Mixed Ownership Model Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Mixed Ownership Model Bill and recommends by majority that it be passed with the amendments shown.

The minority of us believe that the early reporting back of this bill has provided insufficient opportunity to examine the bill adequately.

Introduction

The bill seeks to allow the Crown to sell up to 49 percent of its shareholding in four State-owned enterprises (SOEs)—Genesis Power Limited, Meridian Energy Limited, Mighty River Power Limited, and Solid Energy New Zealand Limited—while ensuring that the Crown retained majority ownership of these companies and that the non-Crown shareholding did not become concentrated. To do this, the bill would allow these four entities to be removed from the State-Owned Enterprises Act 1986 so that they ceased to be SOEs (as the Act explicitly prevents the Crown from selling shares in an SOE), and to be placed under the Public Finance Act 1989.

The bill would also create a new Part 5A in the Public Finance Act setting out the parameters of the mixed ownership model.

Part 5A would place limits on the ownership of these companies, and the majority of us consider it would provide for the protection of Māori interests. The following are the main features of the new provisions:

- Neither the Crown nor the company could sell or issue shares or securities if it would result in the Crown holding less than 51 percent of the voting rights in the company.
- No non-Crown shareholder could have a relevant interest in shares conferring more than 10 percent of the voting rights in the company. (As discussed later in this commentary, there would be an exemption for trustee and nominee companies.)
- The Crown, as majority shareholder, would not be allowed to act in a way that was inconsistent with the principles of the Treaty of Waitangi.
- The State-Owned Enterprises Act rules governing land memorials and land titles would be preserved in the new legislation.

Transfer of companies

Part 1 of the bill provides for the mixed ownership model companies to be transferred from the State-Owned Enterprises Act to the Public Finance Act, so that they would cease to be SOEs and the Crown could sell some of its shares. The companies would also be removed from the Ombudsmen Act 1975 and the Official Information Act 1982, and added to the list of mixed-ownership enterprises in the Income Tax Act 2007. We understand that it is the Government's intention to effect each company's transfer separately.

As a contingency measure, we recommend by majority an amendment to allow the transfer to be reversed by Order in Council and a mixed ownership model company to be restored to the SOE Act (and to the Ombudsmen Act and the Official Information Act, and the list of State enterprises in the Income Tax Act). In the bill as introduced, there is no provision for such a reverse transfer. As a precaution—for example, in case market conditions deteriorated at the last minute and the Government decided not to proceed with a sale for the time being—the majority of us consider it would be de-

sirable to allow a mixed ownership model company to be restored to its original legislative status. Accordingly, we recommend by majority an amendment to clause 15 to insert new section 3C in the Public Finance Act.

Public Finance Act provisions

For legislative transparency, the majority of us recommend the insertion of clauses 15A and 15B to include references to mixed ownership model companies in sections 4(2)(b) and 27(3) of the Public Finance Act. These amendments would make it clear that a parliamentary appropriation would not be required before a mixed ownership model company could incur an operating loss, and that the Government's interests in the mixed ownership model companies must be included in the Government's annual financial statements.

Controls over shareholdings

Clause 16 would insert new Part 5A, containing sections 45P to 45X, into the Public Finance Act setting out the provisions applying to mixed ownership model companies.

Majority Crown ownership

New section 45R would set a 51 percent minimum on the Crown's shareholding, by prohibiting a shareholding Minister or the company from disposing of shares or consenting to issues of shares or securities if doing so would reduce the Crown's voting rights in the company to less than 51 percent. We note that only the owners of shares with voting rights would have the right to vote on the appointment of directors. The majority of us consider that the provision is an appropriate means of ensuring that the Crown retains control of the companies under the mixed ownership model. The majority of us therefore do not propose any change to this provision.

Widespread non-Crown ownership

New section 45S would set a 10 percent cap on individual non-Crown shareholdings, by providing that no person other than the Crown could have a relevant interest in securities conferring more than 10 percent of the voting rights of a mixed ownership model company.

We note that the definition of "relevant interest" is the same as in the Securities Markets Act 1988 and essentially the same as that used in the Companies Act 1993. As well as covering two related bodies corporate, the definition is wide enough to capture an agreement, arrangement, or understanding between two persons to act in concert in relation to the exercise of voting rights.

We considered whether the cap should be set at a different percentage, but concluded that the level proposed is appropriate; a 10 percent cap has been used by other companies and so is familiar to the market, and it would achieve a widespread shareholding. The majority of us therefore do not propose any change to this provision.

Enforcement of 10 percent cap

New section 45T sets out the means by which any breach of the 10 percent cap would be remedied. The majority of us recommend two amendments to this provision. In the bill as introduced, section 45T(1)(b) would require a person who contravened the cap to take the necessary steps to ensure they were no longer in breach at the end of 60 days after the date of the first contravention. The majority of us recommend amending this provision so that the 60-day period for remedying a breach would start from the date on which the person "becomes aware or ought to have become aware" that they had contravened the 10 percent limit. This formulation would be consistent with the Securities Markets Act, and would avoid argument if a person became aware of a breach only after the 60 days had elapsed.

The majority of us also recommend an amendment to add a new subsection, 45T(2A), to ensure that resolutions passed at a shareholder meeting would not be invalidated if votes were counted in good faith and without knowledge that the votes had been exercised in breach of the 10 percent cap. The majority of us consider that this change would provide important commercial certainty for the companies that a transaction approved in good faith could not later be invalidated if it proved that voting restrictions had been breached without the company's knowledge. The company would still have an obligation and incentive to take appropriate precautions to avoid any shareholder breaching the cap.

We note that new section 45U would provide an exemption from the 10 percent cap for trustee corporations or nominee companies that

had been listed as exempt by the Financial Markets Authority (FMA). As trustees and nominees merely hold interests on behalf of another person, the majority of us consider such an exemption appropriate. The cap would still apply to the person for whom the trustee or nominee was holding the shares, and the trustee or nominee would be required to keep share transactions under review and advise the company if any person for whom it was holding shares breached the 10 percent cap. New section 45V (as included in the bill as introduced) provides for the FMA to remove the exemption for a trustee or nominee if these conditions were not being met.

The majority of us recommend an amendment to clarify how the FMA should exercise its powers when policing the above arrangements. Under the bill as introduced, new section 45W provides that the FMA could use its existing information-gathering powers to exercise its functions under new section 45V, that is, to designate trustee corporations or nominee companies as no longer exempt from the 10 percent cap. The majority of us consider that it would be clearer and more workable to provide the FMA with exactly the same powers through its existing legislation. Accordingly, we recommend by majority that new section 45W be removed from the bill, and that an amendment to the Financial Markets Authority Act 2011 be inserted in Schedule 2 of the bill, adding a reference to sections 45U and 45V. This would ensure that the FMA's powers would be used to monitor and enforce these sections in a way that was consistent with the FMA's existing enforcement framework.

Public Audit Act

In Schedule 2, we recommend by majority inserting an amendment to the Public Audit Act 2001 to make it clear that the mixed ownership model companies would be subject to that Act. There is no doubt about the application of the Public Audit Act, as the Crown would retain a 51 percent shareholding and so would control the composition of the board of each mixed ownership model company. Nevertheless, the majority of us consider the amendment desirable for legislative clarity.

Protection of Māori interests

In Schedule 2, the majority of us recommend inserting an amendment to section 64 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 echoing the requirement for consultation that currently applies to SOEs, and applying it even more broadly to mixed ownership model companies. At present, the Act requires an SOE to consult with Waikato-Tainui whenever the SOE proposes to create or dispose of a property right or interest in the Waikato River and is required to consult with Ministers. The proposed change would oblige mixed ownership model companies to engage with iwi whenever they proposed to create or dispose of any property right or interest in the Waikato River, whether or not consultation with Ministers was required. Such a change was sought by Waikato-Tainui during consultation on the bill.

Green Party minority view

Introduction

The Green Party is opposed to the Mixed Ownership Model Bill and recommends the bill does not proceed.

Our opposition to the bill is based on

- the Government accounts being permanently worse off as a result of the mixed ownership model
- flaws in the Government's arguments in favour of the mixed ownership model
- negative impact on New Zealand's external debt situation as a result of the mixed ownership model
- reduction in Government income as a result of the mixed ownership model
- higher power prices as a result of the mixed ownership model
- the mixed ownership model limiting the ability to invest in renewables.

This minority view also sets out what we see as the alternatives to the mixed ownership model.

Government accounts permanently worse off

BERL research, commissioned by the Green Party, shows that a programme of asset sales to finance the construction of new assets leaves

the Government accounts permanently worse off (compared to the baseline) in terms of Government debt, debt ratio, net worth and total assets.

In the short term the option of selling investment assets to fund the construction of new assets leaves the Government's accounts in a worse situation compared to the baseline.

- The annual deficit increases as a result of the loss of dividend revenue, with no compensating decrease in spending.
- Assuming that the increased deficit is funded out of "cash reserves", total assets decline. This leads to a deterioration in net worth.
- Debt remains the same, but the debt ratio increases as a result of the decline in total assets.

In the long term the annual deficit returns to baseline, but net worth, total assets, and debt ratio are worse than baseline. The short-term impact on the financial surplus is not recouped in subsequent periods, leaving this permanent impact on net worth and total assets.

Flaws in Government arguments in favour of mixed ownership model

We asked BERL to examine the various arguments the Government has put forward for the asset sale programme; BERL determined that while each of the arguments had some merit they did not rely on the adoption of the Mixed Ownership Model Bill.

Improvement in the pool of investments available to New Zealand investors

Households (colloquially termed "mom and pop investors") could be attracted to direct investment opportunities in Government bonds or the SOEs issuing bonds. These investment vehicles could be in the guise of infrastructure or national development bonds directly targeted at the retail investor. Therefore domestic investment options could be made available that do not rely on selling the assets.

Allowing mixed ownership companies access to capital to grow

The objective of allowing mixed ownership companies access to capital to grow without depending entirely on the Government need not

require a partial sale of equity. To access capital, mixed ownership companies need to attract funds from the private sector. This can be done, subject to the maintenance of a prudent debt-to-equity ratio, without the reduction in an existing owner's equity stake. Accessing funds to finance growth, through the use of debt instruments, is standard practice in the business sector.

Allowing for the external oversight of companies

This objective could be achieved through alternative means such as the appointment of independent directors, directors/boards reporting to a parliamentary committee (as opposed to Ministers), or the setting of clearer, transparent directions from shareholding Ministers as to market-related objectives. This objective does seem in contradiction to the stated expectation of a gain on sale of these assets (as forecast in the 2012 Budget Policy Statement). Were these companies' performances below par and in need of sharper discipline, such a gain on sale would seem unlikely.

Negative impact on New Zealand's external debt situation

As noted in the 2010 Budget, "New Zealand's largest single vulnerability is now its large and growing net external liabilities. New Zealand now owes the world $168 billion, or around 90 percent of (annual) GDP."

The BERL report stresses the difference between the Government's debt and the external debt in any discussion in regards to the Government's financial situation being used as justification for a programme of partial asset sales.

While the Government has stated that New Zealanders will be at the front of the queue to purchase the investment assets being sold, some assets may be sold to overseas investors. Consequently, the portion of company earnings (dividends and profits) that relate to overseas investors will be an outflow (or payment) on the external accounts. This would ultimately represent, assuming all else remained unchanged, a permanent deterioration in the external deficit and the level of external debt.

Further, while the initial offering may be directed towards domestic purchasers, future private share transactions could increase the portion of shares (and earnings) in overseas investors' hands. Such an

outcome would lead to a further deterioration in the external deficit and external debt position.

Reduction in Government income

By the Government's own estimate, it would lose $360 million a year in profits from asset sales—$200 million in dividends and $160 million in retained profits. That is a low estimate, based on the average dividend return of $258 million in the past six years from the assets the Government intends to sell. Even accepting the Government's estimates on sales revenue, the reduced interest on debt is only $266 million a year. That means the Government would lose $94 million net each year from selling the assets.

That money has to come from somewhere. It could come from higher taxes. It could come from cuts to public services. Or, most likely, it would come from more borrowing. The Government would get a one-off boost from selling the assets but that loss of dividends, made up for with borrowing, would mount year after year forever, long after the sales proceeds were gone.

On top of those dividends, the Government makes a gain when the value of the companies increases (equity gain). That isn't money in the bank, like dividends, but it is an asset that gives the Government's debtors more confidence and makes it less likely that we will get another credit downgrade.

The four energy companies had an average return on investment of 18.5 percent per annum over the last five years, including both equity gain and dividends. This is more than four times higher than the Government's cost of borrowing at 4 percent.

Higher power prices as a result of the mixed ownership model

On average, privately-owned electricity companies charge 12 percent more for electricity than publicly-owned ones. Privately-owned electricity companies have complained to publicly-owned ones that they are not charging enough for the privately-owned companies to make a profit, and the CEO of Contact Energy has said that electricity prices need to rise for private investors to make a profit.

Publicly-owned power companies can make a profit for the Government while charging less than privately-owned electricity companies because the government's cost of borrowing is only 4 percent

whereas a private investor's cost of borrowing is around 8 percent. That means that to cover its interest costs the Government just needs a dividend of over 4 percent but a private investor needs twice that much.

If the assets are sold to private, often overseas, buyers it is likely they would demand higher prices. The boards of companies would be legally required to act in the best interests of the shareholders, and their rights to a higher profit would have to be respected. To make higher profits, they would charge higher electricity prices.

Mixed ownership model limits the ability to invest in renewables

In a world that is carbon-constrained and economically volatile now is not the time for New Zealand to sell off our highly successful, resilient, renewable energy powerbase. These are publicly owned entities that have been grown and owned by New Zealanders who have spent years nurturing and developing the expertise that could be the cornerstone of a cleaner, smarter, robust economy.

The Government is selling our best opportunity to become large-scale exporters of renewable energy technology. Private-sector imperatives will likely delay and deter the switch to increased renewable use, which could further affect New Zealand's chance of becoming a cutting-edge developer and exporter of renewable technologies. Prized energy assets like the Manapouri power station could also be sold off under the legislation into full foreign ownership and control.

There are huge risks in further binding our economic and energy fortunes to the whims and profit margins of overseas investors. It could mean that we will lose the power to direct these energy companies towards cleaner energy technologies and to make decisions that will determine our country's overall energy strategy and mix. With the right vision and political will, we can keep their renewable energy know-how and innovation in New Zealand, capitalising on the potential to create thousands of green, highly paid jobs; insulate our economy from the volatile fossil fuel markets; and build a more sustainable future for our country.

Alternative Solutions

Returning to monopoly public ownership of the main generating capacity

This could be done under tight oversight and control to ensure efficiency, give it a responsibility for energy conservation as much as new generating capacity, require it to charge average costs or below for a base usage allocation for households, and require a proportion of small-scale sustainable generation, such as that from wind and tidal sources, which could come from independent providers.

Feed-in tariffs for firms and households producing their own electricity from small-scale renewable generation should also be part of the mix. The monopoly public generator could also act as default retailer to ensure there are reasonably priced services for low-income and other households that may be considered undesirable by for-profit retailers.

More energy-efficient power production

New generating capacity should be required to be increasingly renewable, and the need for new capacity should be, as far as possible, replaced by conservation measures. New advances in technology can save hugely in power costs using smaller and more efficient and decentralised power plants, which are also more resilient to natural disasters such as earthquakes.

This seems unlikely to happen with the only incentives being a weak emissions trading scheme which pushes up power prices and creates an incentive for companies to charge more not save more. Regulation is required to force companies to explore other options which will save the country drastically in the long run.

Investment in green technology and jobs

The Green Party and many environmental NGOs have strongly advocated an alternative vision that creates decent jobs, adds resilience to our economy, and protects our natural environment. By retaining ownership in our energy companies, we could focus their profits and research and development investment on renewable energy opportunities.

The global renewable energy sector is growing rapidly into a market worth up to $800 billion by 2015. These power companies have the expertise and the capital to take advantage of this growing industry and create tens of thousands of jobs here in New Zealand. Privatisation will end that opportunity to create investment and employment opportunities in the clean energy revolution.

National energy strategy

The development of a comprehensive national environmental strategy around power generation is necessary to deliver a positive environmental future. A move to privatise the four energy companies will compromise New Zealand's ability to implement such a strategy in order to give our children the environmental future they deserve.

The State-Owned Enterprises Act provides a ready-made vehicle for the Government to roll out renewable energy and energy efficiency solutions that may not be commercially viable for a profit-driven energy company but may deliver net benefits for the country as a whole. Possible examples include smart meters, electric vehicles and infrastructure, small-scale renewable generation, and bioenergy.

New Zealand Labour Party minority view

Labour agrees with the vast majority of submitters that this legislation is unnecessary and misguided, and will increase power prices, increase asset inequality, increase the government deficit, increase the current account deficit, and leave New Zealand worse off.

These assets were built by generations of New Zealanders and survived during times that were tougher than today. The Government has no mandate to sell them now by the narrowest of parliamentary margins. As one submitter stated, "We are robbing the future by selling off something paid for in the past".

Process

The unnecessarily rushed methods adopted by the committee in considering this legislation were forced upon submitters and opposition members by the National Party majority on the committee.

At the meeting of the Finance and Expenditure Committee on 30 May 2012, six weeks before the 16 July reporting date, after just

one hour of consideration following the hearing of submissions, the Chair of the committee advised that it was his intention to complete consideration and move to deliberation on the bill on 7 June, five weeks ahead of the reporting date allowed by Parliament.

This minority view was required to be submitted prior to the 7 June meeting. The opposition motion that minority views not be required before consideration was completed was opposed and defeated by Government members.

This process has meant that opposition parties have not had the normal opportunity to put the bill or our minority views to our caucuses prior to deliberation.

Consideration has been so rushed that we have not even been able to seek proper advice confirming or disproving the evidence given by submitters about average residential electricity prices being $265 per annum cheaper via the publicly-owned SOEs than are charged by privately-owned competitors, nor the evidence from submitters that the share sales will result in the partially privatised SOEs increasing their prices to those charged by the private sector participants.

When opposition members complained that their rights and proper committee processes were being over-ridden, the Hon Nick Smith said we were wrong and asserted a similar process was used by the Labour majority to push through the emissions trading legislation in 2008. In fact the Finance and Expenditure Committee report on that bill shows that the committee heard 58 hours of submissions and took almost 16 hours for consideration.

The treatment of submitters also left much to be desired. Treasury officials wrote the departmental report before all submissions were heard. On many occasions, questions from the committee had to be truncated because of time constraints. Some submitters were treated disrespectfully by National members of the committee, with one asked who he had voted for in the 2011 election. The accessibility of the process was constrained for submitters. Only five minutes were given for some submitters. There was only one half-day of hearings in the South Island, with no hearings in Dunedin. There was very short notice for teleconferences.

Overall it seems obvious to Labour members that the processes adopted by the Government members have been used to minimise the length of the process in order to limit adverse publicity, rather

than enable the committee to go about its business in a thorough and properly considered way.

As one submitter put it, "The Government has cotton wool in its ears".

Fiscally irrational

Submitters by an overwhelming majority did not accept the economic rationale for the planned asset sales.

Privatisation makes the Government's deficit worse. Treasury estimated in the pre-budget fiscal update that the Government saves $266 million in borrowing costs yet it loses $360 million a year in profits. That's a $100 million a year loss to the Crown from selling our assets.

The fact that selling the SOE shares makes the deficit worse was hidden from voters during the election, because Treasury allowed the Government to book the proceeds of asset sales in the pre-election fiscal update without disclosing the loss of profits on the interests sold. This was scandalous, and allowed National to avoid this truth.

External private debt is a bigger issue for the New Zealand economy than public debt, and this will worsen the problem. In the long term this will have a negative effect on New Zealand's balance of payments as more profits go overseas. Contact Energy, raised by many submitters, is a ready example of how ownership and dividends will head offshore.

Even if "only" 15 percent of the shares are owned by foreigners, that's $100 million a year in profits going offshore, worsening our current account deficit, and another $2 billion on our country's net international liabilities. To sell off these assets, the Government is also forking out over $120 million in fees to merchant bankers.

National doesn't have an accurate idea of what they're going to get for these assets. Last year the Prime Minister said the sales would free up as much as $10 billion, then it became $7 billion, now it's $6 billion. Bill English has said the amount is a "guess". It seems the Government is determined to proceed at any price.

Selling at a time of subdued economic activity and flat capital markets is likely to reduce the price obtained. Selling off four energy companies over three years may also flood the market and lead to

lower prices for the assets than if the sales were staggered over a longer period of time.

The Crown borrows at around 4 percent per annum. These assets are a profitable investment for the Crown, which returns hundreds of millions in dividends, which pay for schools and hospitals. Private investors have a higher cost of capital. The CEO of Contact Energy recently told commercial investors that they shouldn't invest in energy projects until prices rise because a 6 percent return is not enough to cover their desired 8 percent cost of capital.

Only one of the oral submitters was willing to speak in favour of the legislation as currently proposed. Under questioning they conceded that other options such as the issue of bonds may be a better alternative to asset sales for paying down debt or funding capital spending although they noted that this was not the proposal they were invited to comment on.

Even if selling down holdings in these companies was desirable, a blanket sale of 49 percent is not an optimal figure in any economic sense; it is a political number backed by no analysis of the effect on future efficiency or profitability of the affected companies.

Economic development

The power network is, like the water system, of strategic importance to New Zealand's economy. Many submitters noted that energy and water will be amongst the most critical inputs to our economy in the 21st Century.

The sale of strategic assets is incompatible with the "NZ Inc." approach; it ignores the importance of energy to growing the economy.

Public ownership ameliorates problems with the uncompetitive market in the electricity sector. Excessive profits through excessive prices found by the Wolak Review were returned to the public via Crown ownership.

The prime focus of the so-called market is profit, not security of supply. In the absence of true competition, with profit maximisation as the almost singular aim of private shareholders, there is limited incentive for power companies to improve energy security. Brownouts and the gaming of electricity spot prices, while sometimes profitable for energy companies, can have significant negative effects on productivity and economic growth.

Past privatisations (such as New Zealand Rail) have resulted in asset stripping and the running-down of utilities at the cost of economic development. Similarly Air New Zealand had to be bought back by the last Government after it failed, for reasons of the national interest.

Security of supply issues have been predominantly addressed by SOE generators, who have invested more in new generation than their competitors. Since Contact Energy was privatised, its proportion of generation has dropped while its profitability and retail income have increased.

The weighted average charge for domestic electricity users buying from SOEs is $265 per annum less than the average for non-SOE suppliers. It is likely that once privatised the former SOEs will pursue price-maximising strategies which will see their prices rise. This will increase power prices, especially to residential consumers.

The idea that the sell-off is necessary to create investment opportunities for New Zealand investors is a weak one. The Labour Party does not accept that New Zealand capital markets are so inept that they can only succeed through trading what the Government has created. With the right savings, tax, and investment policies in place New Zealand private enterprise will prosper. The sale of the SOEs is no substitute for those policies.

New Zealand's renewable electricity assets are a point of economic advantage for New Zealand, created by generations of New Zealanders through their Government. They ought to stay in New Zealand control for the benefit of all New Zealanders, and be held on their behalf by the Government.

One submitter cited the example of Norway which retained control of its oil resources, ensuring Norway's social and economic security in the following decades. New Zealand is a world leader in renewable energy, yet this Government plans to do the opposite of Norway and sell off an industry sector that will provide the backbone of a carbon-constrained 21st-Century economy.

Inequality

Public ownership keeps prices down. In 84 percent of lines company areas, the most expensive electricity retailer is privately owned. Nationwide, private power prices are an average of 12 percent higher

than SOE prices. Weakening public ownership will remove a major restraint on power prices.

Several submitters stated that this legislation will cause power price rises, particularly for low-income residential users. Data from the MED presented by Molly Melhuish on behalf of Grey Power shows that an average customer consuming 8,000 kWh per year will pay $265 more per annum to an "average" private electricity company than to an "average" SOE.

Not one electricity generator or retailer submitted on the bill, which was surprising. Some submitters noted this and said it was because there is no answer to the evidence that these sales will lead to increases in electricity prices.

Many submitters were concerned at the impact asset sales would have on "fuel poverty". One submitter stated that 60 percent of NZ housing stock is below WHO standards and 25 percent of New Zealanders currently live in fuel poverty. The price rises that privatisation would instigate will make this problem worse. As one submitter from Grey Power noted, "There is no doubt in our minds people will die from the cold because of this bill".

The 2008 Wolak Report was commissioned by the Commerce Commission during the term of the last Labour Government. The report was delivered after National was elected. It found up to $4.2 billion of overcharging in the electricity industry in the 2000s suggesting there are underlying problems with the market. Upon taking office, National largely ignored the report and prices have increased further since, albeit at a slower rate than in the prior decade.

Bill English has admitted that CEO salaries are already going up because of National's privatisation agenda. Kiwis pay for these extra costs through higher power prices.

Currently, SOEs are legally required to consider the impacts of their actions on New Zealand communities. That means when they think about putting up power prices they have to consider if it will be affordable for their customers, and if it will damage economic growth. National is not replicating that social responsibility clause in this legislation. Many submitters also noted that the removal of the social responsibility clause could encourage price gouging. The submission from the Service and Food Workers Union noted the importance of the social responsibility clause, stating that their members (who are

relatively low-paid) spend up to a fifth of their income on energy. A Dunedin City Councillor submitted on the problems the council had ensuring continued provision of public services after the privatisation of public assets.

The submission from Caritas noted that state ownership is a better way to ensure the provision of essential services, particularly for the most poor and vulnerable consumers. A number of submitters also noted the disparity in the increase of residential and industrial prices since commercialisation of the industry in the 1990s, suggesting that this gap is likely to widen further under privatisation.

Sovereignty

National says that "up to" 30 percent of the shares they want to sell will go to foreigners. But there is nothing in this legislation to ensure it won't be more. Over time it is likely initial purchasers of shares will sell to overseas interests.

John Key made a personal commitment during the campaign that there would be a cap on foreign ownership. This legislation does nothing to deliver on that commitment. In the recent sale of QR National in Queensland, at least 35 percent of the shares went offshore. Although Tony Ryall has raised the possibility of a "loyalty bonus" for domestic investors, (like that used for the sale of QR National) this was not discussed in the committee. Nothing is present in this legislation to ensure that "Kiwis are first in the queue" as the Prime Minister promised during the election campaign.

Many submitters noted that in the sale of public companies to private investors, rather than 49 percent, around 20–25 percent of active shareholding is the "tipping point" at which shareholders have sway over the direction of the company. At 49 percent private ownership, the pressure to maximise profits through price maximisation will prevail. Many submitters also believe the sales will not stop at 49 percent, and that there will be pressure for the proportion of private ownership to increase in the future.

As noted by several submitters the restrictions around the "10 percent" cap on shareholdings is light-handed and no provision has been made for actively policing this loophole.

Individual energy assets, like the Manapouri power station for example, could be sold off into full foreign ownership and control by the companies being partially privatised under this legislation.

The submission of the Office of the Ombudsmen stated that no sufficient grounds have been advanced for removing the companies from the reach of the Official Information Act (OIA) while the companies remain in majority Crown ownership. No information of commercial sensitivity would be at risk of disclosure because the Act already allows non-disclosure in those situations. The loss of OIA applicability could also reduce accountability and increase the risk of cronyism and corruption in these companies.

Some submitters raised concerns about "state capture" suggesting the Government departments involved in the sale process including Treasury were "captured" by the financial services industry and were unable to provide objective, independent advice on the sale of assets. Many submitters also noted their concern that investment rules in free trade agreements will constrain future governments from altering energy policy.

Mandate

The vast majority of New Zealanders oppose asset sales. They know it doesn't make sense to flog off these strategically vital and highly profitable assets.

National does not have a mandate; in 2011 40,000 more people voted for parties that oppose asset sales than support them. It is only the deals National cut with ACT and United Future that are allowing these sales to proceed.

Of the 1,448 submissions listed in the departmental report, 9 were in favour, 1,421 were opposed, which equates to 0.6 percent in favour and 98.1 percent against.

The fact that the asset sales increased the deficit was hidden from view during the election because of the mishandling of the issue in the pre-election fiscal update, as discussed above.

Deals with merchant banks to sell off the assets were signed and agreed upon by the Government well before approval of this legislation by Parliament. Furthermore, a website advertising share sales has been "live" for weeks in advance of the legislation being approved by Parliament.

Environment

World leaders of the 21st Century such as China, Google Inc. and Apple Inc. all have long-term vision and are actively investing in renewable energy. The National-led Government is selling a major part of the public's current interest in renewables.

These assets give New Zealand a strategic advantage in renewables, especially with the cost of carbon predicted to rise rapidly over the coming decades.

Privatised and solely focussed on profit, it is possible that power companies will be more open to carbon-intensive energy sources that are counter-productive in the fight against climate change.

Treaty of Waitangi

The Treaty protection provided in the legislation is inadequate; it only applies to the Crown and allows assets of the SOEs to be sold without recourse to Parliament. The Treaty obligations of the Crown are not even being applied to directors appointed by the Crown.

The submission of Ngāti Tūwharetoa was backed by former National MP Georgina te Heuheu, who campaigned for National in the 2011 election. The iwi is concerned the sell-off will infringe property rights it asserts to water and land underlying waterways. It is also concerned consultation has been inadequate.

Ngāti Tūwharetoa emphasised the importance of resolving this issue before the sales proceed. The submission was not taken seriously by the National members and an outdated report was used to rebuff their submission.

In the view of Tūwharetoa public ownership of the power companies provides strength and security and public benefits for New Zealand through collective ownership. This is akin to the Māori principle of kaitiakitanga which is intergenerational and encourages a custodial/guardianship view of business and assets, favouring long-term stability over short-term gain. Tūwharetoa believe that private control of the water resource and structures, and privatisation of the economic benefits which are earned from their use, is in breach of the understandings they had with the Crown when the power stations were developed.

Ngati Tūwharetoa stated this issue risks upsetting Crown–Māori relationships and will trigger arguments over the ownership of water.

Conclusion

There is no evidence that the sale of state assets will improve the economic, social, and fiscal position of New Zealand. Rather, this legislation will increase power prices, increase asset inequality and make New Zealand poorer and more indebted to the world in the long term. This legislation is unnecessary and deeply misguided. The numerous faults in this legislation identified by submitters are compounded by a process of inadequate consideration and pre-emptory deliberation. By failing to properly consider submissions on this bill, the Government has abused the normal processes of the select committee and bequeathed a series of problems for future Governments to rectify.

Appendix

Committee process

The Mixed Ownership Model Bill was referred to the committee on 8 March 2012. The closing date for submissions was 13 April 2012. We received and considered 1,489 submissions from interested groups and individuals. We heard 124 submissions, holding hearings in Auckland and Christchurch as well as in Wellington.

We received advice from the Treasury.

Committee membership

Todd McClay (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
Hon Clayton Cosgrove
Paul Goldsmith
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Hon Dr Nick Smith

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Tony Ryall

Mixed Ownership Model Bill

Government Bill

Contents

Schedule 2
Amendments to other enactments

The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Mixed Ownership Model Act **2012**.

2 Commencement
(1) **Part 2** and **Schedules 1 and 2** come into force on the day after the date on which this Act receives the Royal assent.
(2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made bringing different provisions into force on different dates.

Part 1
Provisions for companies to cease to be State enterprises and to become mixed ownership model companies

Amendments to State-Owned Enterprises Act 1986

3 Amendments to State-Owned Enterprises Act 1986
Sections 4 and 5 amend the State-Owned Enterprises Act 1986.

4 Schedule 1 amended
(1) In Schedule 1, repeal the item relating to Genesis Power Limited.
(2) In Schedule 1, repeal the item relating to Meridian Energy Limited.
(3) In Schedule 1, repeal the item relating to Mighty River Power Limited.
(4) In Schedule 1, repeal the item relating to Solid Energy New Zealand Limited.

5 Schedule 2 amended

(1) In Schedule 2, repeal the item relating to Genesis Power Limited.

(2) In Schedule 2, repeal the item relating to Meridian Energy Limited.

(3) In Schedule 2, repeal the item relating to Mighty River Power Limited.

(4) In Schedule 2, repeal the item relating to Solid Energy New Zealand Limited.

Amendments to other enactments

6 Amendments to Ombudsmen Act 1975

(1) This section amends the Ombudsmen Act 1975.

(2) In Schedule 1, Part 2, repeal the item relating to Genesis Power Limited.

(3) In Schedule 1, Part 2, repeal the item relating to Meridian Energy Limited.

(4) In Schedule 1, Part 2, repeal the item relating to Mighty River Power Limited.

(5) In Schedule 1, Part 2, repeal the item relating to Solid Energy New Zealand Limited.

7 Amendment to Official Information Act 1982

(1) This section amends the Official Information Act 1982.

(2) In Schedule 1, repeal the item relating to Solid Energy New Zealand Limited.

8 Amendments to Public Finance Act 1989

(1) This section amends the Public Finance Act 1989.

(2) In **Schedule 5**, insert in its appropriate alphabetical order "Genesis Power Limited".

(3) In **Schedule 5**, insert in its appropriate alphabetical order "Meridian Energy Limited".

(4) In **Schedule 5**, insert in its appropriate alphabetical order "Mighty River Power Limited".

(5) In **Schedule 5**, insert in its appropriate alphabetical order "Solid Energy New Zealand Limited".

9 Amendments to Income Tax Act 2007

Sections 10 and 11 amend the Income Tax Act 2007.

10 Income Tax Act 2007, Schedule 36, Part A amended

(1) In **Schedule 36, Part A**, repeal the item relating to Genesis Power Limited.

(2) In **Schedule 36, Part A**, repeal the item relating to Meridian Energy Limited.

(3) In **Schedule 36, Part A**, repeal the item relating to Mighty River Power Limited.

(4) In **Schedule 36, Part A**, repeal the item relating to Solid Energy of New Zealand Limited.

11 Income Tax Act 2007, Schedule 36, Part B amended

(1) In **Schedule 36, Part B**, insert in its appropriate alphabetical order "Genesis Power Limited".

(2) In **Schedule 36, Part B**, insert in its appropriate alphabetical order "Meridian Energy Limited".

(3) In **Schedule 36, Part B**, insert in its appropriate alphabetical order "Mighty River Power Limited".

(4) In **Schedule 36, Part B**, insert in its appropriate alphabetical order "Solid Energy New Zealand Limited".

Part 2
Ongoing provision for mixed ownership model companies

Amendments to Public Finance Act 1989

12 Amendments to Public Finance Act 1989

Sections 13 to 17 amend the Public Finance Act 1989.

13 Section 1A amended (Purpose)

After section 1A(2)(e), insert:

"(ea) places limits on the ownership of the companies named in **Schedule 5**; and".

14 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

"**mixed ownership model company** has the meaning set out in **section 45P**".

15 ~~New section 3B inserted (Power to amend Schedule 5 to reflect name changes)~~ New sections 3B and 3C inserted

After section 3A, insert:

"**3B Power to amend Schedule 5 to reflect name changes**

The Governor-General may, by Order in Council, amend **Schedule 5** to replace the name of any company in recognition of a change in its name.

"**3C Power to amend Schedule 5 to restore company to State-Owned Enterprises Act 1986**

"(1) The Governor-General may, by Order in Council, repeal the name of a company from **Schedule 5** and insert the name of that company in Schedules 1 and 2 of the State-Owned Enterprises Act 1986.

"(2) Every Order in Council made under **subsection (1)** must (unless the amendment is redundant), and is empowered to, also—

"(a) insert the name of that company in Part 2 of Schedule 1 of the Ombudsmen Act 1975; and

"(b) repeal the name of that company from **Part B** of **Schedule 36** of the Income Tax Act 2007 and insert the name of that company in **Part A** of that schedule.

"(3) An Order in Council may be made under this section only if the Governor-General in Council is satisfied, at the time of the making of the Order in Council, that 100% of the issued ordinary shares in the company are held by Ministers of the Crown on behalf of the Crown."

15A Section 4 amended (Expenses or capital expenditure must not be incurred unless in accordance with appropriation or statutory authority)

After section 4(2)(b)(ii), insert:

"(iia) a mixed ownership model company listed in **Schedule 5**; or".

15B Section 27 amended (Annual financial statements of Government)

After section 27(3)(b), after paragraph (b), insert:

"(ba) all mixed ownership model companies listed in **Schedule 5**:".

16 New Part 5A inserted

After Part 5, insert:

"Part 5A
"Mixed ownership model companies

"*Preliminary provisions*

"**45P Definitions of mixed ownership model company and other terms**

"(1) In this Act, **mixed ownership model company** means a company listed in **Schedule 5**.

"(2) In this Part,—

"**10% limit** has the meaning set out in **section 45S**

"**Crown** means Her Majesty the Queen in right of New Zealand

"**FMA** means the Financial Markets Authority established under section 6 of the Financial Markets Authority Act 2011

"**relevant interest** has the meaning given to it by sections 5 to 6 of the Securities Markets Act 1988

"**security** has the meaning set out in paragraph (a) of the definition of that term in section 2(1) of the Securities Markets Act 1988

"**voting right** means a currently exercisable right to cast a vote at meetings of shareholders of a company (and, for this purpose, a right is treated as currently exercisable even if **section 45T(1)(c)** applies to prevent its exercise), other than a right to vote that is exercisable only in 1 or more of the following circumstances:

"(a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists:

"(b) on a proposal that affects rights attached to the security that confers the voting right:
"(c) on a proposal to put the company into liquidation:
"(d) during the liquidation of the company:
"(e) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company.

"**45Q Treaty of Waitangi (Te Tiriti o Waitangi)**

"(1) Nothing in this Part shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

"(2) For the avoidance of doubt, **subsection (1)** does not apply to persons other than the Crown.

"Compare: 1986 No 124 s 9

"51% Crown control

"**45R Restriction on reduction of the Crown's holding below 51% control**

"(1) No Minister who is a shareholder in a mixed ownership model company may take any of the following actions if it would result in the Crown holding less than 51% of the voting rights in the company:
"(a) sell or otherwise dispose of any shares in the company held in the Minister's name:
"(b) permit shares in, or other securities of, the company to be allotted or issued to any person.

"(2) A mixed ownership model company must not issue, acquire, or redeem shares in, or other securities of, the company if the issue, acquisition, or redemption would result in the Crown holding less than 51% of the voting rights in the company.

"(3) An issue, acquisition, or redemption of shares or other securities is invalid and of no effect to the extent that it breaches **subsection (2)** (and, if more than 1 person has participated in an issue of shares or other securities affected by this provision, the invalidity applies to the issue of shares or other securities to those persons on a pro-rata basis).

"10% limit

"**45S 10% limit on holdings by persons other than the Crown**

"(1) No person (other than the Crown) may have a relevant interest in securities that confer more than 10% of the voting rights of a mixed ownership model company (the **10% limit**).

"(2) **Subsection (1)** is subject to **section 45U**.

"**45T Effect of exceeding 10% limit**

"(1) Every person who contravenes **section 45S** must—

"(a) comply with any written notice that the person receives from the mixed ownership model company requiring that the person sell or otherwise dispose of interests in securities of the company, or take any other steps that are specified, for the purpose of ensuring that the 10% limit is not exceeded; and

"(b) without limiting **paragraph (a)**, take the steps that are necessary to ensure that the person is no longer in contravention of that section at the end of 60 days after the ~~date of the first contravention~~ date on which the person becomes aware, or ought to have become aware, of the contravention; and

"(c) while the person contravenes that section, not exercise or control the exercise of the voting rights that exceed the 10% limit.

"(2) An exercise of a voting right in contravention of **subsection (1)(c)** is of no effect and must be disregarded ~~by the person responsible for~~in counting the votes concerned.

"(2A) However, **subsections (1)(c) and (2)** do not invalidate a resolution if the votes concerned were counted by the company in good faith and without knowledge that the voting rights were exercised in contravention of **subsection (1)(c)**.

"(3) Nothing in **section 45S** or this section limits or prevents the constitution of a mixed ownership model company from providing for the 10% limit and the consequences of a person exceeding the 10% limit (including to implement, or to add to, the consequences set out in this section).

"Compare: 1988 No 234 s 36U

"**45U Exemption from 10% limit for trustee corporations and nominee companies, etc**

"(1) A person (**A**) may exceed the 10% limit without contravening **section 45S** if—

"(a) A complies with both of the following subparagraphs:

"(i) A exceeds the 10% limit merely because A holds securities on behalf of another person in the ordinary course of business as a trustee corporation or nominee company; and

"(ii) section 31(1)(b) of the Securities Markets Act 1988 currently applies to A (and so exempts A as a trustee corporation or a nominee company under that Act); or

"(b) A exceeds the 10% limit merely because A is attributed with (under section 5B of the Securities Markets Act 1988) the relevant interests of another person who is exempt from the 10% limit under **paragraph (a)** or this paragraph.

"(2) A person to whom **subsection (1)(a)** applies must—

"(a) keep under continuing review the transactions of all persons for whom A holds securities of the mixed ownership model company in A's name; and

"(b) inform the mixed ownership model company if any of those persons exceeds the 10% limit.

"(3) The exemption under this section does not apply to a person who is currently designated under **section 45V** as no longer exempt.

"Compare: 1988 No 234 ss 31–32A

"**45V Power of FMA to remove exemption from 10% limit for trustee corporations, nominee companies, etc**

"(1) The FMA may, by notice in the *Gazette*, designate a person as no longer exempt under **section 45U** if it is satisfied that—

"(a) the person has not complied with the condition in **section 45U(2)**; or

"(b) the exemption is being used for the purpose or purposes of circumventing, evading, or defeating the operation of the 10% limit taking into account the nature, substance,

and economic effect of the interest or relationship or other facts (and not the mere form).

"(2) The FMA may, by notice in the *Gazette*, revoke a designation under this section.

"(3) A notice under this section takes effect from the date stated in the notice (which must not be earlier than the date of the *Gazette* notice).

"(4) Before designating a person as no longer exempt, the FMA must—

"(a) do everything reasonably possible on its part to advise the person of the proposed designation; and

"(b) give the person a reasonable opportunity to make submissions to the FMA on the proposal.

"(5) **Subsection (4)** does not apply to a designation if the FMA considers that it is desirable in the public interest for the exemption to be removed urgently.

"(6) Failure to comply with **subsection (4)** does not invalidate the designation.

"Compare: 1988 No 234 ss 48C, 48D

~~"45W FMA may use its powers for purposes of exemption~~

~~The FMA may exercise its powers under subpart 1 of Part 3 of the Financial Markets Authority Act 2011 for the purposes of section 45V.~~

"Continuing application of certain provisions

"**45X Certain provisions of State-Owned Enterprises Act 1986 and other enactments continue to apply**

"(1) Sections 22 to 30(1) of the State-Owned Enterprises Act 1986, the provisions listed in **subsection (2)**, and any Order in Council made at any time under any of those provisions continue to apply to a mixed ownership model company, despite it ceasing to be a State enterprise, as if—

"(a) the company were a State enterprise and a company named in Schedule 2 of the State-Owned Enterprises Act 1986; and

"(b) the Minister of Finance and the Minister responsible for that company were the shareholding Ministers for the company.

"(2) The provisions are—

"(a) the definition of State forest land in section 2(1) and sections 24(1) and (6), 24B(4) to (6), and 61(2) of the Conservation Act 1987:

"(b) section 11 of the Crown Pastoral Land Act 1998:

"(c) sections 8A to 8H of the Treaty of Waitangi Act 1975.

"Compare: 1998 No 99 s 3(2), (4)".

17 New Schedule 5 inserted

After Schedule 4, insert the **Schedule 5** set out in **Schedule 1** of this Act.

Amendments to other enactments

18 Amendments to other enactments

Amend the enactments specified in **Schedule 2** as set out in that schedule.

Schedule 1 s 17
New Schedule 5 inserted

Schedule 5 s 45P
Mixed ownership model companies

Schedule 2

s 18

Amendments to other enactments

Electricity Act 1992 (1992 No 122)

In section 2(1), replace the definition of **corporation** with:

"**corporation** means a State enterprise (within the meaning of section 2 of the State-Owned Enterprises Act 1986) or a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that is a generator of electricity, and includes any of its subsidiaries".

Employment Relations Act 2000 (2000 No 24)

In Schedule 1, Part A, replace clause 3 with:

"2A The production or supply of electricity.

"3 The operational management of a State enterprise (within the meaning of section 2 of the State-Owned Enterprises Act 1986) or a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that is a generator of electricity."

Finance Act (No 2) 1988 (1988 No 128)

Repeal sections 7 to 9 and the cross-heading above section 7.

Financial Markets Authority Act 2011 (2011 No 5)

In Schedule 1, Part 1, after the item relating to Parts 4 and 5 and Schedules 1 and 2 of the KiwiSaver Act 2006, insert "**Sections 45U and 45V** of the Public Finance Act 1989".

Income Tax Act 2007 (2007 No 97)

After section CW 38(5), insert:

"*Exclusion: mixed-ownership enterprises*

"(5B) **Subsection (2)** does not apply to an amount of income derived by a mixed-ownership enterprise."

In section CW 38, in the list of defined terms, insert in its appropriate alphabetical order "mixed-ownership enterprise".

Income Tax Act 2007 (2007 No 97)—*continued*

After section IC 3(2), insert:

"*Restriction for mixed-ownership enterprises*

"(2A) A mixed-ownership enterprise may be included in a group of companies only if, at the particular time or for the particular period, no other company in the group is a mixed-ownership enterprise."

In section IC 3, in the list of defined terms, insert in its appropriate alphabetical order "mixed-ownership enterprise".

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

"**mixed-ownership enterprise** means an entity specified in **schedule 36, part B** (Government enterprises)".

In section YA 1, definition of **public authority**, paragraph (d), replace "that section" with "that section; and".

In section YA 1, definition of **public authority**, after paragraph (d), insert:

"(e) does not include a mixed-ownership enterprise".

In section YA 1, definition of **state enterprise**, replace "schedule 36 (State enterprises)" with "**schedule 36, part A** (Government enterprises)".

After section YB 2(6)(a), insert:

"(ab) a mixed-ownership enterprise:".

In section YB 2, in the list of defined terms, insert in its appropriate alphabetical order "mixed-ownership enterprise".

After section YC 5, insert:

"**YC 5B Treatment of mixed-ownership enterprises**

"(1) Section YC 5 applies to the Crown's interest in a mixed-ownership enterprise in the same way as it does to the Crown's interest in a special corporate entity to determine—

"(a) who is treated as holding those shares and related rights that represent the Crown's interest in the enterprise:

"(b) how those shares and related rights are treated as being held.

Income Tax Act 2007 (2007 No 97)—*continued*

"*Transitional provision for changes in status*

"(2) If a special corporate entity changes its status to become a mixed-ownership enterprise, no breach of shareholding arises in relation to the Crown's interest.

"Defined in this Act: mixed-ownership enterprise, share, special corporate entity."

Replace the Schedule 36 heading with:

"Schedule 36
"Government enterprises

"Part A

"State enterprises".

In Schedule 36, after the item relating to Works and Development Services Corporation (NZ), insert:

"Part B

"Mixed-ownership enterprises

"Air New Zealand Limited".

Land Act 1948 (1948 No 64)

In section 172(1), after "State-Owned Enterprises Act 1986,", insert "or as against a mixed ownership model company within the meaning of **section 45P** of the Public Finance Act 1989,".

In section 172(2), after "State-Owned Enterprises Act 1986,", insert "a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989),".

Manapouri-Te Anau Development Act 1963 (1963 No 23)

In section 2, definition of **corporation**, after "a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986", insert ", or a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989),".

Maori Purposes Act 1959 (1959 No 90)

In section 4(7)(l), after "electricity", insert "or of a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that is a generator of electricity".

Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)

In section 8, definition of **Crown body**, replace "or a State enterprise or any company which is wholly-owned by a Crown entity or a State enterprise" with ", a State enterprise, or a mixed ownership model company, or a company that is wholly-owned by a Crown entity, a State enterprise, or a mixed ownership model company".

In section 8, insert in its appropriate alphabetical order:

> "**mixed ownership model company** has the same meaning as in **section 45P** of the Public Finance Act 1989".

In section 48(1), definition of **Crown body**, paragraph (a), replace "or any company that is wholly-owned by a Crown entity or a State enterprise" with "a mixed ownership model company, or a company that is wholly-owned by a Crown entity, a State enterprise, or a mixed ownership model company".

In section 48(1), insert in its appropriate alphabetical order:

> "**mixed ownership model company** has the same meaning as in **section 45P** of the Public Finance Act 1989".

Public Audit Act 2001 (2001 No 10)

In Schedule 1, insert in its appropriate alphabetical order "Mixed ownership model companies as listed in **Schedule 5** of the Public Finance Act 1989".

Public Records Act 2005 (2005 No 40)

After section 5(6), insert:

"(7) This Act continues to apply to a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that was a public office immediately before becoming a mixed ownership model company, as if it were still a public office, but only in respect of its affairs before it ceased to be a public office (regardless of when the records of those affairs are created)."

Public Works Act 1981 (1981 No 35)

In section 42B(1), replace "is advised by a State enterprise within the meaning of the State-Owned Enterprises Act 1986 that any land held by that State enterprise" with "is advised by a State enterprise within the meaning of the State-Owned Enterprises Act 1986 or a

Public Works Act 1981 (1981 No 35)—*continued*

mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that any land held by that State enterprise or mixed ownership model company".

Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (2010 No 24)

In section 6(3), insert in its appropriate alphabetical order:

"**mixed ownership model company** has the meaning given to it by **section 45P** of the Public Finance Act 1989".

In section 64(2), replace "or a state enterprise" with "a state enterprise, or a mixed ownership model company".

In section 64(3), replace "or state enterprise" with "state enterprise, or mixed ownership model company".

In section 64(4), after paragraph (a), insert:

"(aa) in relation to a mixed ownership model company, includes only activities that relate to an asset held by that company; and".

Legislative history

5 March 2012	Introduction (Bill 7–1)
8 March 2012	First reading and referral to Finance and Expenditure Committee

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