

Venture Capital Fund Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Venture Capital Fund Bill and recommends that it be passed with the amendments shown.

Introduction

This bill aims to establish a Venture Capital Fund, which would be owned by the Crown and managed and administered by the Guardians of New Zealand Superannuation (the Guardians). The bill's purpose is to increase the venture capital available to New Zealand's start-up companies and to develop New Zealand's venture capital markets to function more effectively. The Fund would help start-up companies to develop their potential and grow without the need to seek foreign investment.

Part 1 of the bill would amend the New Zealand Superannuation and Retirement Income Act 2001. It would widen the Guardians' responsibilities to include administering the Fund. Part 2 of the bill would establish the Venture Capital Fund and provide for the Guardians to manage and administer it.

It is intended that the bill would be divided at the Committee of the whole House stage. If the bill is enacted, Part 1 would become the New Zealand Superannuation and Retirement Income Amendment Act, and Part 2 would become the Venture Capital Fund Act.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Purpose of the Fund

Clause 24 of the bill outlines the purpose of the Fund. It states that the Fund's purpose is to contribute to a sustainable and productive economy by increasing the venture capital available to New Zealand entities and developing New Zealand's venture capital markets to function more effectively.

Part of the aim is that, over time, as capital is recycled through the economy, more venture capital should become available to New Zealand entities outside the scope of the Fund. Another aim is that New Zealand entities that receive venture capital through the Fund would be more likely to grow into successful and sustainable businesses.

We consider that the bill should be more explicit about what is meant by "developing New Zealand's venture capital markets". In particular, we consider that part of the Fund's purpose is to encourage the development of more self-sustaining private venture capital funds. We recommend inserting clause 24(b)(iii) to include reference to this in the purpose statement.

Promoting an inclusive economy

Clause 32 would require the Guardians to use best-practice investment management when investing the Fund's capital. Clause 33 specifies that they should manage and administer it in line with directions in a policy statement set by the Minister. Clause 35 lists the possible directions that could be put in the policy statement.

Some submitters expressed concern with the limited scope of directions that the policy statement could contain. We heard that it could lead to investment in less diverse and less inclusive ventures.

We do not wish to intervene in the investment decisions. We note that it could prove difficult to attract more capital in the long run if the Fund had specific objectives for using investments to promote diversity. Nonetheless, we recognise that achieving an inclusive economy is an important part of the Government's overall economic strategy. Because of this, we propose amending clause 35 so that the policy statement could include the Government's commitment to an inclusive economy in the list of possible directions a policy statement could contain.

Reporting process

Clause 56(1) would require the Guardians to prepare an annual report that included the information specified in paragraphs (a) to (g). The Minister would have no power of direction over the annual report. However, the Minister could seek reporting on any other matter, outside the scope of the annual report, under clause 57.

The decision in the bill as introduced to limit the Minister's power in this area was intended to preserve the Guardians' independence when operating the Fund. However, we understand there may be a need to ensure that annual reporting on the Fund provides relevant data to support capability development in the venture capital market and meets the various needs of stakeholders.

Because of this, we recommend amendments to clause 56 to give the Minister the power to direct the Guardians to report on additional matters in the annual report. The Minister could only exercise that power after first having regard to the purpose of the Fund.

Appendix

Committee process

The Venture Capital Fund Bill was referred to the committee on 27 August 2019. The closing date for submissions was 23 September 2019. We received and considered 13 submissions from interested groups and individuals. We heard oral evidence from 8 submitters.

Committee membership

Dr Deborah Russell (Chairperson)

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Hon Judith Collins

Hon Paul Goldsmith

Ian McKelvie

Greg O'Connor

Willow-Jean Prime

David Seymour

Fletcher Tabuteau

Dr Duncan Webb

Venture Capital Fund Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon David Parker

Venture Capital Fund Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Venture Capital Fund Act **2019**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1
Amendments to New Zealand Superannuation and Retirement Income Act 2001

- 3 Principal Act** 10
This **Part** amends the New Zealand Superannuation and Retirement Income Act 2001 (the **principal Act**).
- 4 Section 3 amended (Purpose)**
 - (1) In section 3(b), after “Fund”, insert “(the **Fund**)”.
 - (2) Replace section 3(d) with: 15

- (d) to establish a Crown entity called the Guardians of New Zealand Superannuation, which will manage and administer the Fund and the Venture Capital Fund established under the **Venture Capital Fund Act 2019**:
- 5 Section 5 amended (Interpretation of Parts 2 and 3 and Schedule 3)**
In section 5(1), insert in its appropriate alphabetical order: 5
VCF means the Venture Capital Fund established under **section 23** of the **Venture Capital Fund Act 2019**
- 6 Part 2 heading amended**
In the Part 2 heading, after “**Fund**”, insert “**and Guardians of New Zealand Superannuation**”. 10
- 7 Section 36 amended (Outline of Part)**
(1) In section 36(c), after “**Fund**”, insert “and the VCF”.
(2) In section 36(g), after “**Fund**”, insert “, the VCF.”.
- 8 New section 41A inserted (Guardians may apportion obligations)**
After section 41, insert: 15
- 41A Guardians may apportion obligations**
(1) This section applies if the Guardians reasonably consider that an expense or other obligation is related to the operation of both the Fund and the VCF.
(2) The Guardians may apportion the obligation in the manner that the Guardians consider reasonable so as to determine— 20
(a) the part of the obligation that is to be met out of the Fund under section 41(2)(b); and
(b) the part of the obligation that is to be met out of the VCF under **section 27(1)(b)** of the **Venture Capital Fund Act 2019**.
(3) The part of the obligation determined in relation to the Fund or the VCF must be treated as an obligation that is directly related to the operation of the Fund or the VCF (as the case may be). 25
- 9 Section 49A amended (Saving of certain transactions)**
(1) In section 49A(1) and (3), after “this Act”, insert “, the **Venture Capital Fund Act 2019**,”. 30
(2) After section 49A(1)(b), insert:
(ba) a VCF investment vehicle referred to in **section 40** of the **Venture Capital Fund Act 2019**; or
- 10 Section 51 amended (Functions)**
Replace section 51(1) with: 35

<p>(1) The functions of the Guardians are to manage and administer—</p> <p style="padding-left: 20px;">(a) the Fund in accordance with this Act; and</p> <p style="padding-left: 20px;">(b) the VCF in accordance with Part 2 of the Venture Capital Fund Act 2019.</p>	5
<p>11 Section 68 amended (Annual report)</p> <p>In section 68(g), after “Guardians”, insert “in relation to the Fund”.</p>	5
<p>12 Section 71 amended (Performance reviews)</p> <p>(1) In section 71(1), after “functions”, insert “in relation to the Fund”.</p> <p>(2) In section 71(4)(a) and (b), after “Guardians”, insert “in relation to the Fund”.</p>	10
<p>13 Section 72 amended (Political commitment)</p> <p>After section 72(4), insert:</p> <p>(5) In this section, a reference to Part 2 is a reference to Part 2 to the extent that it relates to the Fund (rather than to the VCF).</p>	10
<p>14 Section 73 amended (Amendments to Act)</p> <p>After section 73(2), insert:</p> <p>(2A) Subsection (2)(a) relates to amendments to Part 2 to the extent that the amendments relate to the Fund (rather than to the VCF).</p>	15
<p>15 Schedule 3 amended</p> <p>In Schedule 3, replace clause 39 with:</p>	20
<p>39 Additional persons to whom delegations can be made</p> <p>(1) The board may, in relation to the Fund, delegate any of the functions or powers of the board or the entity to all or any of the following, despite section 73(1)(d) of the Crown Entities Act 2004:</p> <p style="padding-left: 20px;">(a) a person appointed to undertake the investment of any part of the Fund under section 62:</p> <p style="padding-left: 20px;">(b) a custodian:</p> <p style="padding-left: 20px;">(c) a Fund investment vehicle that is formed or controlled under section 59A.</p> <p>(2) The board may, in relation to the VCF, delegate any of the functions or powers of the board or the entity to all or any of the following, despite section 73(1)(d) of the Crown Entities Act 2004:</p> <p style="padding-left: 20px;">(a) a person appointed to undertake the investment of any part of the VCF under section 44 of the Venture Capital Fund Act 2019:</p> <p style="padding-left: 20px;">(b) a person appointed under section 45 of the Venture Capital Fund Act 2019 to act as custodian of the VCF, or any part of the VCF:</p>	25
<p style="padding-left: 20px;">(b) a person appointed under section 45 of the Venture Capital Fund Act 2019 to act as custodian of the VCF, or any part of the VCF:</p>	35

- (c) a VCF investment vehicle that is formed or controlled under **section 40** of the **Venture Capital Fund Act 2019**.

16 Schedule 4 amended

In Schedule 4, in the Part 2 heading, after “Act”, insert “(to extent that it relates to Fund)”. 5

17 Other amendments

The Acts set out in **Schedule 2** are amended as set out in that schedule.

Part 2
Venture Capital Fund

Preliminary provisions 10

18 Purpose of Part

The purpose of this **Part** is—

- (a) to establish a Venture Capital Fund; and
- (b) to provide for the Guardians of New Zealand Superannuation to manage and administer that fund. 15

19 Outline of Part

This **Part**—

- (a) establishes the Venture Capital Fund (the **VCF**):
- (b) provides for payments into and out of the **VCF**:
- (c) provides for the Guardians of New Zealand Superannuation to manage and administer the **VCF**: 20
- (d) requires the Guardians to invest the **VCF** in New Zealand’s venture capital markets:
- (e) empowers the Minister to give certain directions to the Guardians in respect of the **VCF**: 25
- (f) provides for other matters relating to the **VCF**.

20 Interpretation

- (1) In this **Part**, unless the context otherwise requires,—

board means the Guardians of New Zealand Superannuation board

custodian means a person appointed under **section 45(1)** to act as custodian of the **VCF**, or any part of the **VCF** 30

divestment programme has the meaning set out in **section 47(1)(e)**

entity means any person, whether corporate or unincorporate

Guardians means the entity called the Guardians of New Zealand Superannuation established under section 48 of the New Zealand Superannuation and Retirement Income Act 2001

invest includes, without limitation, to carry on any activity, do any act, or enter into any transaction that the Guardians consider to be for the purpose, directly or indirectly, of managing, or enabling the management of, the VCF 5

Minister means the Minister of Finance, or other Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this **Part**

subsidiary— 10

(a) means a subsidiary within the meaning of sections 5 to 8 of the Companies Act 1993; and

(b) includes an entity that is classified as a subsidiary in any relevant financial reporting standard (within the meaning of section 5 of the Financial Reporting Act 2013) 15

VCF means the Venture Capital Fund established under **section 23**.

(2) A function, power, or duty performed or exercised in respect of a part of the VCF may be performed or exercised in respect of—

(a) a specified proportion of the VCF; or

(b) a part of the VCF that is defined in any other way. 20

(3) In this Act, unless the context otherwise requires, **Crown**, **Crown Bank Account**, **financial year**, **Government**, **public money**, and **Treasury** have the same meanings as in section 2(1) of the Public Finance Act 1989.

21 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 25

22 Part binds the Crown

This **Part** binds the Crown.

Establishment of Venture Capital Fund

23 Establishment of VCF 30

This section establishes the Venture Capital Fund (the **VCF**).

Compare: 2001 No 84 s 37

24 Purpose of VCF

The purpose of the VCF is to contribute to a sustainable and productive economy by— 35

(a) increasing the venture capital available to New Zealand entities; and

- (b) developing New Zealand’s venture capital markets to function more effectively so that over time—
- (i) more venture capital becomes available to New Zealand entities from sources other than the VCF; and
 - (ii) New Zealand entities that receive venture capital become more likely to grow into successful and sustainable businesses; and
 - (iii) those markets become self-sustaining (including through more investment from New Zealand investors).
- 25 Property of VCF**
- (1) The VCF consists of— 10
- (a) money paid into the VCF by the Crown under **section 28** or otherwise:
 - (b) VCF investments:
 - (c) money accruing from the investment of the VCF:
 - (d) any other money that may be lawfully payable into the VCF.
- (2) The VCF is not an entity separate from the Crown. 15
- (3) However, **subsection (2)** does not limit **section 54(2) or 55(1)**.
Compare: 2001 No 84 s 38
- 26 Ownership of VCF**
- The VCF is the property of the Crown. 20
Compare: 2001 No 84 s 40
- 27 Payments out of VCF**
- (1) Money may be paid out of the VCF—
- (a) to pay any fee that is payable to an investment manager or a custodian in respect of the VCF:
 - (b) to meet any other obligation that is directly related to the operation of the VCF: 25
 - (c) to pay the taxation liabilities arising in respect of the VCF:
 - (d) to the Crown in accordance with an agreement between the Guardians and the Minister:
 - (e) to comply with a direction under **section 46**. 30
- (2) No payment may be made out of the VCF except in accordance with **subsection (1)** and unless it has been authorised by the Guardians.
- (3) *See **section 41A** of the New Zealand Superannuation and Retirement Income Act 2001, which allows the Guardians to apportion obligations between the Fund and the VCF.* 35
Compare: 2001 No 84 s 41

Contributions to VCF

28 Contributions to VCF

The Minister may pay any money into the VCF.

Acquisition of financial products, borrowing, guarantees, indemnities, and derivatives 5

29 Crown Entities Act 2004 provisions about acquisition of financial products, borrowing, guarantees, indemnities, and derivatives do not apply

- (1) Sections 100 and 160 to 164 of the Crown Entities Act 2004 do not apply to the Guardians in relation to the VCF. 10
- (2) There are no restrictions on the Guardians’ power to invest the VCF, other than as provided by **sections 31 to 39, 46, and 47** and **Schedule 1**.
- (3) This section is subject to **section 30** (borrowing).
Compare: 2001 No 84 s 49

30 Borrowing 15

- (1) The Guardians may not, except with the approval of the Minister of Finance,—
 - (a) borrow money (in respect of the VCF); nor
 - (b) mortgage or charge any of the real or personal property of the VCF, whether present or future, as security; nor
 - (c) hold any financial instrument that places or may place a liability or a contingent liability on the VCF, or the Crown. 20
- (2) The Minister’s approval may be given for any class of transactions in **subsection (1)(a) to (c)**.
Compare: 2001 No 84 s 50

Investment of VCF 25

31 Responsibility for investing

The Guardians are responsible for investing the VCF.

Compare: 2001 No 84 s 58(1)

32 Guardians must use best-practice investment management

- (1) The Guardians must invest the VCF in New Zealand’s venture capital markets using best-practice investment management that is appropriate for institutional investment in those markets. 30
- (2) However, this section is subject to the directions that the Guardians must give effect to under **sections 34 to 38**.
Compare: 2001 No 84 s 58(2) 35

- 33 Guardians must manage and administer the VCF in certain manner**
- (1) The Guardians must manage and administer the VCF in a manner consistent with—
- (a) the policy statement in effect under **section 34**; and
 - (b) avoiding prejudice to New Zealand’s reputation as a responsible member of the world community. 5
- (2) **Section 32** and this section do not prevent the Guardians from investing the VCF or a part of the VCF other than in New Zealand’s venture capital markets—
- (a) pending investments being made in those markets; or 10
 - (b) otherwise on an interim basis.
- 34 Minister must give policy statement that specifies high-level requirements**
- (1) The Minister must give the Guardians a policy statement.
- (2) **Sections 35 and 38** set out the directions that a policy statement must or may contain. 15
- (3) The Minister must take reasonable steps to ensure that a policy statement remains in effect at all times on and after the expiry of the 1-month period that starts on the commencement of this section.
- (4) This section does not limit **section 48** (which allows the policy statement to be amended or replaced). 20
- 35 Directions in policy statement that must be consulted on**
- (1) The Minister may give a direction of the kind described in this section only if the Minister has consulted the Guardians.
- Directions Guardians must give effect to*
- (2) The policy statement must contain directions that— 25
- (a) specify what must be considered to be venture capital and a New Zealand venture capital market; and
 - (b) require the venture capital made available through the VCF to be made available wholly or substantially to New Zealand entities specified under **paragraph (c)**, whether it is made available directly to those entities or indirectly through funds; and 30
 - (c) specify, for the purposes of **paragraph (b)**,—
 - (i) what must be considered to be a New Zealand entity; and
 - (ii) how to calculate whether venture capital is being made available substantially to those entities; and 35
 - (d) require that, to the extent that the venture capital is made available through funds, the venture capital is wholly or substantially made avail-

- able through funds with a New Zealand connection specified under **paragraph (e)**; and
- (e) specify, for the purposes of **paragraph (d)**,—
- (i) what must be considered to be a fund with a New Zealand connection; and 5
- (ii) how to calculate whether venture capital is being made available substantially through those funds; and
- (f) set the minimum proportion of investment that must be made by other investors in 1 or more circumstances specified in the direction.
- (3) The Guardians must give effect to the directions under **subsection (2)** when managing and administering the VCF. 10
- Directions Guardians must have regard to*
- (4) The policy statement may contain directions about 1 or more of the following:
- (a) the Government’s expectations as to the time period during which all or a part of the venture capital to be made available through the VCF will be made available to entities: 15
- (b) the Government’s expectations as to the time period during which all or a part of the capital invested through the VCF will become available to be returned to the Crown:
- (c) the Government’s commitment to a low-emissions economy: 20
- (ca) the Government’s commitment to an inclusive economy:
- (d) the Government’s wider economic policy as specified in the direction.
- (5) The Guardians must have regard to the directions under **subsection (4)** when managing and administering the VCF.
- 36 Minister may approve departure from direction in particular circumstances** 25
- (1) The Guardians do not have to give effect to a direction under **section 35(2)(b), (d), or (f)** in particular circumstances, or in relation to a part of the VCF, if the Minister gives approval.
- (2) The Minister’s approval may be given for any class of circumstances. 30
- 37 Other provisions about directions under section 35**
- (1) A direction under **section 35** must not require the Guardians to use a particular evaluation methodology or performance standard for assessing whether the direction has been given effect to.
- (2) In the case of venture capital being made available to entities indirectly through funds, nothing in or under **section 35** requires the Guardians to verify that any particular entity is, in fact, a New Zealand entity. 35

38 Directions in policy statement that require Guardians' agreement

- (1) The Minister may give a direction of the kind described in this section only if the Guardians have agreed to the direction.
- (2) The policy statement may contain directions that—
 - (a) impose requirements concerning the use of an overarching model or approach for investing the VCF or a part of the VCF; or 5
 - (b) relate to other high-level matters to ensure that the VCF achieves the purpose set out in **section 24**.
- (3) The Guardians must, when managing and administering the VCF,—
 - (a) give effect to a direction under **subsection (2)(a)**: 10
 - (b) give effect to, or have regard to, a direction under **subsection (2)(b)**.
- (4) **Subsection (1)** does not limit the Minister's power to give a direction of the kind described in **section 35** (after consulting the Guardians).

39 Limits on policy statement

Despite anything to the contrary in the Crown Entities Act 2004, the Minister must not include in a policy statement a direction that requires any part of the VCF to be invested in a particular entity or fund. 15

40 VCF investment vehicles

- (1) All or any of the investments of the VCF may be held in an entity that is formed or controlled by the Guardians for the purpose of holding, facilitating, or managing the investments of the VCF (a **VCF investment vehicle**). 20
- (2) A VCF investment vehicle is not a Crown entity subsidiary for the purposes of section 7(1)(c) of the Crown Entities Act 2004.
- (3) Interests in VCF investment vehicles are VCF investments and part of the VCF.
- (4) To avoid doubt, the Official Information Act 1982 and the Ombudsmen Act 1975 do not apply to VCF investment vehicles, but the Official Information Act 1982 applies to the Guardians in respect of information held by the Guardians about VCF investment vehicles. 25
- (5) **Subsection (1)** applies despite anything to the contrary in the Crown Entities Act 2004, this Act, or any other enactment. 30
- (6) For the purposes of this **Part**, an entity is **controlled** by the Guardians if—
 - (a) the entity is a subsidiary of the Guardians; or
 - (b) the Guardians control the entity within the meaning of any relevant financial reporting standard (within the meaning of section 5 of the Financial Reporting Act 2013); or 35
 - (c) the Guardians can control directly or indirectly the composition of the board of the entity within the meaning of sections 7 and 8 of the Com-

panies Act 1993 (which, for the purposes of this paragraph, are to be read with all necessary modifications).

Compare: 2001 No 84 s 59A

- 41 VCF investment vehicles not required to prepare statements or annual reports** 5
- (1) A VCF investment vehicle is not required to do either of the following:
- (a) prepare financial statements or group financial statements that are separate from those prepared for the VCF under **section 54**;
 - (b) have financial statements or group financial statements audited.
- (2) If a VCF investment vehicle is a company, the board of the company is not required to prepare an annual report. 10
- (3) **Subsections (1) and (2)** apply despite anything to the contrary in the Companies Act 1993, the Limited Partnerships Act 2008, or the Public Audit Act 2001.
- (4) This section does not limit **sections 54 to 56**. 15
- (5) In this section, **annual report** and **board** have the meanings given in section 2(1) of the Companies Act 1993.
- Compare: 2001 No 84 s 59B
- 42 Guardians must establish investment policies, standards, and procedures**
- (1) The Guardians must establish, and adhere to, investment policies, standards, and procedures for the VCF that are consistent with their duty to invest the VCF in accordance with **sections 31 to 39**. 20
- (2) The Guardians must review those investment policies, standards, and procedures for the VCF at least annually.
- Compare: 2001 No 84 s 60 25
- 43 Contents of statements of investment policies, standards, and procedures**
- A statement of investment policies, standards, and procedures must cover (but is not limited to)—
- (a) the selection criteria that the Guardians use for deciding who will be appointed under **section 44** and how the Guardians will monitor the performance of persons appointed under that section; and 30
 - (b) the selection criteria that the Guardians will use for making investment decisions (where the Guardians undertake the investment of any part of the VCF other than through a person appointed under **section 44**); and
 - (c) the determination of standards against which the performance of the VCF as a whole will be assessed; and 35
 - (d) standards for reporting the investment performance of the VCF; and

- (e) ethical investment, including policies, standards, or procedures for avoiding prejudice to New Zealand’s reputation as a responsible member of the world community; and
- (f) the VCF management structure; and
- (g) the governance framework for the implementation and operation of VCF investment vehicles referred to in **section 40**; and 5
- (h) the use of derivative financial instruments; and
- (i) the management of credit, liquidity, operational, currency, market, and other financial risks; and
- (j) the method of, and basis for, valuation of investments that are not regularly traded at a public exchange; and 10
- (k) prohibited or restricted investments or any investment constraints or limits.
- Compare: 2001 No 84 s 61
- 44 Investment management** 15
- (1) The Guardians may appoint, on any terms and conditions that the Guardians think fit, 1 or more persons (including any department) to undertake the investment of any part of the VCF.
- (2) Different persons may be appointed for different parts of the VCF.
- (3) The Guardians must state, in each instrument of appointment, the powers and rights of the person appointed (including, without limitation, the extent of that person’s power to delegate any of those powers and rights). 20
- (4) This section is subject to **sections 34 to 39** and **Part 1 of Schedule 1**.
- (5) This section does not limit section 17 of the Crown Entities Act 2004.
- Compare: 2001 No 84 s 62 25
- 45 Custodianship of VCF**
- (1) The Guardians may appoint a person or persons (including any department) to act as custodian of the VCF, or any part of the VCF.
- (2) A custodian so appointed must hold the property of the VCF, or that part of the property of the VCF for which they have been appointed, in their name or, if the Guardians authorise it, in the name of 1 or more nominees. 30
- (3) An appointment may be on any terms and conditions that the Guardians think fit.
- (4) The Guardians must specify, in each instrument of appointment, the powers and rights of the person or persons appointed (including, without limitation, the extent of that person’s powers to delegate any of those powers and rights). 35
- (5) This section does not limit section 17 of the Crown Entities Act 2004.
- Compare: 2001 No 84 s 63

Directions for winding up VCF

46 Minister may give directions for winding up

- (1) The Minister may, after complying with **section 47**, give directions that the Guardians must give effect to regarding the winding up of the VCF or of a part of the VCF, including directions to do any of the following: 5
 - (a) stop reinvesting money from the VCF or part of the VCF in New Zealand’s venture capital markets in a specified manner:
 - (b) comply with a divestment programme (*see section 47(1)(e)*):
 - (c) pay 1 or more amounts from the VCF to the Crown in a specified manner. 10
- (2) Every amount paid to the Crown under a direction must be paid into a Crown Bank Account.
- (3) The Minister may also give directions that the Guardians must give effect to regarding the realisation of particular investments of the VCF in a specified manner if— 15
 - (a) the Minister—
 - (i) has been unable to agree with the Guardians on a divestment programme after having made reasonable efforts to do so; or
 - (ii) considers that the Guardians have failed to comply with a divestment programme in a material respect; and 20
 - (b) the Minister has had regard to the desirability of divesting the investments of the VCF over a time period that is most likely to maximise returns.

47 Process for directions for winding up

- (1) The Minister may give a direction under **section 46** only if— 25
 - (a) a person or persons (including any department) appointed by the Minister has prepared a report on—
 - (i) the amount of venture capital available to New Zealand entities if the VCF or part of the VCF were to be wound up; and
 - (ii) whether, if the VCF or part of the VCF were to be wound up, New Zealand’s venture capital markets would be likely to function effectively; and 30
 - (b) the Minister has taken the report into account; and
 - (c) the Minister has consulted the Guardians; and
 - (d) the Minister is satisfied that, if the VCF or part of the VCF were to be wound up, New Zealand’s venture capital markets would be likely to function effectively; and 35

- (e) the Minister has made reasonable efforts to agree with the Guardians on a programme for the realisation of the investments of the VCF or part of the VCF (a **divestment programme**).
- (2) The Minister may, after **subsection (1)(a) to (d)** has been satisfied, give directions to the Guardians relating to the Government's expectations as to the time frame for the divestment programme. 5
- (3) When making efforts to agree on a divestment programme,—
- (a) the Minister must have regard to the desirability of divesting the investments of the VCF over a time period that is most likely to maximise returns; and 10
- (b) the Guardians must have regard to—
- (i) any directions under **subsection (2)**; and
- (ii) the desirability of divesting the investments of the VCF over a time period that is most likely to maximise returns.
- (4) In this section, New Zealand's venture capital markets would be **likely to function effectively** if adequate venture capital were available to New Zealand entities to enable them to grow into successful and sustainable businesses. 15

Other provisions about policy statement and directions

48 Amendment or replacement of policy statement or directions

The policy statement under **section 34** or a direction under **section 46 or 56(1)(h)** may be amended or replaced in the same way as it may be given. 20

49 Amendment or replacement of policy statement or directions does not affect existing matters

The amendment or replacement of the policy statement under **section 34** or a direction under **section 46 or 56(1)(h)** does not affect any existing investment of the VCF or any existing deed, agreement, right, or obligation that is entered into, obtained, or incurred by the Guardians as manager and administrator of the VCF. 25

50 Publication of policy statement or directions

As soon as practicable after giving a policy statement under **section 34** or a direction under **section 46 or 56(1)(h)**, the Minister must— 30

- (a) publish it in the *Gazette*; and
- (b) publish it on the Internet; and
- (c) present a copy of it to the House of Representatives.

51 Reporting relating to directions

(1) The Guardians must notify the Minister of how the entity proposes to have regard or give effect to any direction given under **sections 34 to 38** ~~or **section 46, 46, or 56(1)(h)**~~.

(2) The Guardians' annual report must, in relation to the year to which the report relates, include a statement of how the entity is having, or has had, regard to, or is giving, or has given, effect to, any ministerial directions given under **sections 34 to 38** or **section 46**. 5

Compare: 2001 No 84 s 64(6), (7)

52 Limit on directions relating to VCF 10

Despite anything to the contrary in the Crown Entities Act 2004, the Minister must not give a direction to the Guardians in respect of the VCF except in accordance with **this Part**.

Compare: 2001 No 84 s 64(2)(b)

53 Certain Crown Entities Act 2004 provisions about directions do not apply 15

Sections 115 and 115A of the Crown Entities Act 2004 do not apply to a direction under **sections 34 to 38** ~~or **section 46, 46, or 56(1)(h)**~~.

Accountability

54 Financial statements of VCF

(1) The Guardians must ensure that financial statements for the VCF are prepared for each financial year. 20

(2) The annual financial statements must be prepared in accordance with generally accepted accounting practice (as defined in section 8 of the Financial Reporting Act 2013).

Compare: 2001 No 84 s 66 25

55 Auditor-General is auditor of VCF

(1) The VCF is to be treated as if it were a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

(2) The Guardians must, not later than 90 days after the end of the financial year, forward the annual financial statements of the VCF to the Auditor-General. 30

(3) The Auditor-General must issue an audit opinion within 30 days of receipt of the annual financial statements and must return the annual financial statements, with the audit report attached, to the Guardians.

Compare: 2001 No 84 s 67 35

56 Annual report

- (1) The annual report of the Guardians prepared each financial year under Part 4 of the Crown Entities Act 2004 must include (in addition to any other requirements, such as the entity's own financial statements)—
- (a) the financial statements of the VCF for that financial year prepared under **section 54**; and 5
 - (b) a statement of responsibility for the financial statements of the VCF, signed by the chairperson of the board and the chief executive of the Guardians (if any), and comprising the same statements that are required by section 155 of the Crown Entities Act 2004 as if the VCF were a Crown entity; and 10
 - (c) the audit report on the financial statements; and
 - (d) an analysis and explanation of the performance of the VCF over that financial year; and
 - (e) a statement of the investment policies, standards, and procedures for the VCF established by the Guardians under **section 42**; and 15
 - (f) a statement signed by the chairperson of the board and the chief executive of the Guardians (if any) certifying whether or not the investment policies, standards, and procedures for the VCF have been complied with throughout that financial year; and 20
 - (g) a schedule of the investment managers and custodians used by the Guardians in relation to the VCF during that financial year and the classes of investments for which each was responsible; and
 - (h) any other information that the Minister directs the Guardians to include.
- (2) If the Guardians' statement of performance expectations relating to the financial year sets out the Guardians' expectations about the performance of the VCF, the information under **subsection (1)(d)** must include a comparison of the performance of the VCF with those expectations. 25
- (3) Before giving a direction under **subsection (1)(h)**, the Minister must have regard to the purpose of the VCF set out in **section 24**. 30

Compare: 2001 No 84 s 68

57 Reporting by Guardians on VCF

- (1) The Guardians must report to the Minister on the VCF at those intervals that the Minister may require.
- (2) The Guardians' report must include any information that the Minister may require. 35

Compare: 2001 No 84 s 69

Schedule 1

Transitional, savings, and related provisions

s 21

Part 1

Provisions relating to this Act as enacted

5

- 1 Guardians and New Zealand Venture Investment Fund Limited must make reasonable efforts to ensure contract or other arrangement is entered into**
- (1) The Guardians and NZVIF must make reasonable efforts to ensure that a contract or other arrangement referred to in **clause 2** is entered into before— 10
- (a) the expiry of the 2-month period that starts on the date on which the first policy statement is given under **section 34**; or
- (b) the expiry of a longer period specified by the Minister under **subclause (2)**.
- (2) The Minister may extend the period under **subclause (1)(a)** by up to 2 15 months (however, the power under this subclause may only be exercised once).
- (3) Before the contract or other arrangement is entered into, the Guardians must—
- (a) give a copy of the draft contract or arrangement to the Minister; and
- (b) give the Minister at least 15 working days to comment on the draft contract or arrangement; and 20
- (c) have regard to any comments given by the Minister within that period.
- (4) This clause applies despite **sections 31 to 38**.
- (5) In this schedule, **NZVIF** means New Zealand Venture Investment Fund Limited.
- 2 Requirements and other provisions relating to contract or other arrangement** 25
- (1) The contract or other arrangement is for the Guardians (or a VCF investment vehicle) to appoint NZVIF to undertake investment of the whole of the money of the VCF using a fund of funds model on reasonable terms and conditions that will enable the Guardians to comply with its duties under **Part 2**. 30
- (2) Nothing in this clause (or the contract or arrangement) prevents or restricts—
- (a) money of the VCF from being held or applied by or on behalf of the Guardians for the purposes of **section 27**; or
- (b) the Guardians (or a VCF investment vehicle) from exercising any right to cancel the contract or other arrangement. 35

- 3 Minister may specify contract or other arrangement if parties do not agree within required time frame**
- (1) This clause applies if a contract or other arrangement has not been entered into in accordance with **clause 1**.
- (2) The Minister may, by written notice to the Guardians and to NZVIF, specify a contract or other arrangement referred to in **clause 2** that is binding on—
- (a) the Guardians or a VCF investment vehicle (or both); and
 - (b) NZVIF.
- (3) The contract or other arrangement—
- (a) must be treated as being on the terms and conditions specified in the notice; and
 - (b) is enforceable as if it were a contract or arrangement that was freely and voluntarily entered into by the parties.
- (4) The power under **subclause (2)**—
- (a) may be exercised only once; and
 - (b) may not be exercised if the Minister, by written notice to the Guardians, states that the Minister will not exercise the power.
- (5) The contract or other arrangement may be amended, replaced, or cancelled—
- (a) in accordance with the terms and conditions of the contract or other arrangement; or
 - (b) by agreement between the parties; or
 - (c) in accordance with section 36 or 37(1)(b) or (c) of the Contract and Commercial Law Act 2017.
- 4 Minister must consult and publish notice**
- (1) The Minister may exercise a power under **clause 3** only after consulting the Guardians and NZVIF.
- (2) As soon as practicable after giving a notice under **clause 3**, the Minister must—
- (a) publish it in the *Gazette*; and
 - (b) publish it on the Internet; and
 - (c) present a copy of it to the House of Representatives.
- (3) However, the Minister may withhold from disclosure under **subclause (2)** any part of the notice that the Minister considers is commercially sensitive and, in that case, must substitute a note of explanation for the parts withheld.
- 5 Other matters relating to contract or other arrangement**
- (1) This clause applies in relation to a contract or other arrangement entered into under **clause 1** or specified under **clause 3**.

- (2) NZVIF must be treated as having been appointed under **section 44**.
- (3) **Section 44(3)** applies with all necessary modifications to the contract or other arrangement.

Schedule 2 Other amendments

s 17

Crown Entities Act 2004 (2004 No 115)

In Schedule 2, item relating to New Zealand Venture Investment Fund Limited, in the column relating to section 165 of the Crown Entities Act 2004, delete the tick. 5

Income Tax Act 2007 (2007 No 97)

After section CW 38(5)(d), insert:

- (db) a VCF investment vehicle as referred to in **section 40** of the **Venture Capital Fund Act 2019**: 10

In section CW 38(5)(e), after “Fund”, insert “and VCF”.

In section CW 38, list of defined terms, insert “VCF”.

After section CX 55(1)(bc), insert:

- (bd) the Crown as owner of the VCF:
- (be) a VCF investment vehicle, as referred to in **section 40** of the **Venture Capital Fund Act 2019**, that is treated as being wholly owned by the Crown under section HR 4B: 15

In section CX 55, list of defined terms, insert “VCF”.

In the heading to section HR 4B, after “Fund”, insert “and Venture Capital Fund”.

In section HR 4B(1), after “(the Fund)”, insert “and the VCF”. 20

Replace section HR 4B(2) and (3) with:

Activities of the Crown relating to Fund or VCF

- (2) Amounts of income derived and expenditure incurred by the Crown in activities relating to the Fund or the VCF are determined as if the amounts were being derived or incurred by a company (the **Fund/VCF company**), other than a public authority, that was a special corporate entity wholly owned by,— 25
- (a) in the case of the Fund, the Minister of the Crown who was for the time being responsible for the administration of the New Zealand Superannuation and Retirement Income Act 2001, Parts 2 and 3:
- (b) in the case of the VCF, the Minister of the Crown who was for the time being responsible for the administration of the **Venture Capital Fund Act 2019, Part 2**. 30

Fund investment vehicles and VCF investment vehicles

- (3) The consolidation rules, continuity provisions, and other rules relating to groups of companies apply to the Crown as owner of the Fund and of the VCF, to a Fund investment vehicle as referred to in section 59A of the New Zealand Superannuation and Retirement Income Act 2001, to a VCF investment vehicle 35

Income Tax Act 2007 (2007 No 97)—continued

as referred to in **section 40** of the **Venture Capital Fund Act 2019**, and to a company in which the Guardians of New Zealand Superannuation (the **Guardians**) hold interests for the Crown, as if—

- (a) the Crown were the Fund/VCF company; and
- (b) interests in the Fund investment vehicle, VCF investment vehicle, or company held by the Guardians were owned by the Crown as the Fund/VCF company. 5

In section HR 4B, list of defined terms, insert “VCF”.

In section YA 1, insert in its appropriate alphabetical order:

VCF means the Venture Capital Fund established under **section 23** of the **Venture Capital Fund Act 2019** 10

In Schedule 1, Part A, after clause 11, insert:

12 Taxable income: Venture Capital Fund

The basic rate of income tax on each dollar of taxable income derived by the Crown through the VCF is the rate applying to companies set out in clause 2. 15

In Schedule 29, Part A, after item 4, insert:

4BA The Crown as owner of the VCF.

In Schedule 29, Part A, after item 4B, insert:

4BB A VCF investment vehicle, as referred to in **section 40** of the **Venture Capital Fund Act 2019**, that is treated as being wholly owned by the Crown under section HR 4B. 20

Legislative history

22 August 2019
27 August 2019

Introduction (Bill 167–1)
First reading and referral to Finance and Expenditure Committee