

2010-2011

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Government Investment Funds
Amendment (Ethical Investments) Bill
2011**

No. , 2011

(Senators Di Natale and Ludlam)

**A Bill for an Act to amend the *Future Fund Act 2006* and the *Nation-building Funds Act 2008*, and
for related purposes**

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1 **A Bill for an Act to amend the *Future Fund Act***
2 ***2006* and the *Nation-building Funds Act 2008*, and**
3 **for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Government Investment Funds*
7 *Amendment (Ethical Investments) Act 2011*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1 **Schedule 1—Amendments**
2

3 ***Future Fund Act 2006***

4 **1 Section 4**

5 After “Investment Mandate”, insert “and by the Future Fund Ethical
6 Investment Guidelines”.

7 **2 Section 5**

8 Insert:

9 *Future Fund Ethical Investment Guidelines* has the meaning
10 given by subsection 20A(1).

11 **3 Section 5**

12 Insert:

13 *prohibited financial asset* means a financial asset of a kind that is
14 specified as a prohibited financial asset in the Future Fund Ethical
15 Investment Guidelines.

16 **4 Section 14**

17 After “Investment Mandate”, insert “and by the Future Fund Ethical
18 Investment Guidelines”.

19 **5 At the end of subsection 16(1)**

20 Add “, other than a prohibited financial asset”.

21 **6 After paragraph 18(11)(b)**

22 Insert:

23 (ba) the Future Fund Ethical Investment Guidelines; and

24 **7 After section 20**

25 Insert:

1 **20A Future Fund Ethical Investment Guidelines**

- 2 (1) The responsible Ministers must, by legislative instrument, make
3 Future Fund Ethical Investment Guidelines.
- 4 (2) The Future Fund Ethical Investment Guidelines:
5 (a) must specify financial assets, or financial assets of a kind,
6 that are prohibited financial assets; and
7 (b) may make provision for or in relation to socially responsible
8 ethical investment practices, including (but not limited to)
9 environmental concerns, human rights concerns, labour
10 practices and the manufacture of weapons of war.
- 11 (3) Without limiting paragraph (2)(a), the Future Fund Ethical
12 Investment Guidelines must specify the following kinds of
13 financial assets as prohibited financial assets:
14 (a) an interest in a body corporate that manufactures tobacco
15 products;
16 (b) an interest in a body corporate that produces components for
17 cluster munitions;
18 (c) an interest in a body corporate that produces, maintains or
19 simulates nuclear weapons.

20 **20B Board to be consulted on Future Fund Ethical Investment**
21 **Guidelines**

- 22 (1) Before making or varying the Future Fund Ethical Investment
23 Guidelines, the responsible Ministers must:
24 (a) send a draft of the Guidelines or variation to the Board; and
25 (b) invite the Board to make a submission to the responsible
26 Ministers on the draft within a time limit specified by the
27 responsible Ministers; and
28 (c) consider any submission that is received from the Board
29 within that time limit.
- 30 (2) If:
31 (a) the responsible Ministers give the Board a draft under
32 paragraph (1)(a); and
33 (b) the Board makes a submission to the responsible Ministers
34 within the specified time limit;

1 the submission is to be tabled in each House of the Parliament with
2 the legislative instrument.

3 (3) A timeline specified under this section must be reasonable.

4 **20C Compliance with Future Fund Ethical Investment Guidelines**

5 (1) The Board must take all reasonable steps to comply with the Future
6 Fund Ethical Investment Guidelines.

7 (2) As soon as practicable after the Board becomes aware that it has
8 failed to comply with the Future Fund Ethical Investment
9 Guidelines, the Board must give the responsible Ministers a written
10 statement:

11 (a) informing the responsible Ministers of the failure to comply
12 with the Future Fund Ethical Investment Guidelines; and

13 (b) setting out the action that the Board proposes to take in order
14 to comply with the Future Fund Ethical Investment
15 Guidelines.

16 (3) If the responsible Ministers are satisfied that the Board has failed
17 to comply with the Future Fund Ethical Investment Guidelines, the
18 responsible Ministers may, by written notice given to the Board,
19 direct the Board:

20 (a) to give the responsible Ministers, within a period specified in
21 the notice, a written explanation for the failure to comply
22 with the Future Fund Ethical Investment Guidelines; and

23 (b) to take action specified in the notice, within a period
24 specified in the notice, in order to comply with the Future
25 Fund Ethical Investment Guidelines.

26 (4) The Board must comply with a direction under subsection (3).

27 (5) A failure to comply with:

28 (a) the Future Fund Ethical Investment Guidelines; or

29 (b) a direction under subsection (3);

30 does not affect the validity of any transaction.

31 (6) A direction under subsection (3) is not a legislative instrument for
32 the purposes of the *Legislative Instruments Act 2003*.

1 **8 At the end of subsection 24(2)**

2 Add “and the Future Fund Ethical Investment Guidelines”.

3 **9 Subsection 24(6)**

4 After “Mandate”, insert “or the Future Fund Ethical Investment
5 Guidelines”.

6 **10 After subclause 7(1) of Schedule 1**

7 Insert:

8 (1A) The nominated Minister must not authorise the acceptance of a gift
9 that is a prohibited financial asset.

10 ***Nation-building Funds Act 2008***

11 **11 Section 4**

12 Insert:

13 *Building Australia Fund Ethical Investment Guidelines* has the
14 meaning given by subsection 38A(1).

15 **12 Section 4**

16 Insert:

17 *Education Investment Fund Ethical Investment Guidelines* has
18 the meaning given by subsection 157A(1).

19 **13 Section 4**

20 Insert:

21 *Health and Hospitals Fund Ethical Investment Guidelines* has
22 the meaning given by subsection 232A(1).

23 **14 Section 4**

24 Insert:

25 *prohibited Building Australia Fund financial asset* means a
26 financial asset of a kind that is specified as a prohibited Building

1 Australia Fund financial asset in the Building Australia Fund
2 Ethical Investment Guidelines.

3 **15 Section 4**

4 Insert:

5 *prohibited Education Investment Fund financial asset* means a
6 financial asset of a kind that is specified as a prohibited Education
7 Investment Fund financial asset in the Education Investment Fund
8 Ethical Investment Guidelines.

9 **16 Section 4**

10 Insert:

11 *prohibited Health and Hospitals Fund financial asset* means a
12 financial asset of a kind that is specified as a prohibited Health and
13 Hospitals Fund financial asset in the Health and Hospitals Fund
14 Ethical Investment Guidelines.

15 **17 Section 10**

16 After “Investment Mandate”, insert “and by the Building Australia Fund
17 Ethical Investment Guidelines”.

18 **18 Section 30**

19 After “Investment Mandate”, insert “and by the Building Australia Fund
20 Ethical Investment Guidelines”.

21 **19 At the end of subsection 32(1)**

22 Add “, other than a prohibited Building Australia Fund financial asset”.

23 **20 Paragraph 35(13)(b)**

24 Omit “.”, substitute “; and”.

25 **21 At the end of subsection 35(13)**

26 Add:

27 (c) the Building Australia Fund Ethical Investment Guidelines.

28 **22 After section 38**

29 Insert:

1 **38A Building Australia Fund Ethical Investment Guidelines**

- 2 (1) The responsible Ministers must, by legislative instrument, make
3 Building Australia Fund Ethical Investment Guidelines.
- 4 (2) The Building Australia Fund Ethical Investment Guidelines:
5 (a) must specify financial assets, or financial assets of a kind,
6 that are prohibited Building Australia Fund financial assets;
7 and
8 (b) may make provision for or in relation to socially responsible
9 ethical investment practices, including (but not limited to)
10 environmental concerns, human rights concerns, labour
11 practices and the manufacture of weapons of war.
- 12 (3) Without limiting paragraph (2)(a), the Building Australia Fund
13 Ethical Investment Guidelines must specify the following kinds of
14 financial assets as prohibited Building Australia Fund financial
15 assets:
16 (a) an interest in a body corporate that manufactures tobacco
17 products;
18 (b) an interest in a body corporate that produces components for
19 cluster munitions;
20 (c) an interest in a body corporate that produces, maintains or
21 simulates nuclear weapons.

22 **38B Future Fund Board to be consulted on Building Australia Fund**
23 **Ethical Investment Guidelines**

- 24 (1) Before making or varying the Building Australia Fund Ethical
25 Investment Guidelines, the responsible Ministers must:
26 (a) send a draft of the Guidelines or variation to the Future Fund
27 Board; and
28 (b) invite the Future Fund Board to make a submission to the
29 responsible Ministers on the draft within a time limit
30 specified by the responsible Ministers; and
31 (c) consider any submission that is received from the Future
32 Fund Board within that time limit.
- 33 (2) If:

-
- 1 (a) the responsible Ministers give the Future Fund Board a draft
2 under paragraph (1)(a); and
3 (b) the Future Fund Board makes a submission to the responsible
4 Ministers within the specified time limit;
5 the submission is to be tabled in each House of the Parliament with
6 the legislative instrument.
- 7 (3) A timeline specified under this section must be reasonable.

8 **38C Compliance with Building Australia Fund Ethical Investment**
9 **Guidelines**

- 10 (1) The Future Fund Board must take all reasonable steps to comply
11 with the Building Australia Fund Ethical Investment Guidelines.
- 12 (2) As soon as practicable after the Future Fund Board becomes aware
13 that it has failed to comply with the Building Australia Fund
14 Ethical Investment Guidelines, the Future Fund Board must give
15 the responsible Ministers a written statement:
- 16 (a) informing the responsible Ministers of the failure to comply
17 with the Building Australia Fund Ethical Investment
18 Guidelines; and
19 (b) setting out the action that the Future Fund Board proposes to
20 take in order to comply with the Building Australia Fund
21 Ethical Investment Guidelines.
- 22 (3) If the responsible Ministers are satisfied that the Future Fund
23 Board has failed to comply with the Building Australia Fund
24 Ethical Investment Guidelines, the responsible Ministers may, by
25 written notice given to the Future Fund Board, direct the Future
26 Fund Board:
- 27 (a) to give the responsible Ministers, within a period specified in
28 the notice, a written explanation for the failure to comply
29 with the Building Australia Fund Ethical Investment
30 Guidelines; and
31 (b) to take action specified in the notice, within a period
32 specified in the notice, in order to comply with the Building
33 Australia Fund Ethical Investment Guidelines.
- 34 (4) The Future Fund Board must comply with a direction under
35 subsection (3).
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- 1 (5) A failure to comply with:
2 (a) the Building Australia Fund Ethical Investment Guidelines;
3 or
4 (b) a direction under subsection (3);
5 does not affect the validity of any transaction.
- 6 (6) A direction under subsection (3) is not a legislative instrument for
7 the purposes of the *Legislative Instruments Act 2003*.

8 **23 At the end of subsection 41(2)**

9 Add “and the Building Australia Fund Ethical Investment Guidelines”.

10 **24 Subsection 41(6)**

11 After “Mandate”, insert “or the Building Australia Fund Ethical
12 Investment Guidelines”.

13 **25 Section 129**

14 After “Investment Mandate”, insert “and by the Education Investment
15 Fund Ethical Investment Guidelines”.

16 **26 Section 149**

17 After “Investment Mandate”, insert “and by the Education Investment
18 Fund Ethical Investment Guidelines”.

19 **27 At the end of subsection 151(1)**

20 Add “, other than a prohibited Education Investment Fund financial
21 asset”.

22 **28 Paragraph 154(13)(b)**

23 Omit “.”, substitute “; and”.

24 **29 At the end of subsection 154(13)**

25 Add:
26 (c) the Education Investment Fund Ethical Investment
27 Guidelines.

28 **30 After section 157**

29 Insert:

1 **157A Education Investment Fund Ethical Investment Guidelines**

- 2 (1) The responsible Ministers must, by legislative instrument, make
3 Education Investment Fund Ethical Investment Guidelines.
- 4 (2) The Education Investment Fund Ethical Investment Guidelines:
5 (a) must specify financial assets, or financial assets of a kind,
6 that are prohibited Education Investment Fund financial
7 assets; and
8 (b) may make provision for or in relation to socially responsible
9 ethical investment practices, including (but not limited to)
10 environmental concerns, human rights concerns, labour
11 practices and the manufacture of weapons of war.
- 12 (3) Without limiting paragraph (2)(a), the Education Investment Fund
13 Ethical Investment Guidelines must specify the following kinds of
14 financial assets as prohibited Education Investment Fund financial
15 assets:
16 (a) an interest in a body corporate that manufactures tobacco
17 products;
18 (b) an interest in a body corporate that produces components for
19 cluster munitions;
20 (c) an interest in a body corporate that produces, maintains or
21 simulates nuclear weapons.

22 **157B Future Fund Board to be consulted on Education Investment**
23 **Fund Ethical Investment Guidelines**

- 24 (1) Before making or varying the Education Investment Fund Ethical
25 Investment Guidelines, the responsible Ministers must:
26 (a) send a draft of the Guidelines or variation to the Future Fund
27 Board; and
28 (b) invite the Future Fund Board to make a submission to the
29 responsible Ministers on the draft within a time limit
30 specified by the responsible Ministers; and
31 (c) consider any submission that is received from the Future
32 Fund Board within that time limit.
- 33 (2) If:

- 1 (a) the responsible Ministers give the Future Fund Board a draft
2 under paragraph (1)(a); and
3 (b) the Future Fund Board makes a submission to the responsible
4 Ministers within the specified time limit;
5 the submission is to be tabled in each House of the Parliament with
6 the legislative instrument.
- 7 (3) A timeline specified under this section must be reasonable.

8 **157C Compliance with Education Investment Fund Ethical**
9 **Investment Guidelines**

- 10 (1) The Future Fund Board must take all reasonable steps to comply
11 with the Education Investment Fund Ethical Investment
12 Guidelines.
- 13 (2) As soon as practicable after the Future Fund Board becomes aware
14 that it has failed to comply with the Education Investment Fund
15 Ethical Investment Guidelines, the Future Fund Board must give
16 the responsible Ministers a written statement:
17 (a) informing the responsible Ministers of the failure to comply
18 with the Education Investment Fund Ethical Investment
19 Guidelines; and
20 (b) setting out the action that the Future Fund Board proposes to
21 take in order to comply with the Education Investment Fund
22 Ethical Investment Guidelines.
- 23 (3) If the responsible Ministers are satisfied that the Future Fund
24 Board has failed to comply with the Education Investment Fund
25 Ethical Investment Guidelines, the responsible Ministers may, by
26 written notice given to the Future Fund Board, direct the Future
27 Fund Board:
28 (a) to give the responsible Ministers, within a period specified in
29 the notice, a written explanation for the failure to comply
30 with the Education Investment Fund Ethical Investment
31 Guidelines; and
32 (b) to take action specified in the notice, within a period
33 specified in the notice, in order to comply with the Education
34 Investment Fund Ethical Investment Guidelines.

- 1 (4) The Future Fund Board must comply with a direction under
2 subsection (3).
- 3 (5) A failure to comply with:
4 (a) the Education Investment Fund Ethical Investment
5 Guidelines; or
6 (b) a direction under subsection (3);
7 does not affect the validity of any transaction.
- 8 (6) A direction under subsection (3) is not a legislative instrument for
9 the purposes of the *Legislative Instruments Act 2003*.

10 **31 At the end of subsection 160(2)**

11 Add “and the Education Investment Fund Ethical Investment
12 Guidelines”.

13 **32 Subsection 160(6)**

14 After “Mandate”, insert “or the Education Investment Fund Ethical
15 Investment Guidelines”.

16 **33 Section 212**

17 After “Investment Mandate”, insert “and by the Health and Hospitals
18 Fund Ethical Investment Guidelines”.

19 **34 Section 225**

20 After “Investment Mandate”, insert “and by the Health and Hospitals
21 Fund Ethical Investment Guidelines”.

22 **35 At the end of subsection 227(1)**

23 Add “, other than a prohibited Health and Hospitals Fund financial
24 asset”.

25 **36 Paragraph 229(13)(b)**

26 Omit “.”, substitute “; and”.

27 **37 At the end of subsection 229(13)**

28 Add:
29 (c) the Health and Hospitals Fund Ethical Investment
30 Guidelines.

1 **38 After section 232**

2 Insert:

3 **232A Health and Hospitals Fund Ethical Investment Guidelines**

- 4 (1) The responsible Ministers must, by legislative instrument, make
5 Health and Hospitals Fund Ethical Investment Guidelines.
- 6 (2) The Health and Hospitals Fund Ethical Investment Guidelines:
7 (a) must specify financial assets, or financial assets of a kind,
8 that are prohibited Health and Hospitals Fund financial
9 assets; and
10 (b) may make provision for or in relation to socially responsible
11 ethical investment practices, including (but not limited to)
12 environmental concerns, human rights concerns, labour
13 practices and the manufacture of weapons of war.
- 14 (3) Without limiting paragraph (2)(a), the Health and Hospitals Fund
15 Ethical Investment Guidelines must specify the following kinds of
16 financial assets as prohibited Health and Hospitals Fund financial
17 assets:
18 (a) an interest in a body corporate that manufactures tobacco
19 products;
20 (b) an interest in a body corporate that produces components for
21 cluster munitions;
22 (c) an interest in a body corporate that produces, maintains or
23 simulates nuclear weapons.

24 **232B Future Fund Board to be consulted on Health and Hospitals**
25 **Fund Ethical Investment Guidelines**

- 26 (1) Before making or varying the Health and Hospitals Fund Ethical
27 Investment Guidelines, the responsible Ministers must:
28 (a) send a draft of the Guidelines or variation to the Future Fund
29 Board; and
30 (b) invite the Future Fund Board to make a submission to the
31 responsible Ministers on the draft within a time limit
32 specified by the responsible Ministers; and

-
- 1 (c) consider any submission that is received from the Future
2 Fund Board within that time limit.
- 3 (2) If:
- 4 (a) the responsible Ministers give the Future Fund Board a draft
5 under paragraph (1)(a); and
- 6 (b) the Future Fund Board makes a submission to the responsible
7 Ministers within the specified time limit;
8 the submission is to be tabled in each House of the Parliament with
9 the legislative instrument.
- 10 (3) A timeline specified under this section must be reasonable.

11 **232C Compliance with Health and Hospitals Fund Ethical**
12 **Investment Guidelines**

- 13 (1) The Future Fund Board must take all reasonable steps to comply
14 with the Health and Hospitals Fund Ethical Investment Guidelines.
- 15 (2) As soon as practicable after the Future Fund Board becomes aware
16 that it has failed to comply with the Health and Hospitals Fund
17 Ethical Investment Guidelines, the Future Fund Board must give
18 the responsible Ministers a written statement:
- 19 (a) informing the responsible Ministers of the failure to comply
20 with the Health and Hospitals Fund Ethical Investment
21 Guidelines; and
- 22 (b) setting out the action that the Future Fund Board proposes to
23 take in order to comply with the Health and Hospitals Fund
24 Ethical Investment Guidelines.
- 25 (3) If the responsible Ministers are satisfied that the Future Fund
26 Board has failed to comply with the Health and Hospitals Fund
27 Ethical Investment Guidelines, the responsible Ministers may, by
28 written notice given to the Future Fund Board, direct the Future
29 Fund Board:
- 30 (a) to give the responsible Ministers, within a period specified in
31 the notice, a written explanation for the failure to comply
32 with the Health and Hospitals Fund Ethical Investment
33 Guidelines; and

- 1 (b) to take action specified in the notice, within a period
2 specified in the notice, in order to comply with the Health
3 and Hospitals Fund Ethical Investment Guidelines.
- 4 (4) The Future Fund Board must comply with a direction under
5 subsection (3).
- 6 (5) A failure to comply with:
7 (a) the Health and Hospitals Fund Ethical Investment
8 Guidelines; or
9 (b) a direction under subsection (3);
10 does not affect the validity of any transaction.
- 11 (6) A direction under subsection (3) is not a legislative instrument for
12 the purposes of the *Legislative Instruments Act 2003*.

13 **39 At the end of subsection 235(2)**

14 Add “and the Health and Hospitals Fund Ethical Investment
15 Guidelines”.

16 **40 Subsection 235(6)**

17 After “Mandate”, insert “or the Health and Hospitals Fund Ethical
18 Investment Guidelines”.

19 **41 Transitional provision—existing investments in prohibited
20 Future Fund financial assets**

- 21 (1) This item applies if, on the day this Schedule commences, a financial
22 asset held by the Future Fund Board as an investment of the Future
23 Fund is a prohibited financial asset (within the meaning of section 5 of
24 the *Future Fund Act 2006*, as inserted by this Schedule).
- 25 (2) The Future Fund Board must realise the asset within 12 months after the
26 day this Schedule commences.

27 **42 Transitional provision—existing investments in prohibited
28 Building Australia Fund financial assets**

- 29 (1) This item applies if, on the day this Schedule commences, a financial
30 asset held by the Future Fund Board as an investment of the Building
31 Australia Fund is a prohibited Building Australia Fund financial asset

1 (within the meaning of section 4 of the *Nation-building Funds Act 2006*,
2 as inserted by this Schedule).

3 (2) The Future Fund Board must realise the asset within 12 months after the
4 day this Schedule commences.

5 **43 Transitional provision—existing investments in prohibited**
6 **Education Investment Fund financial assets**

7 (1) This item applies if, on the day this Schedule commences, a financial
8 asset held by the Future Fund Board as an investment of the Education
9 Investment Fund is a prohibited Education Investment Fund financial
10 asset (within the meaning of section 4 of the *Nation-building Funds Act*
11 *2006*, as inserted by this Schedule).

12 (2) The Future Fund Board must realise the asset within 12 months after the
13 day this Schedule commences.

14 **44 Transitional provision—existing investments in prohibited**
15 **Health and Hospitals Fund financial assets**

16 (1) This item applies if, on the day this Schedule commences, a financial
17 asset held by the Future Fund Board as an investment of the Health and
18 Hospitals Fund is a prohibited Health and Hospitals Fund financial asset
19 (within the meaning of section 4 of the *Nation-building Funds Act 2006*,
20 as inserted by this Schedule).

21 (2) The Future Fund Board must realise the asset within 12 months after the
22 day this Schedule commences.