

30 June 2021

Department of Treasury and Finance  
Statutory Fund Management  
Level 14, Charles Darwin Centre  
19 The Mall  
DARWIN NT 0800

Via email: [Enquiries.DTF@nt.gov.au](mailto:Enquiries.DTF@nt.gov.au)

Dear Sir/Madam,

**Re: Open Consultation – Statutory Fund Management**

Since its formation in 1927, the Australian Council of Trade Unions (ACTU) has been the peak trade union body in Australia. There is no other national confederation representing unions. For more than 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 39 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

In making this submission, the ACTU supports and reiterates the concerns raised by the Electrical Trades Union of Australia (ETU).

The ACTU acknowledges there may be merit in the Government consolidating the investment function of the various Government vehicles. However, we support the ETU's opposition to the inclusion of NT Build, the Portable Construction Industry Long Service Leave Fund, in the proposed Central Holding Authority (CHA). Unlike the other funds proposed to be amalgamated, NT Build is not a public fund. Its funds are generated through private contributions and it has private beneficiaries which are more limited in number. Its inclusion in the proposed CHA is inconsistent with the objective of improving the management of public funds.

NT Build's unique role in the custodianship of workers' entitlements is reliant upon the trust generated from its representative board. This board acts as a fiduciary for its members, at arms-length from the Government, with transparency and rigour. The investment function is a core function of the board and it is essential to executing its fiduciary obligations.

To have that function subsumed or stripped away would cause members and employers to lose trust and confidence in the scheme, generated by its independence from Government. Further, the removal of its investment function would imply to members that the board has not adequately managed its funds, which is not the case.

The proposed structure of the CHA calls into question the ability for the component fiduciaries to exercise their duty. Each Board would ostensibly retain responsibility for the decisions made, however would not be able to make those decisions. For example, in order to achieve the Government's objective of generating scale, investments common to the funds would need to be pooled and unitised. However, should a fiduciary exercising their duty have a reasonable objection to the choice of asset class, asset manager, or ultimate fee structure of the recommendation of the Committee, it is unclear whether the board could reject a proposal from the Investment Committee given the influence of other boards over the Investment Committee. If boards could reject a proposal and these investment decisions for each fund were considered separately, there is no scale generated nor process made more efficient by the amalgamation of the investment function in the CHA. The proposed structure is inconsistent with the management responsibilities of other fiduciaries.

This problem is alleviated to some extent if NT Build is not included under the CHA, due to the nature of the other vehicles in the scheme.

Ultimately, if this process is to proceed in some form the composition of the Investment Committee should follow the Australian-leading example set by industry superannuation funds and other worker-entitlement funds, including NT Build. Equal representation of employer representatives and unions has generated the most effective, rigorous, and best performing governance structures in the execution of funds management. This should be retained, and the Minister should seek nominations to the Committee from the union movement.

We would welcome the opportunity to discuss this proposal further.

Yours sincerely

  
Scott Connolly  
Assistant Secretary

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