



14 November 2023



Ref: OIA OIA-2023/24-0246

Tēnā koe

Official Information Act request: Advice on restrictions on Ministers owning investments

Thank you for your Official Information Act request received on 17 October 2023. Your request was:

In June 2023, during a press conference about the sacking of former Transport Minister Michael Wood for failing to properly manage his conflicts of interest, then-Prime Minister Chris Hipkins said he had "sought advice on a full Restrictions Regime on shareholdings for Ministers." Such a scheme is used in Australia, and would require that Ministers "divest themselves of investments and other interests in any public or private company or business... other than public superannuation funds or publicly listed managed funds or trust arrangements where the Minister has no visibility or control of decision-making". ("Chris Hipkins, Michael Wood's full statements after he resigns over share scandal", Newshub, 12 June 2023). I would like to request the following information under the OIA:

** all advice on restrictions on ministers owning investments*

A response to this request is due as quickly as possible, and in any case no later than 15 November 2023.

Where any document falls under the scope of this request, please release it in full, including sections which might otherwise be considered out of scope.

We have interpreted this as a request for advice about restrictions on Ministers generally owning investments, as referred to in the Prime Minister's statement of 21 June 2023 (available at: www.beehive.govt.nz/release/statement-michael-wood).

The Cabinet Office holds one document relevant to your request, which is provided with this response. Parts of the document have been withheld on the basis of:

- section 9(2)(ba)(i), to protect information which is subject to an obligation of confidence where the making available of the information would be likely to prejudice the supply of similar information; and

- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials.

In making my decision, I have considered the public interest considerations in section 9(1) of the Act. No public interest has been identified that would be sufficient to override the reasons for withholding the redacted information.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on the Department of the Prime Minister and Cabinet's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Nāku noa, nā



Rachel Hayward
Secretary of Cabinet



Cabinet Office

Memo

25 October 2023

To Prime Minister

From Nicola Purvis

Subject **Shareholding restrictions regime for Ministers**

Purpose

- 1 In June 2023, you asked for advice as to how you might consider implementing a shareholding restrictions regime for your Ministers. Other priorities have meant we have been unable to provide this advice before now, but we are providing this memo to you in the caretaker period in order to complete the suite of work you commissioned following the resignation of Hon Wood.

Background: Australian and United Kingdom approaches

- 2 In preparing this advice, we have spoken to our counterparts in Australia and the United Kingdom about the way in which ministerial shareholdings are managed in those jurisdictions. The Australian Prime Minister introduced the current regime to his future Ministers when in opposition, so they had some time to transition to it.
- 3 Key features of the Australian regime, set out in the *Code of Conduct for Ministers* (June 2022)¹ and attached as Appendix 1 are:
 - 3.1 Ministers cannot directly hold shares **at all** (whether they conflict with their portfolios or not).
 - 3.2 Ministers may hold shares via funds or trusts if the investments are broadly diversified, the Minister has no influence over investment decisions and the fund or trust does not invest to any significant extent in a business sector that could result in a conflict with the Minister's portfolios.
 - 3.3 Ministers should encourage their family members to dispose of shares in companies within the Minister's portfolios.
 - 3.4 Blind trusts are not permitted - a Minister must know the investments of the funds or trusts in which they have an interest.

¹ Available at <https://www.pmc.gov.au/resources/code-conduct-ministers>.

4 In contrast, the United Kingdom's approach² is:

4.1 There is no broad restriction on owning shares. Shareholdings are treated like any other interest that may conflict with a portfolio. Ministers declare their interests and agree management arrangements with their Permanent Secretary (rather than the Cabinet Office). An Independent Advisor, supported by the Cabinet Office, provides advice and also publishes all Ministers' interests, to the extent they relate to their portfolios, twice a year.

4.2 The interests of close family members are included in this regime, Section 9(2)(ba)(i)

[Redacted]

4.3

[Redacted]

4.4

[Redacted]

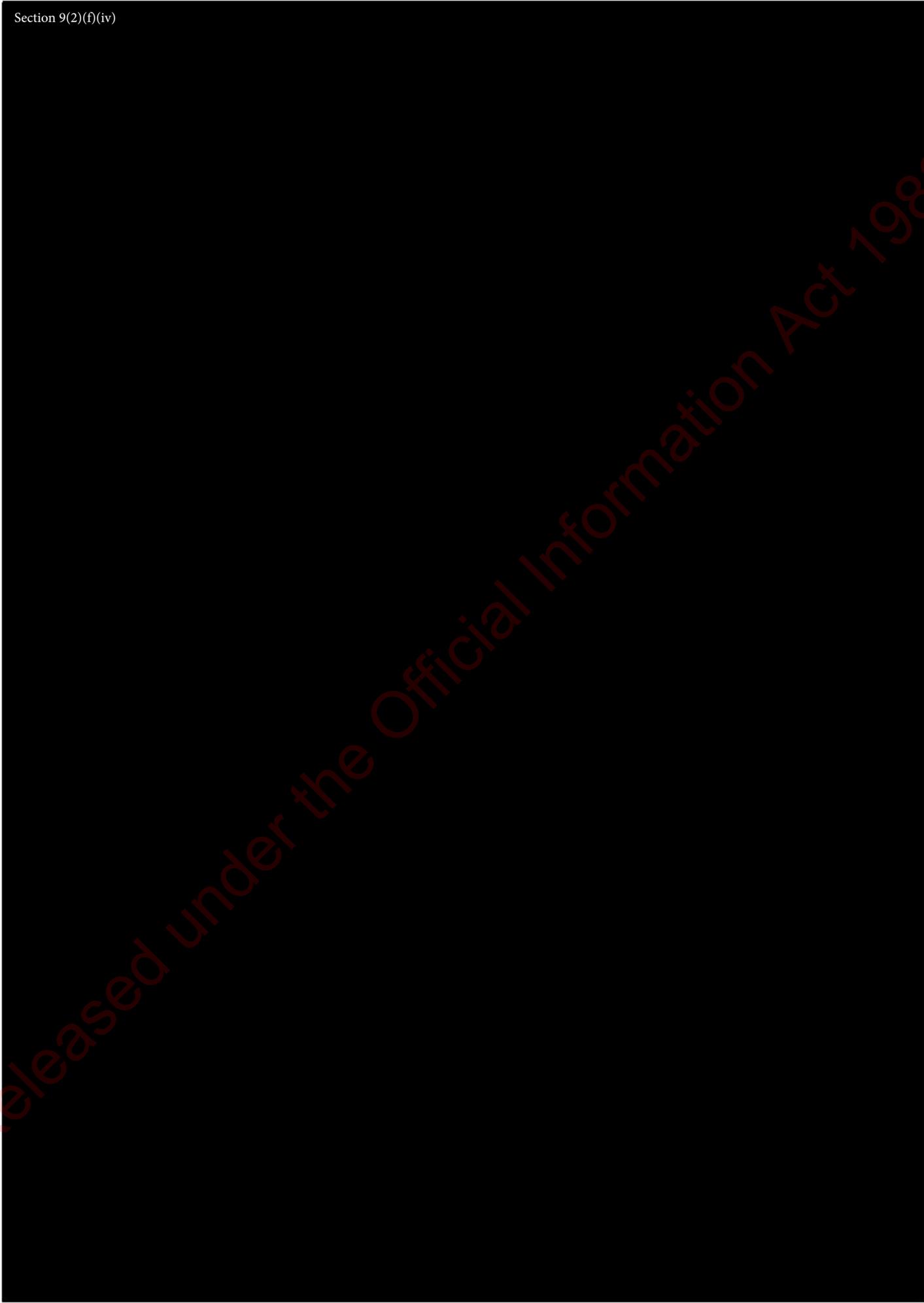
Our advice

Section 9(2)(f)(iv)

[Redacted]

² See chapter 7 of Ministerial Code available at <https://www.gov.uk/government/publications/ministerial-code/ministerial-code>. See also the Independent Advisor's role and the disclosures of Ministers' interests at <https://www.gov.uk/government/organisations/independent-adviser-on-ministers-interests>.

Section 9(2)(f)(iv)



Released under the Official Information Act 1982

Recommendations

11 I recommend that you **note** the content of this briefing.

NOTED / DISCUSS



Nicola Purvis
Deputy Secretary of the Cabinet (Constitutional and Honours)

Rt Hon Chris Hipkins

Prime Minister _____

Date: / / 2023

Distribution:
Andrew Kirton, Chief of Staff

Released under the Official Information Act 1982

Appendix 1: Australian regime: Extract from the *Code of Conduct for Ministers***Conflicts of Interest****Shareholdings**

- 3.11 In recognition of the collective responsibility that Ministers bear in relation to Cabinet decisions, this Code requires that Ministers divest themselves of investments and other interests in any public or private company or business, other than public superannuation funds or publicly listed managed funds or trust arrangements where:
- (i) the investments are broadly diversified and the Minister has no influence over investment decisions of the fund or trust; and
 - (ii) the fund or trust does not invest to any significant extent in a business sector that could give rise to a conflict of interest with the Minister's public duty.
- 3.12 If a Minister becomes aware that a fund or trust has invested in a company that might give rise to a perception of a conflict of interest, the Minister should inform the Prime Minister immediately and liquidate the investment in the fund or trust if required to do so.
- 3.13 If a Minister is required by this Code to dispose of an interest of any kind, the transfer of the interest to a family member or to a nominee or private trust is not an acceptable form of divestment.

Family members

- 3.14 Ministers must have regard to the pecuniary and other private interests of members of their family, to the extent known to them, as well as their own interests, in considering whether a conflict or apparent conflict between private interests and official duty arises.
- 3.15 Ministers should encourage family members to dispose of, or not to invest in, shares in companies which operate in their area of responsibility.
- 3.16 Where a Minister is aware of the nature of investments of family members from which they derive a beneficial interest and which might give rise to a perception of a conflict of interests, those interests should be structured so that the Minister exercises no control over the investment.