of **item 8(6)** of **schedule 1** is that these directions can be inconsistent with the provisions of **item 18(10)** of initial **part 3**. That provision reads:

In the performance of its investment functions the Board must seek to maximise the return earned on the Fund over the long term, consistent with international best practice for institutional investment.

This means that the nominated Minister can issue directions to the Board, in respect of financial assets either transferred or gifted to the Board that are inconsistent with this requirement.

Comment

**Item 8** gives the nominated Ministers considerable power and desecration over the Board's decisions in respect of assets transferred or gifted to the Fund. This may be contrary to the stated intent that the Fund will operate at arm's length from government decision making.

It is difficult to gauge what this may mean in practice. However, it may mean that the nominated Minister could direct that Commonwealth financial assets transferred to the Board be realised for less than their long term financial value.

As noted above, a possible effect of a large block of financial assets being held by the Board may be that the price of this financial asset is permanently depressed, as apparently is the case with SingTel shares held by the Singapore government's investment vehicle: Temasek.<sup>111</sup> In these circumstances it may be prudent to realise these assets, even if the price received is below that which would be received if the financial assets in question were more widely held.

This may be a financially rational course of action if the returns achieved from the assets purchased with the proceeds of such sales showed better returns than the returns that may have been produced by holding the assets initially transferred or gifted to the Fund.

**Item 8(10)** requires the Chair to publish Ministerial directions given under **Item 8(1)** to be published on the Internet as soon as practicable after this direction is given.

This is an important power; a other detailed discussion of it can be found at page 11 and following and in the material dealing with **Item 18**.

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## Schedule 2 – Debits of amounts from the Future Fund

### Purposes of the Fund Account

**Item 2 of Schedule 2** sets out the purposes of the Fund Account. The main purpose is to discharge the Commonwealth's unfunded superannuation liabilities. A secondary purpose is to meet the costs of both the Board and Agency. Discharging liabilities consists of:

- meeting some or all of an unfunded superannuation liability that becomes payable in a financial year ending before 1 July 2020 but only where the balance of the Fund is equal to or greater than this liability at the start of the financial year in question, and/or
- meeting some or all of an unfunded superannuation liability that becomes payable in a financial year beginning on or after 1 July 2020, irrespective of whether or not the Fund contains enough assets to meet this liability.

The assets of the Fund can only be drawn upon to meet the unfunded superannuation liability payable in a particular financial year. As noted above, the government can select which particular part of its unfunded liabilities it meets in any particular year. It does not have to meet all of its unfunded liabilities in a financial year.

The Explanatory Memorandum notes that the year 2020 was chosen as this was the point by which, according to the 2002 Intergenerational Report, the Commonwealth government's finances were expected to be significantly affected by the costs of an ageing population.<sup>112</sup> However, these costs may begin to affect the Commonwealth's fiscal position before that time and if the Fund contains sufficient assets it can be drawn upon to meet these liabilities before 1 July 2020.

It is important to note that the Fund does not have to be drawn upon to meet these liabilities. Rather, the Government has the flexibility to draw upon the Fund to meet these liabilities if that is considered appropriate in the prevailing circumstances. Nor would all of the outstanding liability necessarily be met by a debit from the Fund Account. The Government of the day may choose to cover part of the liability for that financial year from other sources (e.g. an asset sale or from the Consolidated Revenue Fund) and part by way of a debit from the Fund Account.<sup>113</sup>

## Schedule 3 – Target asset level declarations

**Item 2 of Schedule 3** allows the nominated Minister to specify, via a written determination, a 'designated actuary' for the purposes of the Act. The designated actuary calculates the 'target asset level' for a specified financial year.

The Chair of the Board/Agency must publish this declaration on the internet as soon as practicable after it is made.

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As noted above, the target asset level in **Item 3(5)(b)** is the present value of projected unfunded superannuation liabilities in respect of services rendered by Commonwealth public servants, military personal (and others) before the start of the specified financial year. The present value of an amount is the amount that would be needed to be invested today, earning a nominated interest rate, in order to provide an amount in the future.<sup>114</sup>

Comment

The Explanatory Memorandum notes that the target asset level may be higher or lower than the present value of the unfunded superannuation liability during the financial year to which the particular target asset level relates.<sup>115</sup>

Under **Item 3(1)** the designated actuary may give the responsible Ministers a written declaration stating the amount of the target asset level and a separate statement of their reasons for reaching this conclusion. The declaration is to be known as the 'target asset level declaration'.

Under **Item 3(2)** two or more target asset declarations may be set out in the same document. This allows a range of target asset levels to be calculated published at the same time.

According to **Item 3(6)** this declaration lasts until the earliest of:

- the end of the specified financial year
- the occurrence of an event specified in the declaration
- it being revoked.

**Item 3(7)** requires the designated actuary to:

- issue the first target asset declaration as soon as practicable after the commencement of the Act
- ensure that if a particular target asset declaration ceases to be in force before the end of the relevant financial year that a new declaration covering that financial year is made as soon as practicable
- ensure that not more than one target asset declaration is in force for the same financial year at the same time,
- ensure that not more than five target asset declarations for different financial years are in force at the same time (**Item 3(7)(d)**).

Comment

Curiously, there is no requirement for the designated actuary to issue a new target asset declaration as soon as practicable after the start of a new financial year. The Explanatory Memorandum notes that the designated actuary may calculate different target asset levels

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for consecutive financial years, and issue these figures in the one declaration.<sup>116</sup> Under the requirements of **Item 3(7)(d)** this declaration can contain no more than five target asset levels.

**Item 3(10)** requires the nominated Minister to publish the target asset declaration, and the statement of reasons from the designated actuary, on the internet as soon as practicable after receiving these documents.

## Concluding Comments

A key concern about the Future Fund has been the possibility of the Government of the day using the Fund's resources for projects that have a less obvious economic rationale. Under the provisions of the current Bill only the responsible Ministers may direct the Board in respect of its investment mandate. The requirement that such directions be tabled in Parliament, together with the Board's responses to those directions, ensures that any such practices will have to be given in a highly transparent manner.

**Item 8 of Schedule 1** retains with the nominated Minister considerable discretion as to the use of the transferred or gifted assets. Thus, even if Telstra shares are transferred to the Fund, the Government of the day still has power to direct the Board in respect of these shares.

It is also a matter of concern that the Bill does not either contain a definition of 'material personal interest' or refer to such definitions as may exist. The definition of this term is a key concept in the Bill's provisions for managing potential conflict of interest problems and Parliament may consider it appropriate to have this term clarified in the Bill.

Finally, given the size, scope and fiscal importance of the Future Fund it is disturbing that there is no requirement of the Board members to be 'fit and proper' persons. The lack of this requirement appears to be out of step with the requirements for others managing significant amounts of resources on the behalf of others – the trustees of large superannuation funds.

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Attachment 1 – Comparison with Other Countries<sup>117</sup>

Country/Fund	Coverage*	Current or Projected Size (as % of GDP)	Funding Source	Fund Manager	Investment Restrictions
Australia Future Fund	Commonwealth Public Service Pensions	10.5	Realised budgetary surpluses and Gov. asset sales	Independent statutory board	TBD
Canada Pension Plan Investment Plan	National pension	13	Increases in the contribution rate from 5.6% of wages to 9.9 % by 2003, and improved investment policies for higher returns	Independently appointed professional board	30% on foreign securities
Ireland National Pension Reserve Fund	Social welfare and public service pension	26	1 % of GNP annually to 2025 from budgetary transfers	Professional board appointed by the Finance Minister	Prohibited from holding domestic government securities
Sweden National Pension Fund	National pension	23	Transfers of reserves from previous pension funds, and improved investment policies for higher returns	Board appointed by the government and employer/employee organizations	40% limit on unhedged foreign currency exposure and 30% minimum of high-rated fixed income instruments; no controlling interest in domestic entities
New Zealand Superannuation Fund	National pension	40	1.2% of GDP annually to 2020 from budgetary transfers	Independently appointed professional board	No controlling interest in domestic entities
Norway State Petroleum Fund	Fiscal costs from an ageing population	54	Revenues from the North Sea oil	Central Bank	All investment made abroad

The projected peak level of assets for Australian FF, CPP, NPRF of Ireland and NZSF. The CPP figure is based on the projected asset size in 2050 in 2002–03 CPP annual report and projected nominal GDP, the NPRF figure is based on Palacios (2002) and the NZSF figure is based on IMF (2004). For NPF Sweden the figure is as of end 2001.

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Attachment 2 – Meaning of the Term Financial Asset – Extracts from Australian Bureau of Statistics ‘Australian System of Government Finance Statistics: Concepts, Sources and Methods (Cat 5514.0) 2 September 2005 (otherwise known as GSF Australia)

“Financial assets are assets that are in the form of financial claims on other economic units. They are the counterparts of liabilities of the units on which the claims are held.” (p.36)

“**Financial assets** are assets that are in the form of financial claims on other economic units. In the system, financial assets are classified to the following instrument categories:

- **Cash and deposits** - this includes: (i) notes and coins on hand; (ii) cheques held but not yet deposited; (iii) cash and deposits in both Australian currency and foreign currency, which are recoverable or transferable on demand and are held at all banks, non-bank financiers and other deposit taking institutions; (iv) deposits placed in the Short Term Money Market (for example grants received from the Commonwealth and deposited overnight); and (v) units issued by cash management trusts and withdrawable share capital of building societies. The item excludes bank certificates of deposit and fixed deposits held with banks;
- **Investments, loans and placements** - this includes: (i) nonnegotiable, non-transferable loans, other than advances; (ii) credit foncier loans; (iii) deferred payment schemes (re-purchase agreements); (iv) securities such as promissory notes; (v) bills of exchange; (vi) certificates of deposit; (vii) fixed term deposits; (viii) Treasury notes and bonds; (ix) redeemable preference shares; (x) debentures; (xi) long term notes; and (xii) net value of swaps and **other derivatives that are in a net asset position**; [emphasis is the authors]
- **Accounts receivable** - this includes short and long term trade credit and accounts receivable, accounts and interest receivable, and prepayments made;
- **Advances outstanding** - this category refers to loans and other non equity financial assets acquired for policy rather than liquidity management purposes. As a general rule, all loans made by general government to other government bodies, except loans made by central borrowing authorities, are deemed to be for policy purposes. Included are long and short term loans, non-marketable debentures, and long and short term promissory agreements (bonds and bills) issued to public sector units for the purpose of achieving government policy objectives. Excluded are government equity in public corporations (see next item), grants and non-repayable funds, and investments for liquidity management and income generation purposes;
- **Equity** - this category refers to claims on other entities entitling the holder to a share of the income of the entity and a right to a share of the residual assets of the entity should it be wound up. The item includes the market value of shares on issue in listed corporations and preference shares and convertible notes after conversion. It excludes

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convertible notes before conversion. The item also includes the book value of assets (real and financial) less liabilities of unlisted public corporations.” (pp 44-45)

“**A1.72** Net transactions in financial assets and liabilities are both classified according to the financial instruments used in the transactions, which are defined as follows:

- **monetary gold and SDRs** - monetary gold is gold owned by a country’s monetary authorities which is held as a financial asset and is a component of the country’s foreign reserves; Special Drawing Rights (SDRs) are international reserve assets created by the IMF and allocated to its members to supplement existing reserve assets;
  - monetary gold and SDRs are the only financial assets in the system that do not have a liability counterpart;
- **currency and deposits** - these are notes and coin (domestic and foreign) in circulation, transferable deposits that are available on demand at par value, and non-transferable deposits (e.g. term deposits) that are represented by evidence of deposit;
- **securities other than shares** - these include bills, bonds, certificates of deposit, commercial paper, debentures, **tradeable financial derivatives** [authors emphasis] and similar instruments that are normally traded in financial markets;
- **loans** - are defined as financial assets that: (i) are created when creditors lend funds directly to debtors; (ii) are evidenced by nonnegotiable documents; or (iii) are provided with no security as evidence of the transaction;
- **shares and other equity** - are instruments acknowledging a claim on the residual value of a corporation after the claims of all creditors have been met (included is the net equity of owners in quasi-corporations that do not issue shares);
- **insurance technical reserves** - these represent the net equity of households in life insurance and pension funds and include prepayments of insurance premiums (which are treated as assets of the policy holders), and reserves against outstanding insurance claims (which are treated as assets of the beneficiaries);
- **other accounts payable/receivable** - these include trade credit, advances for work that is in progress, and other forms of credit extended on payments (e.g. on taxes, dividends, rent, wages, etc).

The distinction made in the classification between long and short term instruments is based on short-term securities having an original term to maturity of one year or less.” (pp. 127 and 128)

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## Endnotes

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- 1 The term 'responsible Ministers' is defined in **Item 5** of **Part 1** as 'the Treasurer and the Finance Minister'. The term 'Finance Minister' is defined in **section 5** of the *Financial Management and Accountability Act 1997* as the Minister who administers that Act. In practice this currently means the Minister for Finance and Administration.
  - 2 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005, p. 2.
  - 3 *ibid.*
  - 4 *ibid.*, p. 4.
  - 5 *ibid.*, p. 5.
  - 6 The Hon. Peter Costello MP, Treasurer, Interview with David Speers, Agenda, Sky TV, 7 November 2005.
  - 7 The Hon. Peter Costello MP, Treasurer and Senator the Hon. Nick Minchin, Minister for Finance and Administration, 'David Murray to Chair Future Fund', Joint Press Release, 6 November 2005.
  - 8 *ibid.*
  - 9 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005, p. 3.
  - 10 The Hon. Peter Costello MP, Treasurer, answer to question without notice from Mr Richardson MP (Member for Kingston), House of Representatives, *Debates*, 6 December 2005, p. 2.
  - 11 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005, p. 5.
  - 12 *ibid.*, pp. 4 and 53.
  - 13 *ibid.*, p. 2.
  - 14 Laura Tingle, 'Future Fund draws on the RBA model' *The Australian Financial Review*, 8 November 2005, p. 11.
  - 15 'Costello pledges to keep most of Future Fund in Australia' *Sydney Morning Herald*, 8 November 2005, p. 5.
  - 16 *ibid.*, p. 3; and Fleur Anderson, 'Brakes on Future Fund'. *Australian Financial Review*, 8 December 2005, p. 1.
  - 17 'Costello pledges to keep most of Future Fund in Australia' *Sydney Morning Herald*, 8 November 2005, p. 5.
  - 18 'Costello pledges to keep most of Future Fund in Australia' *Sydney Morning Herald*, 8 November 2005, p. 5. and Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005, p. 3.

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- 19 Scott Murdoch, '\$16b fund will vote', *Herald Sun*, 2 November 2005, p 37.
- 20 Senator the Hon. Nick Minchin, *ibid*, p. 17.
- 21 *ibid*, pp.3 and 4.
- 22 *ibid*.
- 23 *ibid*, pp. 20 and 21.
- 24 *ibid*.
- 25 *ibid*, p.3.
- 26 *ibid*, p. 5.
- 27 Jason Koutsoukis, 'Melbourne in future Fund's HQ', *Age*, 8 November 2005.
- 28 Treasury, Budget Paper No 1, Statement 7, 2003–04 Budget at <http://www.budget.gov.au/2003-04/bp1/html/bst7.htm> (accessed 11 August 2005).
- 29 Productivity Commission, *The Economic Implications of an Ageing Australia*, March 2005 pp. 253 – 256.
- 30 Richard Webb and Leslie Nielson, *The Future Fund*, Research Note no. 43 Parliamentary Library, Canberra, 2004–05 also Michaela Anderson, 'Fixing the first pillar', *Superfunds*, November 2003, pp 46 to 50.
- 31 See Alan Wood, 'A super solution for future Budget surpluses', *The Weekend Australian*, 18 May 2002, Ben Wilmont, 'Super liability highest for decade', *Australian Financial Review*, 10 May 2003, p. 4, Stewart Oldfield and Annabel Hepworth, '\$10bn super blow-out to hit budgets', *Australian Financial Review*, 9 July 2003 and Cherelle Murphy, 'No plan for Canberra to use surplus for super bill', *Australian Financial Review*, 10 May 2004, p. 6.
- 32 The Hon. Peter Costello MP, Treasurer, answer to question without notice from Mr Richardson MP (Member for Kingston), House of Representatives, *Debates*, 6 December 2005, p. 2.

Previous estimates of the Commonwealth's unfunded superannuation liabilities were \$91 billion. Treasury, Budget Paper No. 1, Statement 7 Debt Management, Establishment of the Future Fund, p. 7-3. Currently, the Commonwealth's unfunded superannuation liabilities, by particular superannuation fund, are as follows:

- CSS: \$47 billion
- PSS: \$11 billion
- DFRDB: 22 billion
- MSBS: \$7 billion
- Governor-General, Judges and the Parliamentary Contributory Superannuation Schemes: \$1.5 billion.

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Source: Senator Nick Sherry, Opposition Spokesman on Superannuation and Retirement Income, Second Reading Speech, Superannuation Bill 2005 and Superannuation (Consequential Amendments) Bill 2005, Senate, *Debates*, 23 June 2005, p. 174.

The total of these figures adds up to only \$88.5 billion. Senator Sherry gained this information through the Senate Estimates Hearings process. The discrepancy between this figure and the \$91 billion in current Commonwealth unfunded superannuation liabilities are unexplained.

- 33 A defined benefit scheme is one where the benefit to be paid is calculated with reference to a member's salary and their years of service (or some other formula).
- 34 Rule B2.1.1A of the 20<sup>th</sup> Amending Deed to the Public Sector Superannuation Scheme Trust Deed and Rules.
- 35 The *Parliamentary Superannuation and Other Entitlements Act 2004* which received assent on 25 June 2004.
- 36 The other Commonwealth government defined benefit superannuation schemes are those covering Federal and High Court Judges and the Governor General.
- 37 For exact projections to 2008–09 see Treasury, Budget Paper No. 1 2005–06, Part 6: Historical Australian Government Data, Table 1: Australian Government general government sector receipts, payments and underlying cash balance, p. 13-4. Otherwise, Treasury, Budget Paper No. 5 2002–03 (The Intergenerational Report), pp 6-7.
- 38 Ross Gittins, 'Our ageing problem may be diminishing' *Sydney Morning Herald*, 25 July 2005, p. 17.
- 39 The Hon. Nick Minchin, Minister for Finance and Administration, Media Release 32/2005, Government to update study into possible sale of Medibank Private, 16 August 2005.
- 40 Fleur Anderson, 'Australia Post not for sale: Minchin', *Australian Financial Review*, 25 August 2005, p. 4, (article reports on comments made by Senator Minchin, Minister for Finance and Administration, after a speech at the National Press Club 24 August 2005); Senator the Hon. Nick Minchin, 'Business Adviser appointed to undertake ASC scoping study' Media Release 58/2005, 16 December 2005; Mr Peter Costello MP, Treasurer, Doorstop interview with Stephen Mayne 774 ABC 20 December 2005; James Hall, 'Snowy Hydro sale downstream', *Australian Financial Review*, 21 December 2005, p. 3.
- 41 The Hon. Peter Costello MP, Treasurer, Press Conference, 10 September 2004, and Liberal Party of Australia, *Investing for the Future*, 10 September 2004.
- 42 The Hon. Peter Costello MP, Treasurer, Second Reading Speech, Appropriation Bill No. 1 2005–06 (the Budget Speech), House of Representatives, *Debates*, 10 May 2005, p. 55.
- 43 Australian Chamber of Commerce and Industry (ACCI), 'The Future Fund is not the Best Use of Budget Surpluses', *ACCI Review*, June 2005, pp. 8-11 and ACCI, '2006–07 Pre Budget Submission', December 2005, pp. 16 to 18.
- 44 Kenneth Davidson, 'Costello's pot of gold', *Dissent*, Nu. 18, Spring 2005, p. 3 and 'What to do with the Future Fund', Editorial, *The Weekend Australian*, 21 May 2005, p. 18.
- 45 Kenneth Davidson, *ibid*, Stephen Bartholomeuse, 'Murdoch's happy to miss Australia's king tide', *Sydney Morning Herald*, 9 June 2005, p. 26.

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- 46 Alex Erskine, 'The Future Fund is a Bad Idea', Henry Thornton web site at [http://www.henrythornton.com/article.asp?article\\_id=3285](http://www.henrythornton.com/article.asp?article_id=3285), accessed 11 August 2005, also Bob Hogg, 'Danger lurks in cargo cult', *Australian Financial Review*, 19 May 2005, p. 70
- 47 Peter Saunders, 'The super rip-off is unfair, not the tax cuts', *The Australian*, 13 May 2005 and Brian Toohey, 'Future fund not such a super idea', *Australian Financial Review*, 7 May 2005, p. 63.
- 48 Brian Toohey, 'Solving a problem that's already fixed', *Australian Financial Review*, 13 September 2004, p. 8 and Alan Wood, 'Rational for Future Fund misleading', *Weekend Australian*, 14 May 2005, p. 44.
- 49 Nicholas Howarth, *National Farmers Federation 2006–07 Pre Budget Submission*, December 2005, p. 6.
- 50 *ibid*, p.16.
- 51 Peter Saunders, 'Twenty Million Future Funds', *Issues and Analysis*, The Centre for Independent Studies, Sydney, 21 December 2005, pp. 8 and 9.
- 52 OECD, *Economic Surveys. Australia*, December 2004, p. 59.
- 53 William Coleman, 'Present calculations easily upset by future events', *Canberra Times*, 10 May 2005, p. 17.
- 54 Senator the Hon. Nick Minchin MP, Minister for Finance and Administration, 'Address to the Australian Financial Markets Association 2005 Congress', 20 July 2005, and Henry Ergas and Rick Simes, 'New fund is a step in the right direction', *Australian Financial Review*, 16 May 2005, p. 68, and Ross Gittins, 'Future Fund is just to hide the budget surplus', *Sydney Morning Herald*, 16 May 2005, p. 38.
- 55 *ibid*.
- 56 Senator the Hon. Nick Minchin, Speech to the National Press Club Canberra, 24 August 2005, Ian Harper, Executive Director Centre of Business and Public Policy at the Melbourne Business School, 'Generation game could have big future' *Age*, 5 July 2005 p. 8, and Barrie Dunstan, 'In the dark on the Future Fund', *Australian Financial Review*, 12 May 2005, p. 68. While such a course would not avoid brokerage fees, it may avoid investment banking fees charged for advice on the placement of such a significant parcel of shares on Australian and overseas markets.
- 57 Investment and Financial Services Association, Media Release, 'Securing the future', 7 December 2005.
- 58 Senator the Hon Nick Minchin, Minister for Finance and Administration, 'Address to the Australian Financial Markets Association 2005 Congress', 20 July 2005.
- 59 David Uren, 'Future Fund to arrive earlier', *Australian*, 26 October 2005, p. 4.
- 60 Ross Guest and Ian M McDonald, 'The economic implications for Australia of prospective demographic change' Conference paper—The economic and business implications of the baby boomers, Australian Conference of Economists, 2002 Business Symposium 4 October 2002 or Steve Dowrick and Creina Day 'Australian Economic Growth: Why Bill Gates and the

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Ageing Pessimists are Wrong', National Institute of Economics and Business, Public Lecture 14 May 2003, or Rami Hanegbi and Mirko Bagaric, 'Super blooper? Time to halt the superannuation juggernaut?', Australian Business Law Review, October 2004.

- 61 Ken Henry, 'Address to the Melbourne Institute's 40<sup>th</sup> Anniversary Dinner', 7 February 2003.
- 62 Ken Henry, *ibid.*
- 63 The Hon. Peter Costello MP, Treasurer, answer to question without notice from Mr Richardson MP (Member for Kingston), House of Representatives, *Debates*, 6 December 2005, p. 2.
- 64 The Hon. Peter Costello, Treasurer, and the Hon. Nick Minchin, Minister for Finance and Administration, Joint Press Release, 'Future Fund', 10 May 2005.
- 65 Australian Prudential Regulation Authority, Statistics, 'Quarterly Superannuation Performance', June 2005 (issued 13 October 2005), p. 5.
- 66 For the purposes of this exercise the total size of the superannuation industry is derived by adding \$741 billion plus net inflows into superannuation funds for two quarters (\$25.8 billion) and \$18 billion giving a total of \$785.5 billion.
- 67 "I do not anticipate \$16 billion (now \$18bn) of liquidity suddenly coming into the market in one afternoon" Senator the Hon Nick Minchin, Minister for Finance and Administration, 'Address to the Australian Financial Markets Association 2005 Congress', 20 July 2005.
- 68 Low estimate from Treasury, contained in Senator the Hon Nick Minchin, Minister for Finance and Administration, 'Address to the Australian Financial Markets Association 2005 Congress', 20 July 2005, high estimate from the Association of Superannuation Funds of Australia-Access Economics estimates of all funds, contained in Ross Clare, 'Uniformity and diversity in superannuation fund investment portfolios', Paper to the 13<sup>th</sup> Annual Colloquium of superannuation researchers, UNSWU, June 2005, p. 16.
- 69 Ross Clare, *ibid.*, p. 17. It is most unlikely that half of the Fund's assets would be invested in the Australian share market.
- 70 Michelle Grattan, 'Future Fund will buy time, as T3 proves its nuisance value', *Age*, 19 November 2005, p. 2.
- 71 David Uren and Robert Clow, 'Analysts slam plan to park Telstra stock in Future Fund', *Australian*, 23 August 2005, p. 22. The article notes a similar effect on the share price of the Singapore based phone company 'Singtel' caused by the Singaporean Government's investment vehicle, 'Temasek', holding of a significant proportion of this company's shares, and selling those shares into the Singaporean stock market each year.
- 72 Tony Boyd, 'No Future on Telstra board', *Australian Financial Review*, 28 November 2005, pp. 1 and 16.
- 73 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Address To The National Press Club Canberra Wednesday 24 August 2005
- 74 *ibid.*

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- 75 International Monetary Fund, 'Australia: Selected Issues', *IMF Country Reports*, 05/330, September 2005, p. 17.
- 76 For example, Australian Chamber of Commerce and Industry, 'The Future Fund is not the Best Use of Budget Surpluses', *ACCI Review*, June 2005, pp. 8-11. Also, Ms Heather Ridout, Chief Executive of the Australian Industry Group, cited in Alan Mitchell, 'Future Fund shouldn't be shackled', *Australian Financial Review*, 18 June 2005, p. 45 and the Tourism and Transport Forum, Media Release, Transport Industry Welcomes Infrastructure Future Fund, May 10 2005.
- 77 Mr O'Neill's comments cited in Alan Mitchell, 'Future Fund shouldn't be shackled', *Australian Financial Review*, 18 June 2005, p. 45.
- 78 Senator Nick Sherry, Shadow Minister for Finance and Superannuation, Press Release, 'Minchin confused and muddled on the future fund', 8 June 2005.
- 79 Senator the Hon. Nick Minchin, Minister for Finance and Administration, 'Address to the Australian Financial Markets Association 2005 Congress', 20 July 2005. Such conflicts of interest may be related to the different investment objectives specified by the Government in relation to the Fund versus the requirements of a superannuation fund. For Example, the responsible Minister's may direct the Board to deal with a particular financial asset held by the Fund in a manner that is not consistent with its long term value and that same asset is held by the superannuation fund that Comsuper is also managing.
- 80 The Hon. Kim Beazley MP, Leader of the Opposition, Second Reading Speech, Appropriation Bill No. 1 2005–06 (the Address in Reply), House of Representatives, *Debates*, 12 May 2005, p. 124. This position was recently confirmed by the Leader of the Opposition in an address, 'Building Australia: Infrastructure and Investment', AUSRAIL Conference, Sydney, 24 November 2005.
- 81 Stephen Smith MP, Shadow Minister for Industry, Infrastructure and Industrial Relations, 'Paper presented to the Transport Workers Union 2005 Federal Council', 19 May 2005; also, Katharine Murphy 'Building on Future Fund' *Australian*, 28 October 2005, p. 2 recently confirmed this position. The Hon. Kim Beazley MP, Leader of the Opposition, Address to the NSW ALP State Conference, 'Securing Australia's Economy', 12 June 2005; Wayne Swan MP, Shadow Treasurer, 'A Wealth Creation Agenda', Breakfast Speech to NSW Business Dialogue, 2 August 2005.
- 82 Mr Wayne Swan MP, Shadow Treasurer, 'RBA Statement on Monetary Policy; David Murray and Future Fund; Treasury Analysis of IR Changes', *Doorstop Interview*, 7 November 2005.
- 83 Cited in David Uren, 'Curbs set on fund spending', *The Australian*, 8 December 2005.
- 84 Mr Lindsay Tanner MP (Opposition spokesperson on Finance), 'Future Fund turns into coalition honey pot', *Australian Financial Review*, 13 December 2005, p. 55.
- 85 Senator Lyn Allison, Leader of the Australian Democrats, Speech on Matters of Public Importance: Telstra, Senate, *Debates*, 11 August 2005, p. 62.
- 86 Australian Bureau of Statistics, *Australian System of Government Finance Statistics: Concepts, Sources and Methods*, ABS Catalogue 5514.0, 2 September 2005, p. 256.

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- 87 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005, p. 8.
- 88 *ibid*, p. 9.
- 89 The meaning of ‘appropriation’ or ‘appropriated’, in section 5 of the *Financial Management and Accountability Act 1997* is that authority exists to draw money from the Consolidated Revenue fund.
- 90 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005, p. 12.
- 91 *ibid*, p. 13.
- 92 *ibid*, p. 14.
- 93 *ibid*, p. 15.
- 94 *ibid*, p. 16.
- 95 *ibid*, p. 16.
- 96 *ibid*, p. 25.
- 97 ‘The Australian Financial Review Dictionary of Investment Terms’, 5<sup>th</sup> Edition, 2000, p. 73.
- 98 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005, p. 20.
- 99 *ibid*, p. 21.
- 100 Reg 4.14(3) Superannuation Industry (Supervision) Regulations 1994.
- 101 Reg 4.14(4), *ibid*.
- 102 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005 p. 25.
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- 107 Australian Prudential Regulation Authority, Superannuation Circular No II.D.1, ‘Managing Investments and Investment Choice’, April 1999, p. 5. This requirement expands on the requirements of section 52 of the *Superannuation Industry (Supervision) Act 1993* and Reg. 4.09(2) of the Superannuation Industry (Supervision) Regulation 1994.
- 108 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005 p. 45.
- 109 *ibid*, p. 46.
- 110 *ibid*, p. 50.

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- 111 David Uren and Robert Clow, 'Analysts slam plan to park Telstra stock in Future Fund', *Australian*, 23 August 2005, p. 22. The article notes a similar effect on the share price of the Singapore based phone company 'Singtel' caused by the Singaporean Government's investment vehicle, 'Temasek', holding of a significant proportion of this company's shares, and selling those shares into the Singaporean stock market each year.
- 112 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005 p. 52: Budget Paper No. 5, 2002–03 (the Intergenerational Report), p. 1.
- 113 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December 2005 p. 53.
- 114 Beth Quinlivan, *The Dictionary of Superannuation*, Melbourne, 1994, p. 92. Present value is the current value of a future amount payable or receivable, or a series of payments or receipts in the future. It is calculated by discounting to the present the future amount(s) at a specified interest rate.
- 115 Senator the Hon. Nick Minchin, Minister for Finance and Administration, Explanatory Memorandum to the Future Fund Bill 2005, 6 December, p. 58.
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- 117 International Monetary Fund, 'Australia: Selected Issues', *IMF Country Reports*, 05/330, September 2005, p. 24.

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