

House of Representatives

Supplementary Order Paper

Tuesday, 16 June 2015

**New Zealand Superannuation and Retirement Income Amendment
Bill**

*Proposed amendments for the consideration of the Committee of the
whole House*

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- NOT have official status in terms of unamended text
- NOT have the status of an as-reported version of the Bill.

Explanatory note

This Supplementary Order Paper replaces SOP No 73.

It proposes the deletion of *new subsections (1A) and (1B)* of *new section 59A*, which were inserted into the Bill to provide that fund investment vehicles can invest in passive holding entities, or in other kinds of investments with the Minister of Finance's approval.

It also updates a cross-reference in section CX 55 of the Income Tax Act 2007 as a consequence of the change to that section already made in *clause 12* of the Bill.

Departmental disclosure statement

The Treasury considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

The Honourable Bill English, in Committee, to propose the amendments shown in the following document.

Hon Bill English

New Zealand Superannuation and Retirement Income Amendment Bill

Government Bill

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**Proposed amendments to
New Zealand Superannuation and Retirement Income
Amendment Bill**

cl 1

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the New Zealand Superannuation and Retirement Income Amendment Act **2013**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1
Amendments to principal Act**

3 Principal Act

This Part amends the New Zealand Superannuation and Retirement Income Act 2001 (the **principal Act**).

4 Section 38 amended (Property of Fund)

In section 38, insert as subsections (2) and (3):

- (2) The Fund is not an entity separate from the Crown.
- (3) However, **subsection (2)** does not limit section 66(2) or 67(1).

5 New section 49A inserted (Saving of certain transactions)

After section 49, insert:

49A Saving of certain transactions

- (1) A failure by the Guardians to comply with any provision of this Act or the Crown Entities Act 2004 does not affect the validity or enforceability of any deed, agreement, right, or obligation that is entered into, obtained, or incurred by—
 - (a) the Guardians; or
 - (b) a Fund investment vehicle referred to in **section 59A**; or
 - (c) a Crown entity subsidiary of the Guardians.
- (2) This section applies only to the extent that the deed, agreement, right, or obligation is entered into, obtained, or incurred for the purpose of performing the functions of the Guardians.

- (3) This section applies despite anything to the contrary in this Act or the Crown Entities Act 2004 or any other enactment or rule of law.

Compare: 1986 No 124 s 21

6 Section 59 amended (No controlling interests)

After section 59(4), insert:

- (5) This section—
- (a) does not apply to a Fund investment vehicle referred to in **section 59A**; but
 - (b) does apply to an entity in which a Fund investment vehicle has an interest, as if the investments of the Fund that are held, facilitated, or managed by the Fund investment vehicle were held directly by the Guardians as manager and administrator of the Fund.

7 New section 59A inserted (Fund investment vehicles)

After section 59, insert:

59A Fund investment vehicles

- (1) All or any of the investments of the Fund 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 Fund (a **Fund investment vehicle**).
- (1A) ~~The Guardians may exercise the power in **subsection (1)** in respect of—~~
- ~~(a) passive holding entities (being entities that only hold financial products within the meaning of the Financial Markets Conduct Act 2013); or~~
 - ~~(b) any other entities only with the approval of the Minister of Finance.~~
- (1B) ~~The Minister's approval under **subsection (1A)(b)**—~~
- ~~(a) may be given for any class or classes of investments or entities; and~~
 - ~~(b) may set conditions as to the governance framework for the implementation and operation of the entities and as to the application of this Act to the entities.~~
- (2) A Fund 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 Fund investment vehicles are Fund investments and part of the Fund.
- (3A) To avoid doubt, the Official Information Act 1982 and the Ombudsmen Act 1975 do not apply to Fund investment vehicles, but the Official Information Act 1982 applies to the Guardians in respect of information held by the Guardians about Fund investment vehicles.
- (4) **Subsection (1)** applies despite anything to the contrary in the Crown Entities Act 2004, this Act, or any other enactment.

**Proposed amendments to
New Zealand Superannuation and Retirement Income
Amendment Bill**

Part 1 cl 8

8 Section 61 amended (Contents of statements of investment policies, standards, and procedures)

After section 61(f), insert:

- (fa) the governance framework for the implementation and operation of Fund investment vehicles referred to in **section 59A**; and

9 Schedule 3 amended

(1) In Schedule 3, after clause 39(b), insert:

- (c) a Fund investment vehicle that is formed or controlled under **section 59A**.

(2) In Schedule 3, repeal clause 40.

**Part 2
Amendments to Income Tax Act 2007**

10 Income Tax Act 2007 amended

This Part amends the Income Tax Act 2007.

11 Section CW 38 amended (Public authorities)

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

- (d) a Fund investment vehicle as referred to in **section 59A** of the New Zealand Superannuation and Retirement Income Act 2001;
- (e) a company that is treated as being wholly owned by the Crown under **section HR 4B** (Activities relating to New Zealand Superannuation Fund).

12 Section CX 55 amended (Proceeds from disposal of investment shares)

(1) Replace section CX 55(1)(b) with:

- (b) the Crown as owner of the New Zealand Superannuation Fund;
- (bb) a Fund investment vehicle, as referred to in **section 59A** of the New Zealand Superannuation and Retirement Income Act 2001, that is treated as being wholly owned by the Crown under **section HR 4B** (Activities relating to New Zealand Superannuation Fund);
- (bc) a company that is treated as being wholly owned by the Crown under **section HR 4B**:

(2) In section CX 55(2)(a), replace “subsection (1)(a) or (b)” with “subsection (1)(a), **(b)**, **(bb)**, or **(bc)**”.

13 Section HR 4B replaced (Crown activities through New Zealand Superannuation Fund)

Replace section HR 4B with:

HR 4B Activities relating to New Zealand Superannuation Fund

When this section applies

- (1) This section applies to determine for this Act the rules that determine the amounts of income derived and expenditure incurred by the Crown as owner of the New Zealand Superannuation Fund (the **Fund**).

Activities of the Crown relating to Fund

- (2) Amounts of income derived and expenditure incurred by the Crown in activities relating to the Fund are determined as if the amounts were being derived or incurred by a company (the **Fund company**), other than a public authority, that was a special corporate entity wholly owned by 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.

Fund 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, to a Fund investment vehicle as referred to in **section 59A** of the New Zealand Superannuation and Retirement Income Act 2001, 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 company; and
 - (b) interests in the Fund investment vehicle or company held by the Guardians were owned by the Crown as the Fund company.

Defined in this Act: amount, company, consolidation rules, continuity provisions, group of companies, income, public authority, special corporate entity

14 Schedule 29 amended (Portfolio investment entities: listed investors)

In Schedule 29, part A, replace item 4 with:

- 4 The Crown as owner of the New Zealand Superannuation Fund.
- 4B A Fund investment vehicle, as referred to in **section 59A** of the New Zealand Superannuation and Retirement Income Act 2001, that is treated as being wholly owned by the Crown under **section HR 4B**.
- 4C A company that is treated as being wholly owned by the Crown under **section HR 4B**.