

8 December 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: New Zealand Superannuation and Retirement Income (Controlling Interests) Amendment Bill

1. We have considered whether the New Zealand Superannuation and Retirement Income (Controlling Interests) Amendment Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 24250/6.6). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. The 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.
4. The Act currently requires the Guardians, the Crown entity that manages and administers the NZSF, to use best endeavours to ensure that the NZSF does not take a controlling stake in an entity. When the NZSF was established in 2001, direct controlling investments were uncommon within the global practice of investment management by sovereign wealth funds. 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.
5. However, since its inception, the NZSF has significantly matured in terms of its size, capability and operating model. It is now considered that removing the control restriction may enable the NZSF to access a wider group of viable investment partners and opportunities, particularly in New Zealand, and bring it in line with many global peers.
6. The Bill also ensures that the fact of an investment by the NZSF does not result in any entity being treated as part of the Crown or subject to obligations that were designed for public sector organisations. To ensure appropriate oversight, the Bill also requires the Guardians' statement of investment policies, standards and procedures to include details of the governance framework for the implementation and operation of controlled entities.
7. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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