

Departmental Disclosure Statement

New Zealand Superannuation and Retirement Income (Controlling Interests) Amendment Bill

A departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Treasury.

The Treasury certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

15 February 2023

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Part One: General Policy Statement

Introduction

This Bill amends the New Zealand Superannuation and Retirement Income Act 2001 (the **Act**) to allow the New Zealand Superannuation Fund (the **NZSF**) to take a controlling interest in an entity.

Section 59 of the Act currently requires the Guardians to use their best endeavours to avoid the Fund from taking a controlling stake in an entity. The original policy rationale for the control restriction was that the NZSF's purpose was to get exposure to investments and not to own businesses—if the Government wished to take ownership of businesses it would have a policy rationale for doing so. The NZSF was also still developing its investment practices and, when the NZSF was established in 2001, direct controlling investments were uncommon within the global practice of investment management by sovereign wealth funds. Amendments in 2015 partially removed the restriction, allowing the Guardians to create and control Fund investment vehicles.

Rationale for change

Since inception, the NZSF has significantly matured in terms of size, capability, and operating model. The Guardians' governance has evolved in line with NZSF's investment capability, to provide effective oversight of complex investment strategies such as direct and unlisted investments.

Removing the control restriction may enable the NZSF to access a wider group of viable investment partners and opportunities, particularly in New Zealand. This could attract institutional investors who are comfortable with the Guardians' due diligence practices, deepening capital markets for domestic transactions, particularly as the Guardians look for scalable investment opportunities such as strategic infrastructure. It should also provide a larger opportunity set for New Zealand investments and potential to increase the risk adjusted return of the NZSF. Allowing the NZSF to hold controlling interests will have a limited impact on competition with other market investors because the size and scale of the NZSF's direct investments differentiate them from the market.

Enabling controlling interests will help bring the NZSF into line with many global peers. Typically, as sovereign wealth funds mature and develop their internal expertise, more capital is managed in-house. The NZSF is in line with a number of other funds which, as they have grown and matured, have graduated to taking on a lead investor role with the ability to own businesses. The NZSF has a reputation of being world leading in environmental, social, and governance (**ESG**) integration and has a strong commitment to using its influence as a shareholder to encourage companies to manage and report on their ESG risks.

The Bill does not derogate from the Guardians' independence from political influence in relation to investment decisions (as provided for in section 64(2) of the Act). To ensure appropriate oversight, the Bill requires the Board of the Guardians to establish a new *Statement of Investment Policies, Standards, and Procedures* which states the appropriate policy and oversight of how the NZSF direct investment strategy is given effect, including where the option to take a controlling interest is utilised.

The Bill distinguishes between the Guardians as a Crown entity, and the Guardians as manager and administrator of the NZSF. The laws that apply to public sector organisations are not intended to apply to entities that the Guardians controls as manager and administrator of the Fund.

The Guardians may have controlling interests in that capacity in a number of different ways, all of which are intended to be covered by new section 59(1). For example, the Guardians as manager and administrator of the Fund, may control an entity through ownership of shares (in the entity or an interposed holding company) or other ownership interests, rights under a trust, contractual rights, or rights to appoint directors; and entities that are so controlled may in turn control other entities in different ways.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	N/A
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
Treasury's Regulatory Impact Analysis Team has determined that the proposal to loosen control restrictions of the NZSF is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
The Treasury expects that the Treasury report outlining the findings of a first principles policy review of section 59 and accompanying documents to be proactively released when appropriate.	
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
See 2.3.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

This Bill does not impact on New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

This Bill does not impact the rights and interests of Māori protected by the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?

YES

The Infrastructure Commission, the Accident Compensation Corporation, and the NZSF Guardians were consulted during the policy development. The NZSF were consulted on the content of the Bill and their views taken into account.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?

NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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