

14 December 2021

Level 3, Justice Centre  
19 Aitken Street  
SX10111  
Wellington 6011

s9(2)(a)

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Tēnā koe s9(2)(a)

#### Your request under the Official Information Act 1982

I refer to your email of 26 November 2021. Your email requested the following information under the Official Information Act 1982 (the Act):

- 'a. Confirmation of whether the process, and the requirements, for amending or varying terms of trust/trust deeds for PSGEs (invariably including special resolutions, which in turn require postal ballots, appointment of an independent returning officer, and notified and publicly advertised, and in-person, special general meeting) has been communicated to MBIE in the period since March 2020, including in particular:
- (i) to advise MBIE that trustees of such trusts are not able to amend their own terms of trust/trust deeds themselves and that there is a prescribed process for doing this;
  - (ii) in relation to the COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020 and the COVID-19 Response (Management Measures) Legislation Bill, Schedule 4, Part 2
- b. If any such advice has been provided to MBIE, then I request a copy of all such advice, please.'

We hold no information in relation to your request your request and therefore refuse it under section 18(e) of the Act.

In your email you also note:

*'I am concerned that MBIE developed the COVID-19 Response (Management Measures) Legislation Bill, Schedule 4, Part 2, and advised Parliament, on the misconception or mistaken belief that trustees of post-settlement governance entities (or PSGEs), established to receive and administer Treaty settlement assets are able to amend or vary their terms of trust/trust deeds either themselves or relatively easily.'*

As you note the key part of the Act for PSGEs is Schedule 4, Part 2. The COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020, defines “entity” for the purposes of that Act as follows (see section 4(1)):

### Meaning of entity

(1) In this Act, *entity* means any of the following:

- (a) assembled owners under [Part 9](#) of Te Ture Whenua Maori Act 1993:
- (b) a building society:
- (c) a charitable trust board:
- (d) a company:
- (e) a credit union:
- (f) a firm:
- (g) a friendly society:
- (h) an incorporated society:
- (i) an industrial and provident society:
- (j) a limited partnership:
- (k) a mandated iwi organisation:
- (l) a Māori association:
- (m) a Māori land trust:
- (n) a Māori incorporation:
- (o) a body corporate or the trustees of a trust appointed to administer a Māori reservation:
- (p) a Māori Trust Board.

(2) For the purposes of Part 2, entity also includes any post-settlement governance entity of a type not listed in subsection (1).

To the best of Te Arawhiti’s knowledge, there are no post-settlement governance entities that are not one of the entities in subsection (1). However, we were asked by MBIE (the Ministry for Business Innovation and Employment) to comment given our familiarity with PSGEs and their operation.

We shared the view of MBIE that, to the extent any PSGE’s rules did not allow it to hold meetings electronically, the risk arising from those entities having no legal option but to hold potentially large in-person meetings during periods where there was a raised COVID risk justified allowing them to meet electronically in those periods.

We note also that, to change an entity’s rules to allow electronic meetings, most entities would have to hold an in-person Annual General Meeting or Special General Meeting, thus requiring them to run the very risk to their beneficiaries they seek to avoid by the rule change.

For this reason we supported the MBIE rule change applying to all entities, including all PSGEs.

Nāku noa, nā



Marian Smith

**Director, Te Kāhui Whakamana (Settlement Commitments)**

Proactively Released