

The Treasury

LEG-24-SUB-0053: Progressing the New Zealand Superannuation and Retirement Income (Controlling Interests) Amendment Bill Information Release

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Office of the Minister of Finance

Chair, Cabinet Legislation Committee

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

Proposal

- 1 This paper seeks agreement to proceed with the New Zealand Superannuation and Retirement Income (Controlling Interests) Amendment Bill (the Bill) which amends the New Zealand Superannuation and Retirement Income Act 2001 (the Act).

Policy

- 2 The Bill will amend the Act to allow Guardians of the New Zealand Superannuation (the Guardians) to take a controlling interest in businesses. The Guardians administer the New Zealand Superannuation Fund (NZSF) on behalf of the Crown.
- 3 Section 59 of the Act currently restricts the Guardians from holding a controlling interest in entities. This restriction was incorporated in the Fund's 2001 founding legislation due, primarily, to the Fund's purpose being to gain exposure to investments and not own businesses. In its nascent stage, the NZSF was relatively small and had not developed mature investment practices.
- 4 Since then, the NZSF has developed its size, capability, and operating model. A 2021 Treasury review concluded that removing the control restriction would widen the investable universe for the NZSF, which may bring performance and competitive advantages. Allowing the NZSF to hold controlling interests is expected to 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.
- 5 The NZSF currently targets direct investments with a minimum size of \$200m to \$300m. The minimum transaction size is expected to rise as the NZSF grows over time. This means it is likely that the potential addressable market/opportunity set in New Zealand will decline in the future, as the size of the NZSF grows at a rate faster than the wider economy. An increased infrastructure programme or larger stakes in domestic businesses are potential options to resolve this constraint.
- 6 Direct investments are also now more common within the global practice of investment management than when the Fund was established in 2001.

- 7 The removal of the control restriction would provide access to a wider group of viable investment partners and attract institutional investors who are comfortable with the Guardians' due diligence practices.
- 8 The Guardians highlighted in 2021 that the control restriction limits its direct and other investment activities. In its view, a relaxation of the control restriction would provide it with an important "tool in the toolbox" that can have a wide range of benefits.
- 9 In very broad terms, these tools include a larger investable universe (particularly domestically), the opportunity to obtain additional value through purchase/exit strategies, access to a wider range of co-investment partners, greater ability to support investees with growth capital and greater ability to use its influence as shareholder to encourage good environmental, social and governance (ESG) outcomes within investments.
- 10 The proposal was considered by the previous Economic Development Cabinet Committee on 17 November 2021 [DEV-21-MIN-0233] and Cabinet on 22 November 2021 [CAB-21- MIN-0487]. The previous Government agreed to relax the control restriction with the caveat that the Guardians be required to establish and maintain a new Statement of Investment Policies, Standards and Procedures for the selection and monitoring of controlling interests in entities.
- 11 In 2023 the Bill underwent its first reading on 9 March and was referred to the Finance and Expenditure Committee (the Committee) for consideration. The Committee reported back on 17 August and recommended no changes to the Bill.
- 12 The amendment is not expected to be contentious.
- 13 There are currently no known outstanding policy issues that are yet to be agreed by Cabinet.
- 14 A legislation bid for the Bill has been prepared and submitted to the Cabinet Office as part of the 2024 Legislation Programme process. This bid seeks a priority category 4 for the Bill (to be passed by the end of 2024 if possible), reflecting the fact the Bill is non-contentious, received cross party support in the previous parliamentary term, and is currently awaiting its second reading.

Impact analysis

- 15 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. The substantive changes to the NZSF were assessed and

analysed in the report “NZ Super Fund: Controlling interest in entities” prepared by the Treasury.

Compliance

- 16 The Bill complies with each of the following:
 - 16.1 the principles of the Treaty of Waitangi;
 - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 16.3 the principles and guidelines set out in the Privacy Act 2020;
 - 16.4 relevant international standards and obligations; and
 - 16.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 17 In addition, a disclosure statement has been prepared and is attached to the paper.

Consultation

Relevant Government Departments or Other Bodies

- 18 The Guardians of New Zealand Superannuation have been consulted during the policy development for this legislative change, and on the content of the draft Bill. No concerns were raised.
- 19 Relevant government agencies were consulted during policy development. Agencies consulted included:
 - 19.1 the Infrastructure Commission;
 - 19.2 the Accident Compensation Corporation; and
 - 19.3 Department of the Prime Minister and Cabinet were informed of the Cabinet Paper.
- 20 Agencies raised no concerns with the policy proposals.
- 21 In addition, section 73 of the Act stipulates that the National Party and Labour Party, who are listed as in agreement with Part 2 of the Act, must be consulted (refer to schedule 4 of the Act). Prior to the Bill’s introduction to the House, the National Party and other parties in the House were consulted. No concerns were raised.

The Government Caucus and Other Parties Represented in Parliament

- 22 Consultation has occurred with both coalition partners, no issues were raised with this paper.

Binding on the Crown

23 The Act will bind the Crown.

Commencement of legislation

24 The Bill provides for the amendment to come into force on the day after the date on which it receives the Royal assent.

Parliamentary stages

25 The Bill is awaiting its second reading.

Recommendations

The Minister of Finance recommends that the Committee:

26 **note** that the New Zealand Superannuation and Retirement Income (Controlling Interests) Amendment Bill will amend the New Zealand Superannuation and Retirement Income Act 2001 (the Act) to remove the restriction on Guardians of the New Zealand Superannuation taking a controlling interest in businesses;

27 **agree** to proceed with the New Zealand Superannuation and Retirement Income (Controlling Interests) Amendment Bill through the remainder of its stages through the House of Representatives;

28 **note** that the Bill is currently awaiting its second reading; and

29 **note** that the Bill should be commenced no later than 1 July 2024.

Authorised for lodgement

Hon Nicola Willis
Minister of Finance