Keep Kiwibank Bill

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Report of the Finance and Expenditure Committee

Contents

Keep Kiwibank Bill

Recommendation

The Finance and Expenditure Committee has examined the Keep Kiwibank Bill and recommends by majority that it not be passed.

Introduction

The Keep Kiwibank Bill, a member's bill in the name of Hon David Parker, seeks to legislate that any proposal to partly or wholly privatise Kiwibank would require the support of 75 percent of all members of the House of Representatives or, alternatively, from a majority of voters in a referendum, in order to lawfully proceed.

Background

Kiwibank is a wholly owned subsidiary of the State-owned enterprise the New Zealand Post Group. New Zealand Post Limited, including Kiwibank, is wholly owned by the Crown through its shareholding Ministers.

All decisions relating to the operation of a State-owned enterprise are the domain of its board, in accordance with the Companies Act 1993 and the enterprise's statement of corporate intent. The shareholding Ministers have no authority to direct the State-owned enterprise concerning its operations, except in the limited ways set out in the State-Owned Enterprises Act 1986.

The board of New Zealand Post Limited could decide to sell all or part of Kiwibank.

The bill raises a fundamental issue

The means by which this bill seeks to ensure that Kiwibank continues to be owned by the New Zealand people raises an important constitutional issue. What it proposes would legislatively entrench New Zealand Post Limited's ownership of Kiwibank Limited.

Entrenchment restricts the future ability of the legislature to decide matters by simple majority and the majority of us believe that it should therefore be used only for provisions of a constitutional nature. Currently, entrenched or "reserved" provisions are found only in the Electoral Act 1993 and the Constitution Act 1986.

We acknowledge that the intent of the bill is to protect this State-owned enterprise. However, the majority of us consider that this proposal does not meet the very high bar that has in the past been used for entrenched provisions. The majority of us believe that this bar should not be lowered.

There could be other ways of achieving the bill's policy objectives without raising an issue which is so fundamental to our constitutional democracy. While we have not ourselves explored those options while the bill has been before us, we suggest that members who support the intent of this bill may wish to do so.

Some of us believe that the danger that Kiwibank will be partially or wholly privatised by the current Government remains a risk. This has been fuelled in recent weeks by suggestions that the New Zealand Post group will be split. Finding a way to protect the public ownership of Kiwibank remains an important goal.

Conclusion

This bill raises a significant constitutional issue and we are not convinced that it should be progressed further. We recommend by majority that this bill not be passed.

Appendix

Committee procedure

The Keep Kiwibank Bill was referred to the committee on 14 October 2015. The closing date for submissions was 4 December 2015. We received and considered 15 submissions, including 7 form submissions, from interested groups and individuals. We heard oral evidence from 2 submitters.

Committee members

David Bennett (Chairperson)
Andrew Bayly
Chris Bishop
Hon Clayton Cosgrove
Julie Anne Genter
Stuart Nash
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Alastair Scott
David Seymour