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

Presented to the House of Representatives in accordance with Standing Order 272

Introduction

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

It is proposed that the change will involve amending the Act by repealing a number of provisions and making a number of amendments, in particular a new provision that ensures that the fact of an investment by the Fund (or any related arrangements) does not result in any entity being treated as part of the Crown or subject to obligations that were designed for public sector organisations.

Background

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

Rationale for change

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

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

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

The Bill does not derogate from the Guardians' independence from political influence in relation to

investment decisions (as provided for in section 64(2) of the Act). To ensure appropriate oversight, the Bill requires the Board of the Guardians include in the *Statement of Investment Policies, Standards, and Procedures* the details of a governance framework for the implementation and operation of controlled entities.

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

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