

Reference: 20160328

1 November 2016



Thank you for your Official Information Act request, received on 29 August 2016.

You requested the following:

*“copies of all Treasury advice and/or information to ministers and/or other government ministries or departments, about the effect of the Trans Pacific Partnership Agreement, particularly the TPPA’s State Owned Enterprises chapter, on the NZ Superannuation Fund, the ACC Investment Fund, and/or the Government Superannuation Fund.*

*I also request copies of any advice and/or information about this provided by the Treasury to the funds themselves.”*

On 26 September 2016 the Treasury wrote to you advising that we were extending the deadline to reply to this request by 25 working days.

### **Information Being Released**

We understand your request to be for information that discusses the effects of the finalised version of the TPP on the New Zealand Superannuation Fund, ACC Investment Fund and / or the Government Superannuation Fund specifically.

Please find enclosed the following documents:

<b>Item</b>	<b>Date</b>	<b>Document Description</b>	<b>Decision</b>
1.	18 April 2012	Treasury Report Trans-Pacific Partnership State Enterprises State Commercial Enterprises and Designated Monopolies	Release in part
2.	17 February 2014	Email 17 February 2014 TPP financial services subsidies exception for NZ	Release in part
3.	7 February 2011	Email 7 February 2011 TPP Financial Services Govt Guarantees Reservation	Release in part
4.	7 February 2011	Attachment item 3 – Attachment 7 Summary of TPP State Enterprises Analysis	Release in part
5.	January 2010	Attachment 13 TPP Policy Areas Treasury Positions - January 2010	Release in part
6.	2 September 2011	Email 2 September 2011 TPP Financial Services Government Guarantees Reservation	Release in part
7.	21 October 2011	Email 21 October 2011 SOE text	Release in part
8.	28 January 2015	Email 28 January 2015 TPP SOEs - independent pension fund exclusion	Release in part
9.	11 October 2013	Email 11 October 2013 TPP Negotiations	Release in part
10.	3 July 2013	Email 3 July 2013 TPP Financial Services - subsidies	Release in part
11.	15 August 2013	Email 15 August 2013 TPP SOES - comments from MBIE and MOH	Release in part
12.	15 August 2013	Attachment Treasury Positions on SOE Provisions	Release in part
13.	15 May 2014	Email 15 May 2014 NZ Super Fund and TPP	Release in part
14.	15 May 2014	Attachment Full-evidence-text	Release in full
15.	2 February 2011	Email chain 2 February 2011 Financial Services	Release in part

I have decided to release the relevant parts of the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- personal contact details of officials, under section 9(2)(a) – to protect the privacy of natural persons, including deceased people, and
- under section 6(a) – to protect the security or defence of New Zealand or the international relations of the Government of New Zealand, and
- under section 6(b)(i) – to protect the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of any other country or any agency of such a Government, and
- legal advice under section 9(2)(h) – to maintain legal professional privilege, and
- names and contact details of junior officials and certain sensitive advice, under section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions, and
- commercially sensitive information, under section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information.
- confidential information, under section 9(2)(j) – to enable the Crown to negotiate without disadvantage or prejudice

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This fully covers the information you requested.

You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Chris Nees  
**Team Leader, International**

# TOIA 20160328

## Information for release

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1.	<a href="#"><u>Treasury Report Trans-Pacific Partnership State Enterprises State Commercial Enterprises and Designated Monopolies</u></a>	1
2.	<a href="#"><u>Email 17 February 2014 TPP financial services subsidies exception for NZ</u></a>	13
3.	<a href="#"><u>Email 7 February 2011 TPP Financial Services</u></a>	24
4.	<a href="#"><u>Attachment 7 Summary of TPP State Enterprises Analysis</u></a>	28
5.	<a href="#"><u>Attachment 13 TPP Policy Areas Treasury Positions - January 2010</u></a>	32
6.	<a href="#"><u>Email 2 September 2011 TPP Financial Services</u></a>	39
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13.	<a href="#"><u>Email 15 May 2014 NZ Super Fund and TPP</u></a>	72
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**Treasury Report: Trans-Pacific Partnership: State Enterprises, State Commercial Enterprises and Designated Monopolies**

<b>Date:</b>	18 April 2012	<b>Report No:</b>	T2012/693
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**Action Sought**

	<b>Action Sought</b>	<b>Deadline</b>
Minister of Finance (Hon Bill English)	<b>Direct</b> Treasury to work with the Ministry of Foreign Affairs and Trade to incorporate a negotiating mandate for US proposals regarding 'State Enterprises, State Commercial Enterprises and Designated Monopolies' into Cabinet paper that the Minister of Trade intends to take to Cabinet  <b>Forward</b> a copy of this report to the Minister for Primary Industries and the Minister of Trade	Thursday 26 April
Associate Minister of Finance (Hon Steven Joyce)	None	None
Minister for State Owned Enterprises (Hon Tony Ryall)	<b>Note</b> the contents of the report and that officials are available to discuss the report if you wish.	Thursday 26 April
Associate Minister of Finance (Hon Dr Jonathan Coleman)	None	None

**Contact for Telephone Discussion (if required)**

<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st Contact</b>
Richard Downing	Senior Analyst, International	471 5930 (wk) s9(2)(a)	✓
Siân Roguski	Manager, International	917 6089 (wk)	

**Minister of Finance's Office Actions (if required)**

If agreed, forward a copy of the report to the Minister for Primary Industries and the Minister of Trade

**Enclosure: No**

18 April 2012

IM 3-0-5

## Treasury Report: Trans-Pacific Partnership: State Enterprises, State Commercial Enterprises and Designated Monopolies

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### Executive Summary

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s6(a) & s6(b)(i) disciplines on State Enterprises (SEs), State Commercial Enterprises (SCEs) and Designated Monopolies (DMs) as part of the Trans-Pacific Partnership (TPP) trade negotiations. This paper summarises the proposals, recommends a future negotiating strategy and seeks your agreement to Treasury working with the Ministry of Foreign Affairs and Trade to reflect this strategy in a TPP negotiating mandate Cabinet paper that the Minister of Trade intends to take to Cabinet in May.

The general principles behind s6(a) & s6(b)(i) seek to ensure 'competitive neutrality' between government-owned and private sector businesses and to ensure government-owned businesses do not discriminate between customers and suppliers from other TPP countries. The proposals would create the following three categories of entities:

s6(a) & s6(b)(i)



Treasury recommends that New Zealand support the inclusion of the disciplines s6(a) & s6(b)(i) s6(a) & s6(b)(i). The general principles are consistent with the broad approach followed in New Zealand and would benefit New Zealand traders and investors by promoting more equal competition in some markets s6(a) & s6(b)(i) s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

We are working with the Ministry of Foreign Affairs and Trade (MFAT) to develop a negotiating position that would protect current practices and preserve future policy flexibility where a need based on strong public policy reasons is identified. If you agree, Cabinet approval will be sought for this mandate as part of a broader TPP Cabinet paper that is due to be considered in early May.

s6(a) & s6(b)(i)

s6(a) & s6(b)(i) some of the proposals are ambiguous and could produce unintended consequences. We will be working to address these issues and will report to you with more detail should any issue prove unduly problematic to resolve.

### Recommended Action

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We recommend that you:

- a s6(a) & s6(b)(i)
- b **note** that the Minister of Trade intends to take a paper for Cabinet in early May seeking a revised TPP negotiating mandate, s6(a) & s6(b)(i) proposals referred to in recommendation (a);
- c **direct** Treasury to work with the Ministry of Foreign Affairs and Trade to reflect the following negotiating principles in the paper referred to in recommendation (b):
- Begin negotiations at the next round of talks in May in Dallas;
  - Negotiators can agree to proposals consistent with existing New Zealand policy settings; and
  - Negotiators should seek exemptions to protect current arrangements and preserve future policy flexibility where a need based on strong public policy reasons is identified.
- Yes/No.
- d **note** that officials are available to discuss this report if you wish; and
- e **forward** a copy of this report to the Minister for Primary Industries and to the Minister of Trade.

Siân Roguski  
**Manager, International**

Hon Bill English  
**Minister of Finance**

Hon Tony Ryall  
**Minister for State Owned Enterprises**

## Treasury Report: Trans-Pacific Partnership: State Enterprises, State Commercial Enterprises and Designated Monopolies

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### Purpose of Report

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1. s6(a) & s6(b)(i) disciplines on 'State Enterprises, State Commercial Enterprises and Designated Monopolies' as part of the Trans-Pacific Partnership (TPP) trade negotiations. This report summarises the proposals and recommends a future negotiating strategy. The report seeks your agreement to Treasury working with the Ministry of Foreign Affairs and Trade to reflect this strategy in a TPP negotiating mandate Cabinet paper that the Minister of Trade intends to take to Cabinet in May.

### Analysis

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#### Background

2. The Trans-Pacific Partnership (TPP) negotiations consist of Australia, Brunei, Chile, NZ, Malaysia, Peru, Singapore, US and Viet Nam. TPP is intended to:
  - provide greater scope and support for long-term regional integration, trade, investment and access to global supply chains;
  - tackle behind the border issues affecting traders; and
  - work to get more coherence in regulatory practice in TPP markets.

3. s6(a) & s6(b)(i)

4. Treasury is working with MFAT, and other relevant agencies, to assess the likely impact of the proposals in New Zealand and the fit with existing policy settings. This report sets out some of the initial results of that work and seeks agreement about how the negotiations should be managed in the future.

5. s6(b)(i)

s6(b)(i)

s6(a)

s6(a)

#### Overview of Proposals

6. The proposals are motivated by concerns about the increasing role of state owned and run businesses around the world and the impacts these businesses can have on competition and market access. s6(a) & s6(b)(i)

s6(a) & s6(b)(i)



7. The broad focus of the proposals is to ensure 'competitive neutrality' between government-owned and privately-owned businesses and to ensure government-owned businesses do not discriminate between customers and suppliers from different countries. In this context 'competitive neutrality' means that no commercial entity should have an advantage purely as a result of its ownership or control.

8. s6(a) & s6(b)(i)

9.

10.

11.

12. Many of the principles underlying the proposals, including those around competitive neutrality and non-discrimination are features of the New Zealand system of governance for commercial entities, particularly SOEs. These are principles that we recommend New Zealand should support as part of TPP and such disciplines may provide some protection for New Zealand companies operating in TPP countries.

s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

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s6(a) & s6(b)(i)



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s6(a) & s6(b)(i)



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s6(a) & s6(b)(i)

26. The Minister of Trade intends to take a paper to Cabinet in early May seeking a further mandate for TPP negotiations. There is currently no Cabinet mandate to negotiate the proposals discussed in this paper. We therefore recommend that New Zealand support the inclusion of disciplines s6(a) & s6(b)(i)

s6(a) & s6(b)(i) in the TPP agreement. We are working with MFAT to reflect the following principles regarding s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

- New Zealand can begin negotiations at the next round of talks in May in Dallas;
- Negotiators can agree to proposals consistent with existing New Zealand policy settings; and
- Negotiators should seek exemptions to protect current arrangements and preserve future policy flexibility where a need based on strong public policy reasons is identified.

27. It is possible that the type of mandate provided for above will not be sufficient to close negotiations in this area, depending on the exemptions that officials are able to secure for New Zealand entities and for future policy space. Officials will report back to you and to Cabinet if further flexibility is required.

28. Out of scope of request

## Risks

29. The inclusion of disciplines on s6(a) & s6(b)(i) s6(a) & s6(b)(i) is likely to be opposed by some stakeholder groups. Some New Zealand commentators and academics have already begun to provide a critical assessment of such disciplines. While the proposals have not been publicly released, these critics have focused on perceived concerns that New Zealand will be required to sell SOEs, will be prohibited from creating new ones and that the government's ability to meet domestic public policy objectives and optimise domestic regulatory settings would be impeded. The proposals do not lead to the first two of these criticisms. The approach proposed in this report will limit some of the other risks.

s6(a) & s6(b)(i)



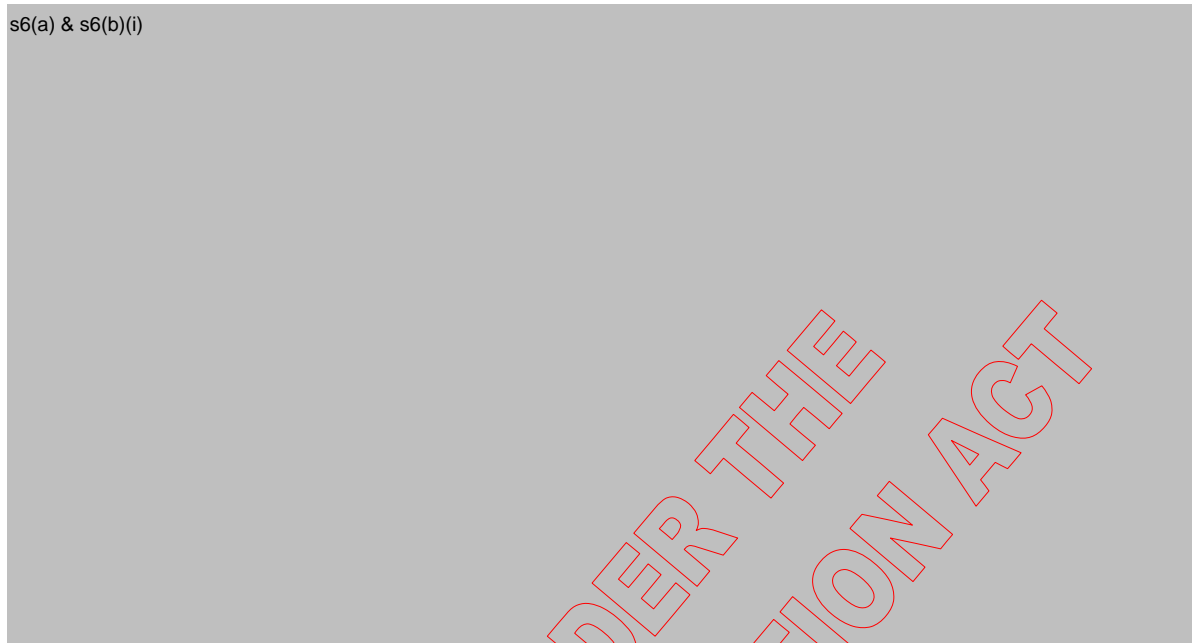
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s6(a) & s6(b)(i)



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s6(a) & s6(b)(i)



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**From:** s9(2)(g)(i) [TSY]  
**Sent:** Monday, 17 February 2014 9:22 a.m.  
**To:** s9(2)(a) [TND]  
**Cc:** Lee McCauley [TSY]; David Snell [TSY]; Anna Everton [TSY]  
**Subject:** RE: TPP financial services: subsidies exception for NZ

Hi s9(2)(a)

I can confirm ACC, 1 and GSF are Government owned.

Out of scope of request

Cheers

s9(2)(g)(i)

Advisor | The Treasury

s9(2)(g)(i) @treasury.govt.nz

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**From:** s9(2)(a) [TND] s9(2)(a) [TSY] @mfat.govt.nz]  
**Sent:** Friday, 14 February 2014 1:42 p.m.  
**To:** s9(2)(g)(i) [TSY]  
**Cc:** Lee McCauley [TSY]; David Snell [TSY]; Anna Everton [TSY]  
**Subject:** RE: TPP financial services: subsidies exception for NZ

Many thanks s9(2)(g)(i) that may necessitate a wording change to our reservation. I will look that over. I assume the Government also owns ACC 2 Can you confirm re the GSF?

Out of scope of request

Redactions numbered 1-4  
redacted as out of scope of  
request

Thanks so much,

s9(2)(a)

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**From:** s9(2)(g)(i) @treasury.govt.nz]  
**Sent:** Friday, 14 February 2014 1:29 p.m.  
**To:** s9(2)(a) [TND]  
**Cc:** Lee McCauley [TSY]; David Snell [TSY]; Anna Everton [TSY]  
**Subject:** RE: TPP financial services: subsidies exception for NZ

Hi s9(2)(a)

Reading the email chain below, it looks as though the NZ government plans to reserve the right to provide a subsidy or grant to organisations we own or control that provide financial services. We'd want that reservation to cover all of the Crown financial institutions – NZSF, ACC, GSF, 4 [redacted] You've asked specifically about NZSF 3 [redacted]

The NZ Superannuation Fund *is* wholly owned by the Government but operates at double arms length.

The New Zealand Superannuation Fund (the Fund) is a pool of assets on the Crown's balance sheet and the Guardians of New Zealand Superannuation (the Guardians) is a Crown entity charged with managing the Fund. The Guardians operates at "double arm's length". The first arm involves the role of the Independent Nominating Committee to identify candidates for the Guardians' Board (i.e. the Government does not decide the pool of candidates), which are then selected by the Minister of Finance. The second arm is that investment decisions are made by the Board and Management of Guardians.

Out of scope of request

Kind regards

s9(2)(g)(i)

Advisor | The Treasury

s9(2)(g)(i)

[@treasury.govt.nz](mailto:s9(2)(g)(i)@treasury.govt.nz)

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**From:** Lee McCauley [TSY]

**Sent:** Friday, 14 February 2014 8:39 a.m.

**To:** David Snell [TSY]; Anna Everton [TSY]

**Subject:** FW: TPP financial services: subsidies exception for NZ

**Importance:** High

Hi David, Anna,

See below. Can either of you help, please?

Lee

**Lee McCauley** | Senior Analyst | The Treasury

Tel: +64 4 917 6217 | [Lee.McCauley@treasury.govt.nz](mailto:Lee.McCauley@treasury.govt.nz)

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- any use, dissemination or copying of this email is strictly prohibited and may be unlawful.

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**From:** s9(2)(a) (TND) s9(2)(a) @mfat.govt.nz]  
**Sent:** Friday, 14 February 2014 8:06 a.m.  
**To:** Lee McCauley [TSY]  
**Cc:** Nick McNabb [TSY]  
**Subject:** FW: TPP financial services: subsidies exception for NZ  
**Importance:** High

Hi Lee,

A very quick question for you:

Are you able to confirm that the Super Fund Out of scope of request are owned (wholly or partially) by the Government?

Many thanks,

s9(2)(a)

---

**From:** Nathan Penny [TSY] [mailto:Nathan.Penny@treasury.govt.nz]  
**Sent:** Friday, 6 December 2013 2:06 p.m.  
**To:** s9(2)(a) (LGL/TLU); s9(2)(a) (TND)  
**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell (james.campbell@mbie.govt.nz); Fiona Ross [TSY]; Nick McNabb [TSY]; Jennie Kerr [TSY]; David Snell [TSY]; Lee McCauley [TSY]  
**Subject:** RE: TPP financial services: subsidies exception for NZ

Hi s9(2)(a)

Thanks for sending that through.

We are comfortable with the language (and scope) provided for in the proposals.

Note Lee McCauley is now the Treasury TPP contact as today is my last day.

Cheers  
Nathan

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**From:** s9(2)(a) (LGL/TLU) s9(2)(a) @mfat.govt.nz]  
**Sent:** Friday, 6 December 2013 11:27 a.m.  
**To:** Nathan Penny [TSY]; s9(2)(a) (TND)  
**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell (james.campbell@mbie.govt.nz); Fiona Ross [TSY]; Nick McNabb [TSY]; Jennie Kerr [TSY]; David Snell [TSY]; Lee McCauley [TSY]  
**Subject:** RE: TPP financial services: subsidies exception for NZ

Hi Nathan,

Please see below for the definition of "financial service". "subsidy" is not actually defined in the FS Chapter and as far as I know, in the TPP Agreement.

Let me know if you'd like to discuss anything – my contact details are below.

s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

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s6(a) & s6(b)(i)

s9(2)(a)

Legal Division/ Trade Law Unit  
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

s9(2)(a) @mfat.govt.nz

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Wellington 5045  
New Zealand

[www.mfat.govt.nz](http://www.mfat.govt.nz) | [www.nzembassy.com](http://www.nzembassy.com) | [www.aid.govt.nz](http://www.aid.govt.nz) | [www.safetravel.govt.nz](http://www.safetravel.govt.nz) | [www.nzunsc.govt.nz](http://www.nzunsc.govt.nz)



**From:** Nathan Penny [TSY] [<mailto:Nathan.Penny@treasury.govt.nz>]

**Sent:** Friday, 6 December 2013 10:52 a.m.

**To:** s9(2)(a) (TND); s9(2)(a) (LGL/TLU)

**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell ([james.campbell@mbie.govt.nz](mailto:james.campbell@mbie.govt.nz)); Fiona Ross [TSY]; Nick McNabb [TSY]; Jennie Kerr [TSY]; David Snell [TSY]; Lee McCauley [TSY]

**Subject:** RE: TPP financial services: subsidies exception for NZ

Hi s9(2)(a)

Can we check the relevant definitions for *financial services* and *subsidies*?

Thanks  
Nathan

**From:** s9(2)(a) (TND) s9(2)(a) @mfat.govt.nz]

**Sent:** Thursday, 5 December 2013 11:27 a.m.

**To:** s9(2)(a) (LGL/TLU); Nick McNabb [TSY]; s9(2)(g)(i) [TSY]; Jennie Kerr [TSY]

**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell ([james.campbell@mbie.govt.nz](mailto:james.campbell@mbie.govt.nz)); Fiona Ross [TSY]; Nathan Penny [TSY]

**Subject:** RE: TPP financial services: subsidies exception for NZ

**Importance:** High

Hi everyone,

Further to s9(2)(a) message below and your further consideration of the issue, I thought I would circulate some additional thinking on the wording of a subsidies NCM for the TPP financial services chapter. Both take on aspects discussed below.

s6(a) and s9(2)(j)

Nick s9(2)(a) Jennie: could you please let us know if you would be comfortable with either of the proposed texts above?

s6(a) & s6(b)(i)

On that basis I wanted to confirm whether Treasury would be fine including the following or equivalent language:

s6(a) and s9(2)(j)

I am now in Bali/Singapore for what are intended to be the final TPP meetings of the year (and where potential conclusion could be reached). I would be very grateful if any final comments on the above language (particularly any concerns with the above) could be provided by COP tomorrow.

s9(2)(a) our financial services trade lawyer) is currently in Wellington and would be available to talk through any of the above if needed. I'm also happy to discuss over the phone.

Many thanks for your consideration,

s9(2)(a)

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**From:** s9(2)(a) (LGL/TLU)  
**Sent:** Saturday, 23 November 2013 3:38 p.m.  
**To:** Nick McNabb [TSY]; s9(2)(g)(i) [TSY]; Jennie Kerr [TSY]  
**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell ([james.campbell@mbie.govt.nz](mailto:james.campbell@mbie.govt.nz)); s9(2)(a) (LGL/TLU); s9(2)(a) (TND); Fiona Ross [TSY]; Nathan Penny [TSY]  
**Subject:** RE: TPP financial services: subsidies exception for NZ

Hi Nick and others,

s9(2)(h) and s6(a) and s9(2)(j)

s9(2)(h) and s6(a) and s9(2)(j)

s9(2)(h) and s6(a) and s9(2)(j) and

s9(2)(h) and s6(a) and s9(2)(j) and s6(b)(i)

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s9(2)(h) and s6(a) and s9(2)(j) and s6(b)(i)

s9(2)(h) and s6(a) and s9(2)(j)

s9(2)(h) and s6(a) and s9(2)(j)

Many thanks,

s9(2)(a)

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**From:** Nick McNabb [TSY] [<mailto:Nick.McNabb@treasury.govt.nz>]  
**Sent:** Friday, 22 November 2013 2:15 p.m.  
**To:** s9(2)(g)(i) [TSY]; Jennie Kerr [TSY]  
**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell ([james.campbell@mbie.govt.nz](mailto:james.campbell@mbie.govt.nz)); s9(2)(a) (LGL/TLU); s9(2)(a) (TND); Fiona Ross [TSY]; Nathan Penny [TSY]  
**Subject:** RE: TPP financial services: subsidies exception for NZ

s9(2)(g)(i) this is from my time when I was in the Financial Markets team, so I would get in touch with Jennie if you have not already done so.

Jennie – see below for my prior correspondence with s9(2)(a) on this:

---

**From:** s9(2)(a) (LGL/TLU)  
**Sent:** Saturday, 23 November 2013 3:38 p.m.  
**To:** Nick McNabb [TSY]; s9(2)(g)(i) [TSY]; Jennie Kerr [TSY]  
**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell ([james.campbell@mbie.govt.nz](mailto:james.campbell@mbie.govt.nz)); s9(2)(a) (LGL/TLU); s9(2)(a) (TND); Fiona Ross [TSY]; Nathan Penny [TSY]  
**Subject:** RE: TPP financial services: subsidies exception for NZ

Hi Nick and others,

s9(2)(h) and s6(a) and s9(2)(j)

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Many thanks,

s9(2)(a)

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**From:** Nick McNabb [TSY] [<mailto:Nick.McNabb@treasury.govt.nz>]  
**Sent:** Friday, 22 November 2013 2:15 p.m.  
**To:** s9(2)(g)(i) [TSY]; Jennie Kerr [TSY]  
**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell ([james.campbell@mbie.govt.nz](mailto:james.campbell@mbie.govt.nz)); s9(2)(a) (LGL/TLU); s9(2)(a) (TND); Fiona Ross [TSY]; Nathan Penny [TSY]  
**Subject:** RE: TPP financial services: subsidies exception for NZ

s9(2)(g)(i) this is from my time when I was in the Financial Markets team, so I would get in touch with Jennie if you have not already done so.

Jennie – see below for my prior correspondence with s9(2)(a) on this:



[RE: RE: TPP Financial Services - subsidies \(Nick McNabb\) \(Treasury:2794213\)](#) [Add to worklist](#)

S6(a) and s6(b)(i)

S6(a), s6(b)(i) and s9(2)(j)

S6(a), s9(2)(j)

Out of scope of request

Nick

**Nick McNabb** | Senior Analyst | **The Treasury**

Tel: +64 4 917 6964 | [Nick.McNabb@treasury.govt.nz](mailto:Nick.McNabb@treasury.govt.nz)

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**From:** s9(2)(a) (TND) [[mailto:s9\(2\)\(a\)@mfat.govt.nz](mailto:s9(2)(a)@mfat.govt.nz)]  
**Sent:** Friday, 22 November 2013 6:18 a.m.  
**To:** Nick McNabb [TSY]; s9(2)(a) (LGL/TLU); s9(2)(g)(i) [TSY]  
**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell ([james.campbell@mbie.govt.nz](mailto:james.campbell@mbie.govt.nz))  
**Subject:** RE: TPP financial services: subsidies exception for NZ

s9(2)(g)(i) unfortunately Nick is out of the office but am hoping that you might be aware of the below work. More than happy to talk on the phone if that would be helpful. My number is s9(2)(a) But as below, we will continue to push for the language that s9(2)(a) Nick have worked up. Thanks, s9(2)(a)

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**From:** s9(2)(a) (TND)  
**Sent:** Friday, 22 November 2013 6:12 a.m.  
**To:** 'nick.mcnabb@treasury.govt.nz'; s9(2)(a) (LGL/TLU)  
**Cc:** 'norman.miller@rbnz.govt.nz'; James Campbell ([james.campbell@mbie.govt.nz](mailto:james.campbell@mbie.govt.nz))  
**Subject:** TPP financial services: subsidies exception for NZ  
**Importance:** High

Nick,

Apologies to email you out of the blue. I understand you have been working with s9(2)(a) on a provision (non-conforming measure) in the TPP financial services chapter s9(2)(j)

s9(2)(j)

s6(a) and s9(2)(j)

s6(a) and s6(b)(i)

I have also copied in s9(2)(a) (MFAT's trade lawyer on these issues) s6(a) and s9(2)(j)  
s6(a) and s9(2)(j)

Note that obviously any measure/subsidy taken for prudential reasons is otherwise justified under the prudential exception in the chapter.

Would be very grateful for any insights you have on this and what scope/policy space you need us to retain here.

For the moment we will continue to press the initial/broader language in red above.

More than happy to set up a time to talk. I am contactable on s9(2)(a)

Many thanks,

s9(2)(a)

New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

s9(2)(a)

[@mfat.govt.nz](mailto:mfat@govt.nz)

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**From:** s9(2)(a)  
**Sent:** Monday, 7 February 2011 12:50 p.m.  
**To:** s9(2)(a) (TND); s9(2)(a) (LGL/TLU)  
**Cc:** Adam Wood; Stephen Revill; s9(2)(a); Andrew Blazey  
**Subject:** RE: TPP Financial Services: s9(2)(j)

Hi s9(2)(a)

Apologies for the delay in providing our view on the Financial Services reservation.

s9(2)(h)

Also, I believe in our meeting last week we did discuss the guarantees /indemnities and funding arrangements currently in place with SOEs and other Crown Entries, but I can't recall whether there is a carve out for these as part of the FTA / other agreements.

Hope this helps. Adam and I would be happy to discuss over the phone (we're free until 3 pm) if you have any further questions.

Kind regards

s9(2)(a)

---

**From:** Adam Wood  
**Sent:** Monday, 7 February 2011 11:15 a.m.  
**To:** s9(2)(a)  
**Subject:** RE:

Hi s9(2)(a)

s9(2)(h) and s9(2)(j)

Cheers

**Adam Wood | Senior Solicitor | The Treasury**

Tel: +64 4 890 7212 | Adam.Wood@treasury.govt.nz

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**From:** s9(2)(a) (TND) s9(2)(a) @mfat.govt.nz]

**Sent:** Friday, 4 February 2011 2:38 p.m.

**To:** s9(2)(a)

**Subject:** RE: TPP Financial Services: s9(2)(j)

That would be great s9(2)(a) O course sooner the better if your discussion flags other instances where we need to be worried about subsidies

Thanks again, s9(2)(a)

Out of scope of request

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**From:** s9(2)(a) (TND) [s9(2)(a) @mfat.govt.nz]

**Sent:** Friday, 4 February 2011 2:06 p.m.

**To:** s9(2)(a)

**Cc:** ; s9(2)(a) (LGL/TLU); 'James Hartley'; WILSON, Paula (TND); 'Norman Miller'

**Subject:** TPP Financial Services: s9(2)(j) Reservation

**Importance:** High

Hi s9(2)(a)

Further to my email yesterday, I have set out further info below on the s9(2)(j) reservation. Following our discussion on Wednesday we are proposing to make some adjustments to our initial draft:

s6(a) and s9(2)(j)

s6(a) and s9(2)(j)

Our meeting usefully clarified that the Crown has a number of arrangements in place that need to be protected by this reservation:

- out of scope of request
- 
- The Crown also provides guarantees in relation to returns on funds under the Government Superannuation Fund Authority (GSFA) and out of scope of request (Please note that our assumption is that this guarantee is provided to the GSFA out of and not any fund management companies/administrators, eg. Datacom, appointed by the Funds).scope of

s6(a) and s9(2)(j)

out of scope of request

s9(2)(j)

Give me a call on s9(2)(a) if you want to discuss any of the above further. Otherwise I look forward to your advice on whether any other subsidies reservations might be required.

Thanks,

s9(2)(a)

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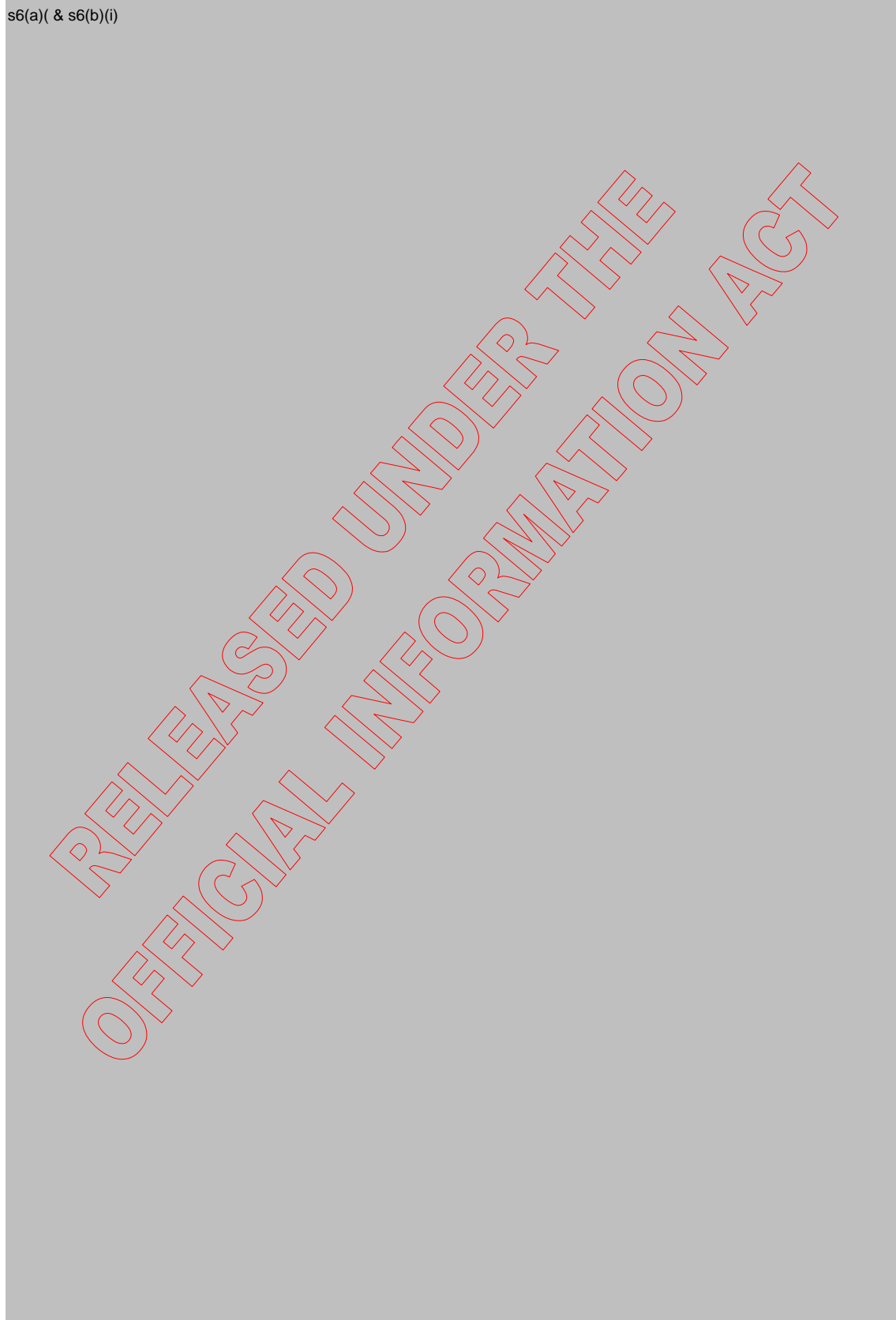
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s6(a) & s6(b)(i)



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s6(a) & s6(b)(i)

These are principles that New Zealand supports. The principle objective of every State Owned Enterprise in NZ is to be as profitable and efficient as any other company and competitive neutrality is maintained between the SOEs and the private sector. In general the current State Enterprise proposals fit well with the operations of these organisations.

s6(a) & s6(b)(i)

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Out of scope of request

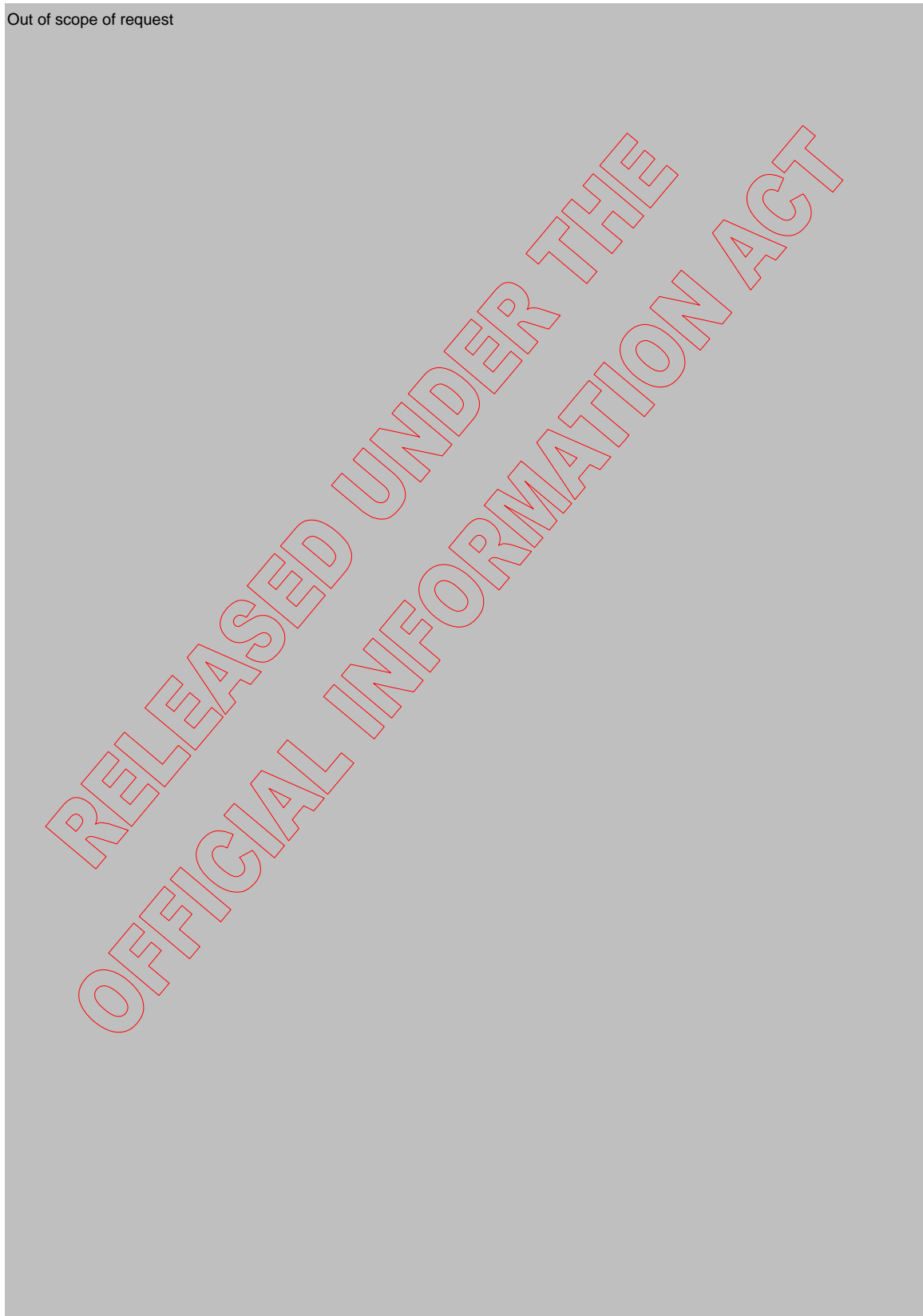


s6(a) & s6(b)(i)

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**Collating Treasury Positions on Policy Areas Affected by TPP Negotiations**

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Policy area	Where and how this is likely to show up in	Sensitivity (of changing NZ policy	Treasury position	Does Tsy need to develop a	Contact person
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<p>ACC Out of scope of request</p>	<p>Competition Policy, Low Investment (schedules of reservations) – these act effectively as statutory monopolies even though they aren't, which may be seen as anti-</p>		<p>ACC supplies compulsory injury insurance cover, funded by the Crown and by levies on employers, employees and vehicle owners. There is competition between suppliers of health and related services but not in underwriting.</p>	<p>Fine as is</p>	<p>Ben McBride (ACC); Justin Anderson Out of scope of request</p>
------------------------------------	---	--	---	-------------------	---

	<p>competitive. They may also be seen as breaching national treatment in investment by offering an advantage to an incumbent domestic operator which isn't available to others (though this interpretation of national treatment is open to challenge).</p>		<p>Additional contestability would have both benefits and costs. Social costs would arise from additional litigation on coverage and boundary issues, marketing costs and duplicated administrative overheads. The Government has commissioned an external review of ACC (due to report by 30 June 2010) which will include advice on competition in ACC's Work Account. Treasury will develop its view on the balance between costs and benefits of additional contestability in the light of the information that the review will identify. Pending the result of the review, Treasury considers that New Zealand should retain its current ability to operate the injury insurance market with no contestable underwriting.</p>	
	<p>Out of scope of request</p>			

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**From:** s9(2)(a)  
**Sent:** Friday, 2 September 2011 4:50 p.m.  
**To:** Richard Downing  
**Cc:** s9(2)(a)  
**Subject:** FW: TPP Financial Services s9(2)(j)  
**Attachments:** RE: TPP Financial Services: s9(2)(j)

Hi Richard

Below are my comments on the articles:

Out of scope of request

Attached is an email setting out our views re SOEs and Crown entities for the Financial Services chapter negotiation earlier this year. I thought you might find it useful.

I am yet to go through the MED's comparative table, but wanted to check with you if the above comments are the sort of comments you are looking for?

Happy to discuss

s9(2)(a)

s9(2)(a) **Advisor | The Treasury**

s9(2)(a) @treasury.govt.nz

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Duplication

**From:** s9(2)(a)  
**Sent:** Friday, 21 October 2011 5:05 p.m.  
**To:** s9(2)(a) @mfat.govt.nz; s9(2)(a) @mfat.govt.nz  
**Cc:** s9(2)(a) Gina Butson; Rory McLeod; s9(2)(a) (TND); s9(2)(a) Gina Butson; Rory McLeod; s9(2)(a) (TND); Richard Downing  
**Subject:** TPP: SOE text

Hi s9(2)(a)

Further to Richard's email below, below are our initial thoughts on the SOE text. We have identified a few potentially problematic areas – but have not yet arrived at a definitive conclusion on the issues – we presume that will be OK given the early stage of negotiation on this item.

- We can signal broad comfort with the concept of SOEs being covered by TPP.
- However, as further elaborated below, some of the specific terms in the text may be difficult for New Zealand. We will need to look into these areas in more detail (it may be worth signalling to our negotiating partners that we will need to do this work and may have some issues).

s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

Out of scope of request

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Out of scope of request

Attachments redacted as Out of scope of request

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**From:** Brian McCulloch [TSY]  
**Sent:** Wednesday, 28 January 2015 3:53 p.m.  
**To:** s9(2)(a) (AUS)  
**Cc:** Thomas Parry [TSY]; Andreas Heuser [TSY]  
**Subject:** RE: TPP SOEs - independent pension fund" exclusion

s9(2)(a)

This is the way I think this goes:

- GSF
  - GSFA are the entities owned/controlled by the Crown that administer various pension funds (GSFA has the GSF scheme). The Crown does not have an ownership interest in the schemes themselves, although it does have responsibility for unfunded liabilities of the schemes. This separation is illustrated by the fact that the entities produce separate financial statements from those of the schemes they operate.
  - The unfunded liabilities of the Crown are not non-commercial assistance to the entities (GSF) but to meet shortfalls in the funds.
  - These schemes are largely legacy schemes that are not operated in competition with other entities that offer or administer pension schemes.
  - The annual revenues of the entities, being reimbursement from the schemes (not from the Crown) for their administrative expenses, would be less than the threshold.

Out of scope of request



- Policy Space
  - On the broader question of whether NZ should retain policy space to set up an SOE that would meet the definition of an "independent pension fund" (and, further, which receives non-commercial assistance above the materiality level), I guess that is remotely possible.
    - For example, the NZ Superannuation Fund legislation (New Zealand Superannuation and Retirement Income Act 2001, section 73(3)) provides for its allocation to individual retirement accounts, in which case, the NZSF might change its status under the TPP from "sovereign wealth fund" to become an "independent pension fund". This provision was included in the legislation in order to secure the support of NZ First. However, it was, and still is, considered very unlikely that it would ever be invoked.
    - Another remote example could be if there was to be a failure in the pension fund provider market (for example, a Kiwisaver scheme) and the Government decided to take over a scheme and run it directly, rather than administration passing to another provider.
  - My conclusion would be that it does not hurt to have the policy space, but I would not argue for it.

Brian Mc

**Dr Brian W McCulloch** | Director | **The Treasury**  
Tel: +64 4 917 6077 | s9(2)(a) brian.mcculloch@treasury.govt.nz

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**From:** s9(2)(a) (AUS) s9(2)(a) @mfat.govt.nz]  
**Sent:** Tuesday, 27 January 2015 1:39 p.m.  
**To:** Brian McCulloch [TSY]  
**Cc:** Thomas Parry [TSY]; Andreas Heuser [TSY]  
**Subject:** RE: TPP SOEs - independent pension fund" exclusion

Redactions numbered 1 and 2 are  
Out of scope of request

Hi Brian,

Thanks very much for looking into this (I'm keeping you busy!)

It's good to know that this might be helpful for GSFA 1. By way of background, from memory of my previous discussions with Treasury about GSFA 2, the conclusion had been that while they were government-owned/controlled, it wasn't clear that they were principally engaged in commercial activities as defined in the text, or that their annual revenue from commercial activities (i.e. the service they provide in administering the fund) would be over the "de minimis" threshold s6(a) & s6(b)(i) & s9(2)(j). The purpose of the entities is not, as I understand it, to provide a service at a profit, but rather in the best interests of the members. s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

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Cheers

s9(2)(a)

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**From:** Brian McCulloch [TSY] [mailto:Brian.McCulloch@treasury.govt.nz]  
**Sent:** Tuesday, 27 January 2015 9:06 a.m.  
**To:** s9(2)(a) (AUS)  
**Cc:** Thomas Parry [TSY]; Andreas Heuser [TSY]  
**Subject:** RE: TPP SOEs - independent pension fund" exclusion



s9(2)(a)

I'm going to be offline for the rest of the day but will be able to respond properly tomorrow.

One immediate thought is that the definition could possibly include our Government Superannuation Fund which could both arguably meet the state enterprise definition?

Out of scope of request

- Government Superannuation Fund Authority (which is the defined benefit scheme for public servants that closed to new members in the early 1990s but still has an accrued benefits liability of about \$12.8 billion and assets of \$3.7 billion) is a Crown entity. [www.gsfa.govt.nz](http://www.gsfa.govt.nz)

Out of scope of request

Both have unfunded liabilities that will fall to the Crown (== non-commercial assistance?). Maybe not operating in competitive markets for fund members, but do invest their funds in competitive investment markets.

Brian Mc

**Dr Brian W McCulloch** | Director | **The Treasury**

Tel: +64 4 917 6077 | Mob: s9(2)(a) | [brian.mcculloch@treasury.govt.nz](mailto:brian.mcculloch@treasury.govt.nz)

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**From:** Thomas Parry [TSY]  
**Sent:** Tuesday, 27 January 2015 8:25 a.m.  
**To:** Brian McCulloch [TSY]  
**Subject:** FW: TPP SOEs - independent pension fund" exclusion  
**Importance:** High

**Thomas Parry** | Senior Analyst | **The Treasury**

Tel: +64 4 890 7260 | [Thomas.Parry@treasury.govt.nz](mailto:Thomas.Parry@treasury.govt.nz)

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**From:** s9(2)(a) (AUS) s9(2)(a) | [@mfat.govt.nz](mailto:@mfat.govt.nz)  
**Sent:** Tuesday, 27 January 2015 4:33 a.m.  
**To:** Thomas Parry [TSY]  
**Subject:** RE: TPP SOEs - independent pension fund" exclusion

Thanks very much, Thomas.

Here is a bit of background:

s6(a) & s6(b)(i)

The disciplines apply to state-owned enterprises which are "principally engaged in commercial activities". Pension funds which are private or which are not operated on a commercial basis (not in competition and not oriented towards profit) would

not be caught by the disciplines. the proposed exclusion is not only for the government-owned pension funds, but also for their investments. s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

One question I had about the wording is the reference to "retirement (including social security)". Would we see social security as a sub-set of retirement, or would we see it as a broader concept?

s6(a) & s6(b)(i)

Cheers

s9(2)(a)

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**From:** Thomas Parry [TSY] [<mailto:Thomas.Parry@treasury.govt.nz>]

**Sent:** Monday, 26 January 2015 9:22 a.m.

**To:** s9(2)(a) (AUS)

**Subject:** RE: TPP SOEs - independent pension fund" exclusion

Hi s9(2)(a)

We'll have a look at this and get back to you.

Cheers

Thomas

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**From:** s9(2)(a) (AUS) s9(2)(a) [[@mfat.govt.nz](mailto:s9(2)(a)@mfat.govt.nz)]

**Sent:** Monday, 26 January 2015 4:06 a.m.

**To:** Thomas Parry [TSY]

**Subject:** TPP SOEs - independent pension fund" exclusion

Hi Thomas,

I hope you had a good break.

I'm at a TPP meeting in New York this week. s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

NZ doesn't currently have an SOE that fits within the definition, but we may want policy space to set up such an SOE in the future. I wanted to check we are happy that this definition provides us with enough flexibility. Is this something that Treasury is able to advise on (i.e. would you lead on the set-up/design of such an SOE), or would I need to talk to another agency, e.g. IRD?

Kind regards

s9(2)(a)

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<sup>[1]</sup> For greater certainty, measures of general application to the relevant market shall not be construed as the determination by a Party of pricing, production, or supply decisions of a state-owned enterprise.

<sup>[2]</sup> For greater certainty, this excludes activities undertaken by an enterprise:

- (a) which operates on a not-for-profit basis; or
- (b) which operates on cost recovery basis.

---

**From:** s9(2)(a) [TSY]  
**Sent:** Friday, 11 October 2013 3:25 p.m.  
**To:** 'June.Brodie@mbie.govt.nz'  
**Cc:** Nathan Penny [TSY]; David Snell [TSY]; John Toomath [TSY]; Sarah Vrede [TSY]  
**Subject:** TPP negotiations

Hi June,

Out of scope of request

There is a range of other entities that may be affected and who should be consulted. We can think of ACC, GSF and the NZ Super Fund. The Reserve Bank may also be affected.

Out of scope of request

Out of scope of request

Out of scope of request

Thanks,

s9(2)(a)

| Analyst. International | The Treasury

s9(2)(a)@treasury.govt.nz

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**From:** June Brodie [mailto:June.Brodie@mbie.govt.nz]  
**Sent:** Monday, 16 September 2013 7:37 p.m.  
**To:** Jeremy Salmond [TSY]  
**Subject:** TPP negotiations  
**Importance:** High

Hi Jeremy

I am negotiating the government procurement chapter of the TPP FTA.

I wondered if you could help on a question relating to certain types of exemptions from government procurement Rules. If you are not the right person could you please let me know who at Treasury would be good to speak to?

Question:

Does Treasury, or any Public Service ministry or department, require an exemption from the Rules of procurement when undertaking the following activities:

- pension fund management
- public insurance and fund placements

- investments and financial services related to securities or trading on an exchange.

Many thanks  
June

**June Brodie**  
SENIOR PROCUREMENT ADVISOR

Government Procurement, Market Services Group  
Ministry of Business, Innovation & Employment

Email: [june.brodie@mbie.govt.nz](mailto:june.brodie@mbie.govt.nz) | Telephone: +64 4 474 2842 | Extn: 42842 | Mobile: s9(2)(a)  
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**From:** Nick McNabb  
**Sent:** Wednesday, 3 July 2013 5:32 p.m.  
**To:** s9(2)(a) (TND)  
**Cc:** Richard Downing  
**Subject:** RE: RE: TPP Financial Services - subsidies

Hi s9(2)(a)

Sorry for the delay in getting back to you.

Having thought some more about our discussion we think there are a wide group of entities that we would want to incorporate within any non-conforming measure. s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

In addition to <sup>Out of scope of</sup> ACC there would also be <sup>Out of scope of request</sup> s9(2)(j)

s9(2)(j) Should there be pushback we could then think about the most appropriate way to narrow.

Best Regards,

Nick

**Nick McNabb | Senior Analyst | The Treasury**

Tel: +64 4 917 6964 | [Nick.McNabb@treasury.govt.nz](mailto:Nick.McNabb@treasury.govt.nz)

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**From:** Nick McNabb  
**Sent:** Tuesday, 28 May 2013 5:42 p.m.  
**To:** s9(2)(a) (TND)  
**Cc:** David Snell  
**Subject:** RE: RE: TPP Financial Services - subsidies

Hi s9(2)(a)

Ahead of our meeting tomorrow I thought I would outline some of the questions we have and the sorts of entities operating in the financial services sector that might possibly benefit from some form of subsidy.

Some basic questions:

- Do we have a better definition of financial services? You suggested we cast this fairly wide
- Is there a clear sense of what it means to provide a subsidy on the basis of nationality. Does Crown providing a benefit to a crown owned entity in its capacity as shareholder meet this criteria?
- How broad is the exclusion for actions taken during times of economic crisis

s6(a) & s6(b)(i)

In terms of specific entities that operate in the financial services sector where you could make some argument for subsidy are:

Out of scope of request

There are some other examples s9(2)(j)

Out of scope of request

- Guardians of the NZ Super Fund – we give it money to invest. Is classed as a sovereign wealth fund in the SOE chapter
- GSF/NZSF – each run legacy pension funds for state sector employees. The Crown makes contributions to the fund where it is in deficit – but the Crown does this as an employer to ensure that the pension funds can meet the cost of payments to its members. But this is no different to a corporate topping up its pension fund (although the Crown won't go bust like company)

Out of scope of request

Nick

**Nick McNabb** | Senior Analyst | The Treasury

Tel: +64 4 917 6964 | [Nick.McNabb@treasury.govt.nz](mailto:Nick.McNabb@treasury.govt.nz)

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**From:** Nick McNabb

**Sent:** Monday, 27 May 2013 9:01 a.m.

**To:** s9(2)(a) (TND)

**Subject:** RE: RE: TPP Financial Services - subsidies

Hi s9(2)(a)

Could we possibly reschedule this – I have asked a colleague from our Crown Ownership area to attend but he can't make this time. How does 11am on Wednesday sound?

Nick

**Nick McNabb** | Senior Analyst | **The Treasury**

Tel: +64 4 917 6964 | [Nick.McNabb@treasury.govt.nz](mailto:Nick.McNabb@treasury.govt.nz)

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**From:** s9(2)(a) (TND) s9(2)(a) [mailto:s9(2)(a)@mfat.govt.nz]  
**Sent:** Monday, 13 May 2013 1:20 p.m.  
**To:** Nick McNabb  
**Subject:** RE: TPP Financial Services - subsidies

Hello Nick,

We are off to Lima tomorrow for the next round of TPP negotiations, so I'd thought I'd take the opportunity to check in with you on how you're getting on with this request, following on from our conversation in March.

As we discussed, we'll be needing to submit a revised Financial Services offer of non-conforming measures in about the middle of June, so that will be the focus of my attention following the Lima round. s9(2)(j)  
s9(2)(j)

So I'll be interested to catch up with you again on that, perhaps in the last week of May if you'll be around?

Cheers,

s9(2)(a)

**From:** s9(2)(a) (TND)  
**Sent:** Tuesday, 19 March 2013 12:02 p.m.  
**To:** 'Nick McNabb'  
**Subject:** RE: TPP Financial Services - subsidies

Hi Nick, we are doing well at missing each other on the phone today! There's a limit to how much I could actually say on the phone at any rate, but here's some more background which I hope will help.

s6(a) & s9(2)(j)

So at this stage I'd be interested to have a pretty high-level conversation about what the subsidies etc universe looks like in the financial sector, so we can get an idea of the level of work

s9(2)(j)

I hope that's useful background, and I will also bring some documents with me when we meet that will hopefully make the whole process a little clearer. 10am Thursday would work well for me, so I'll see you then.

s9(2)(a)

**From:** Nick McNabb [<mailto:Nick.McNabb@treasury.govt.nz>]

**Sent:** Tuesday, 19 March 2013 9:17 a.m.

**To:** s9(2)(a) (TND)

**Subject:** RE: TPP Financial Services - subsidies

Hi s9(2)(a)

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**From:** s9(2)(a) (TND) s9(2)(a) @mfat.govt.nz]  
**Sent:** Thursday, 28 February 2013 1:17 p.m.  
**To:** Nick McNabb  
**Subject:** TPP Financial Services - subsidies

Hello Nick,

s9(2)(a) here at MFAT – I've just recently taken on the lead for the financial services chapter of the TPP negotiation. I was given your contact details by Norman Miller at RBNZ who has also been involved in that negotiation, during a conversation we were having earlier today on subsidies.

s6(a) & s9(2)(j)

Would you be the right person at Treasury to discuss this with? I'm heading up to Singapore for the next negotiation round next Friday, but would be happy to have a chat before then if that would suit you, otherwise later in March would also be fine for me.

Regards,

s9(2)(a)

s9(2)(a)

New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

s9(2)(a) @mfat.govt.nz

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**From:** Abbe Hutchins [mailto:Abbe.Hutchins@mbie.govt.nz]

**Sent:** Thursday, 15 August 2013 2:58 p.m.

**To:** s9(2)(a) (TND); 'Sheila\_Girvan@moh.govt.nz'

**Cc:** s9(2)(a) (LGL/TLU); Richard Downing [TSY]; Rory McLeod (rory.mcleod@mbie.govt.nz) (rorv.mcleod@mbie.govt.nz); Yvonne\_Lucas@moh.govt.nz; jenny.mcgregor@mpi.govt.nz; Fiona Ross [TSY]; s9(2)(a) (TND) s9(2)(a) @mfat.govt.nz

**Subject:** RE: TPP SOES - comments from MBIE and MOH

Hi s9(2)(a)

Thanks for these comments and sending through the papers. s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

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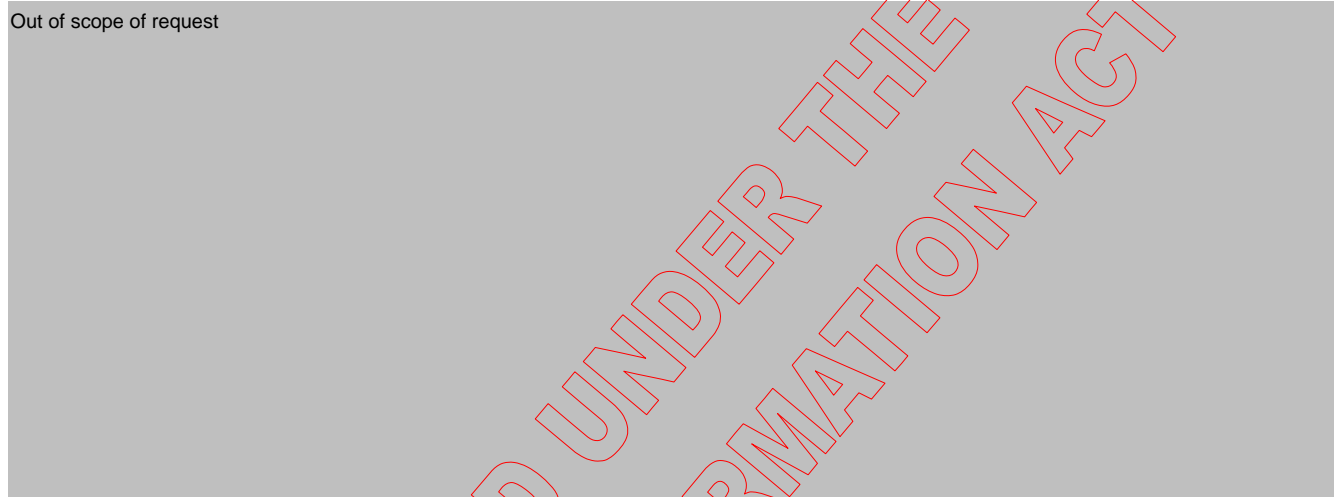
s6(a) & s6(b)(i)

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s6(a) & s6(b)(i)



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s6(a) & s6(b)(i)



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s6(a) & s6(b)(i)

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s6(a) & s6(b)(i)

s9(2)(a)

New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

s9(2)(a) [@mfat.govt.nz](mailto:)

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### Treasury Positions on SOE Provisions based on 23 July text

This note responds to a request from MFAT to resolve NZ positions regarding the SOEs text in TPP:

[RE: TPP SOEs - issues for Treasury consideration \(Treasury:2705264v1\)](#) <sup>s9(2)(a)</sup> [REDACTED] [TND\)\)](#)

The proposed positions in this note cover only a subset of the proposals currently under negotiation.

A number of aspects of the text require further assessment. <sup>s6(a) & s6(b)(i)</sup> [REDACTED]  
<sup>s6(a) & s6(b)(i)</sup> [REDACTED]

s6(a) & s6(b)(i)

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There is uncertainty the following entities that are not included on the list:

- Entities owned by the NZ Super Fund or ACC. Need more up-to-date data about their equity holdings. As at 2011 only Z Energy (then called Aotea energy) met the definitions.

Out of scope of request



4. Setting a revenue threshold

We have previously provided comment on a possible threshold that would rule out any entities with revenue below some set level from the scope of the obligations. s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

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s6(a) & s6(b)(i)

Out of scope of request

s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

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**From:** s9(2)(a) [TSY]  
**Sent:** Thursday, 15 May 2014 4:05 p.m.  
**To:** s9(2)(a) (TND); s9(2)(a) (TND)  
**Cc:** s9(2)(a) [TSY]; s9(2)(a) [TSY]  
**Subject:** NZ Super Fund and TPP  
**Attachments:** Full-evidence-text.pdf

Hi s9(2)(a)

New Zealand Superannuation and Retirement Income Amendment Bill is currently before the Finance and Expenditure Select Committee and a couple of submissions ask about its impact in the context of TPP. Out of scope of request  
Out of scope of request The email below gives more detail.

I'm cc'ing in s9(2)(a) from our Commercial Operations portfolio who are responding to the submissions. Are you able to provide them with advice on what they can go back with?

Cheers,

s9(2)(a)

s9(2)(a) | Analyst, International | The Treasury  
s9(2)(a) @treasury.govt.nz

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**From:** s9(2)(a) [TSY]  
**Sent:** Thursday, 15 May 2014 2:38 p.m.  
**To:** s9(2)(a) [TSY]; Lee McCauley [TSY]  
**Cc:** s9(2)(a) [TSY]  
**Subject:**

s9(2)(a) /Lee

Could you please provide advice in regards to a couple of submissions received by Select Committee, in relation to the New Zealand Superannuation and Retirement Income Amendment Bill.

To provide context, the key elements of the bill are:

- the relaxation of a control provision to allow the Guardians to control fund investment vehicles (FIVs) specifically for holding, facilitating or managing investments of the Fund. This simply enables investments to be structured and accessed with increased efficiency.
- allowing the Fund's Board to delegate certain powers to the Fund's executive officers (appointing external fund managers, custodians and granting powers of attorney)
- Making it explicit that the Fund is not an entity separate from the Crown
- Ensures all fund income remains taxable in NZ, including with the use of FIVs.
- Enabling protection of the Guardians against claims that the acts of the Guardians are invalid i.e. on grounds they are contrary to, or outside the authority conferred by the Act.

1. Do you see any issues/concerns in relation to the TPPA? For context the concern expressed by Sandle is as below:

*"I wonder if this bill has any connection to the TPPA it has appeared in the lead-up to. We know of*

*such matters as investor state dispute provisions in earlier trade treaties. But how do the corporates feel about governments with these large compulsorily obtained public funds? I feel it could be quite likely such matters could be in any TPPA, and that this bill could be a sort of way to allow corporates more control, but because of secrecy about the TPPA we cannot know.”*

2. Sandle has also indicated concern about if the Bill seeks to give effect to New Zealand action in relation to an international treaty. (See submission attached for further detail).

We will be in attendance at Select Committee next Wednesday so would greatly appreciate any insight as soon as possible. Also please ensure Gerry is cc'd in as I will be away next week.

Many thanks

s9(2)(a)

| Advisor | **The Treasury**

s9(2)(a)

[@treasury.govt.nz](mailto:s9(2)(a)@treasury.govt.nz)

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Item of business : New Zealand Superannuation and Retirement Income Amendment Bill  
Submission name : Brian Robert SANDLE

The Treasury  
Departmental Disclosure Statement— Bill No 166

5

"PART TWO: BACKGROUND MATERIAL AND POLICY INFORMATION

Published reviews or evaluations

Relevant international treaties

2.2. Does this Bill seek to give effect  
to New Zealand action in relation  
to an international treaty?  
NO"

I feel there needs to be legal testing that that is the case. for a treaty, such as a Bilateral Investment Treaty can: "BITs restrict the imposition of performance requirements, such as local content targets or export quotas, as a condition for the establishment, acquisition, expansion, management, conduct, or operation of an investment." <http://www.ustr.gov/trade-agreements/bilateral-investment-treaties>.

Such could override Our local Treaty of Waitangi, or moral investment matters, not in tobacco companies, land mines &c.

Removal of the block against delegation of important powers could involve the Trustees giving away powers.

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Parts of attachments are within scope, but are redacted on s6(a), s6(b)(i), and s9(2)(j).

**From:** s9(2)(a) (TND)  
**Sent:** Wednesday, 2 February 2011 6:24 p.m.  
**To:** s9(2)(a)  
**Cc:** (LGL/TLU); WILSON, Paula (TND); s9(2)(a) [@treasury.govt.nz](mailto:s9(2)(a)@treasury.govt.nz)  
**Subject:** RE: Financial Services: Consultations on Draft Negative List Schedule

Hi s9(2)(a)

It was good to meet you today.

Out of scope of request

s9(2)(a) and I will give further thought to the wording of the s9(2)(j)

s9(2)(j) As discussed, we would be most grateful if you could let us know by Friday afternoon if there are additional policy measures we need to consider in relation to an entry on subsidies for financial institutions.

Kind regards,

s9(2)(a)

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**From:** s9(2)(a) (LGL/TLU)  
**Sent:** Monday, 31 January 2011 5:51 p.m.  
**To:** s9(2)(a)  
**Cc:** (TND)  
**Subject:** RE: Financial Services: Consultations on Draft Negative List Schedule

Hi s9(2)(a)

Thanks for getting back to me so quickly.

The yet to be finalised definition of "financial institution" is as follows:

s6(a) & s6(b)(i)

s6(a) & s6(b)(i)

We would need to assess the regulatory and supervisory burden on each entity before we could be sure whether a particular entity would fall within the definition.

The definition of cross-border financial service supplier is also yet to be finalised. The current definition is as follows:

s6(a) & s6(b)(i)

Cumulatively these definitions capture a pretty broad range of financial services suppliers. If there was even a chance that the Out of scope of request Superannuation Funds were captured by these definitions and were provided with a subsidy by the Government that could be inconsistent with one or more obligations in the Financial Services Chapter then we would like to hear about them.

s6(a), s6(b)(i) & s9(2)(j)

s6(a), s6(b)(i) & s9(2)(j) We would appreciate your views on whether this covered the range of subsidies that the Government provides?



Page 54 of 83

If you think it would be easier to meet in person to discuss I could arrange a time to come to Treasury to discuss this with you.

Regards

s9(2)(a)

---

**From:** s9(2)(a) [redacted]@treasury.govt.nz]  
**Sent:** Monday, 31 January 2011 5:08 p.m.  
**To:** s9(2)(a) [redacted] (LGL/TLU)  
**Subject:** RE: Financial Services: Consultations on Draft Negative List Schedule

Hi s9(2)(a) [redacted]

Thank you for providing a bit more background – it is helpful.

I would like to clarify what is captured by the definition of a financial institution / financial service suppliers.

Out of scope of request

I also note you're seeking update on the Government's policy on ACC. There are also superannuation funds, and the Crown provides guarantees on some of the funds' investments (under the Acts establishing funds).  
Is this not of concern?

Kind regards

s9(2)(a) [redacted]

Advisor | **The Treasury**

Tel: s9(2)(a) [redacted]@treasury.govt.nz

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**From:** Ben McBride [<mailto:ben.mcbride@treasury.govt.nz>]

**Sent:** Monday, 7 February 2011 4:03 p.m.

**To:** Juston Anderson; s9(2)(a) (TND); s9(2)(a) (LGL/TLU)

**Cc:** s9(2)(a)

**Subject:** RE: Meeting to Discuss Financial Services Reservations: EXTRA INFO (ACC) Out of scope of request

Out of scope of request

As discussed on the phone with s9(2)(a) have no issues with the proposed reservation relating to ACC either.

Don't hesitate to give me a call if you have any issues, etc

Ben

**Ben McBride** | Workforce Attachment and Skills | **The Treasury**

Tel: +64 4 917 6184 | [Ben.McBride@treasury.govt.nz](mailto:Ben.McBride@treasury.govt.nz)

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**From:** Juston Anderson

**Sent:** Monday, 7 February 2011 12:10 p.m.

**To:** s9(2)(a) (TND); s9(2)(a) (LGL/TLU)

**Cc:** Ben McBride; s9(2)(a)

**Subject:** RE: Meeting to Discuss Financial Services Reservations: EXTRA INFO (ACC) Out of scope of request

Out of scope of request

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**Juston Anderson** | Senior Analyst | **The Treasury**

Tel: +64 4 917 6180 | [juston.anderson@treasury.govt.nz](mailto:juston.anderson@treasury.govt.nz)

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**From:** s9(2)(a)

**Sent:** Monday, 7 February 2011 11:43 a.m.

Page 59 of 83

**To:** s9(2)(a) (TND); s9(2)(a) (LGL/TLU)  
**Cc:** Ben McBride; Juston Anderson; s9(2)(a)  
**Subject:** FW: Meeting to Discuss Financial Services Reservations: EXTRA INFO (ACC/Out of scope of request)

Hi s9(2)(a)

Just to let you know that Ben and Juston (our ACC/Out of scope of request analysts) are looking into this reservation and will get back to you shortly. s9(2)(a) is preparing a response on the other reservation.

Ben/Juston – please contact either s9(2)(a) email above, or the main switchboard is 439 8000).

Cheers

s9(2)(a)

Analyst | The Treasury

Tel: s9(2)(a) @treasury.govt.nz

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**From:** s9(2)(a) (TND) s9(2)(a) @mfat.govt.nz]

**Sent:** Tuesday, 1 February 2011 7:26 p.m.

**To:** s9(2)(a)

**Cc:** Carmen Mak; Steve Cantwell; s9(2)(a) (LGL/TLU); WILSON, Paula (TND)

**Subject:** RE: Meeting to Discuss Financial Services Reservations: EXTRA INFO (ACC/Out of scope of request)

Dear s9(2)(a)

Thanks so much for taking the time to meet with us tomorrow. I understand that s9(2)(a) has already provided some further background/detail on the financial services text in relation to the proposed draft negative list schedule s9(2)(j)

s9(2)(j) Out of scope of request

Out of scope of request

I wonder if we could also impose on you to consult your Treasury colleagues on the reservation we have for ACC/Out of scope of request (I have copied the text below). MED suggested we consult with DoL and Internal Affairs but I understand from talking with our Investment Protocol team that Treasury (Steve Cantwell and Julia Pearce) took the lead on drafting this reservation for CER. I am hoping I could impose on you to confirm what agency/who was consulted for the CER process? We can then follow up on that basis. We would also welcome any thoughts from Treasury on the reservation. My starting point, however, is that it should be fairly uncontroversial given we are seeking maximum flexibility (this may change of course once negotiations on the schedules begin) s6(a), s6(b)(i) & s9(2)(j)

s6(a), s6(b)(i) & s9(2)(j)



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Look forward to meeting you tomorrow. Please contact s9(2)(a) or myself s9(2)(a) if you have any questions.  
Kind regards.

s9(2)(a)

**From:** s9(2)(a) LGL/TLU  
**Sent:** February 2011 3:17 p.m.  
**To:** s9(2)(a) (LGL/TLU); s9(2)(a) (TND); s9(2)(a)  
**Subject:** Meeting to Discuss Financial Services Reservations  
**When:** Wednesday, 2 February 2011 2:00 p.m.-3:00 p.m. (GMT+12:00) Auckland, Wellington.  
**Where:** Treasury, Level 5

When: Wednesday, 2 February 2011 2:00 p.m.-3:00 p.m. (GMT+12:00) Auckland, Wellington.

Where: Treasury, Level 5

Note: The GMT offset above does not reflect daylight saving time adjustments.

\*~\*~\*~\*~\*~\*~\*~\*~\*~\*

s9(2)(a)

[UNCLASSIFIED]

Thanks for inviting down to talk to you about the TPP Financial Services reservations. If you have any questions in the meantime please feel free to give me a call.

Regards

s9(2)(a)

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