Enabling KiwiSaver investment in private assets

This is the submission template for the discussion document, *Enabling KiwiSaver investment in private assets*. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **5pm on 14 February 2025**.

Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table: "Your name and organisation".
2. Fill out your responses to the consultation document questions in the table, "Responses to discussion document questions". There are two sets of questions: teal-coloured for industry, and purple for the public, including KiwiSaver members. There is one final question (blue) for everyone. Your submission may respond to any or all of the questions in the discussion document, as appropriate.
3. When sending your submission:
   a. Delete this page of instructions.
   b. Please clearly indicate in template if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures.
   c. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
   d. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE's website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
      i. Please state this in the template, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
      ii. Indicate this on the front of your submission (e.g. the first page header may state "In Confidence"). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
4. Please send your submission (or any further questions):
   - as a Microsoft Word document to ***financialmarkets@mbie.govt.nz*** (preferred), or
   - by mailing your submission to:

     Financial Markets Policy
     Business, Resources and Markets
     Ministry of Business, Innovation & Employment
     PO Box 1473
     Wellington 6140
     New Zealand

Submission on discussion document:
Enabling KiwiSaver investment in private assets

Your name and organisation

Name	Privacy of natural persons
Date	14 February 2025
Organisation (if applicable)	Fisher Funds Management Limited
Contact details	Privacy of natural persons

Privacy and publication of responses

[To tick a box below, double click on check boxes, then select 'checked'.]

☒ The Privacy Act 2020 applies to submissions. Please check this box if you do <u>not</u> wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☒ MBIE intends to upload submissions received to MBIE's website at ***www.mbie.govt.nz***. If you do <u>not</u> want your submission to be placed on our website, please check the box and provide an explanation in the box below.

I do not want my submission placed on MBIE's website because our answer to question 1 contains commercially sensitive information relating to the size and scale of Fisher Funds' investment in private assets and to future plans. Some of our other answers contain proprietary or sensitive information.

Please check if your submission contains confidential information

☒ I would like my submission (or identified parts of my submission) to be kept confidential, and **<u>have stated below</u>** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because our answer to question 1 contains commercially sensitive and proprietary information relating to the size and scale of Fisher Funds' investment in private assets and to future plans. Some of our other answers contain proprietary or sensitive information.

Responses to discussion document questions

Please enter your responses in the space provided below each question.

Fisher Funds Management Limited and related entities (Fisher Funds) is one of New Zealand's largest specialist investment managers with approximately 500,000 Kiwis invested across our KiwiSaver, managed investment schemes and other products and services. Operating for over 25 years, Fisher Funds help Kiwis realise their ambitions through our Smart Active Investment Management approach to investing and delivery of our award-winning client services.

Fisher Funds supports increased KiwiSaver investment in private assets and endorses the benefits to the New Zealand economy and members of KiwiSaver schemes, as articulated by the Hon Andrew Bayly, Minister of Commerce and Consumer Affairs, namely:

- a significant supply of private capital
- better diversification of risk
- potentially higher returns

Fisher Funds is committed to the central tenets of the KiwiSaver Act:

- one account per member,
- simplicity of design and operation resulting in low fees, and
- portability,

and would be reluctant to see regulatory actions which compromise these features, particularly when other options are available, such as KiwiSaver providers stringent adherence to appropriately managing liquidity.

KiwiSaver members' financial literacy continues its uplift as participation rates and average balances grow. However, they must still be distinguished from wholesale / institutional investors who could be expected to be familiar with liquidity management tools such as side-pocketing and gating, commonly employed in higher risk investments.

The KiwiSaver Act references the 'member's account' and this is how most KiwiSaver members think of their KiwiSaver investment – it's a personal account, with the money in it their retirement savings, which they are free to move between providers – whether they're looking for low fees, high returns, responsible investment or all of the above.

Proposals which include multiple KiwiSaver scheme memberships, side-pocketing and gating are anathema to the member perspective and the simplicity, low cost and portability principles. Proceeding with changes to normalise their use in the KiwiSaver space, risks undermining public and member confidence in KiwiSaver. If this were to occur, it could provoke a fallback in KiwiSaver membership and contributions, antipathy towards private asset investment, and fewer providers willing to invest in private assets.

Multiple KiwiSaver memberships confuse members (as Australians have found out with multiple employer-based scheme memberships) and could ultimately result in a single KiwiSaver member being a member of every KiwiSaver scheme. This would impose an unreasonable administrative burden on providers and cause confusion and distress to the member, knowing that they had to leave money behind each time they moved providers.

Instead, Fisher Funds proposes that KiwiSaver schemes' investment in private assets could and should be managed within current KiwiSaver settings (subject to some minor changes re asset classification categories), alongside greater supervisory and regulatory oversight of providers' liquidity management practices.

Notwithstanding the above, Fisher Funds remains committed to growing investment in private assets and has submitted as below to assist with industry growth in and member understanding of this asset class.

	Liquidity management tools – questions for KiwiSaver providers or other industry
1	For KiwiSaver managers: Please describe your current practice around investing in private assets, including levels of exposure you have to these types of assets, how you invest in these assets, and your management of liquidity risk.
	IN CONFIDENCE Commercial Information [redacted] [redacted] [redacted] [redacted] [redacted]
2	Do you think that the current legislative framework for KiwiSaver effectively allows for the use of liquidity risk management tools that may impact transfer or withdrawal times (e.g. suspending redemptions or side-pocketing)?
	Fisher Funds is of the view that the current legislative framework for KiwiSaver managers is broadly adequate to enable KiwiSaver managers to implement and maintain appropriate liquidity. With respect to this comment, we assuming that there will not be another global event like 9/11 where international markets were plunged into uncertainty and asset values were extremely difficult to assess for a short time. However, most KiwiSaver managers have policies and processes in place to manage valuation challenges in times of temporary uncertainty. The Regulator could assist the KiwiSaver industry with allowable responses to such global events by providing guidance as to the treatment of funds in such circumstances. Notwithstanding the comments above, the current legislative setting for KiwiSaver do not explicitly allow for the use of liquidity risk management tools such as side-pocketing and withdrawal suspensions.
3	For KiwiSaver managers: If you cannot use these tools, can you please explain the reasons for this and the impacts in terms of: a. your ability to increase investment in private assets b. risks associated with your current allocation of private assets.

	Fisher Funds' governing documents provide for a range of liquidity management tools which of themselves, neither advance nor hinder Fisher Funds' investment in private assets. Fisher Funds' approach to liquidity management, informed by FMA's Guidance, currently enables investment in private assets without recourse to such tools. We are of the view that it is incumbent on all KiwiSaver managers to ensure that their governing documents, particularly as they relate to liquidity management, are routinely reviewed and updated as documents should.
4	Please provide any other comments on the availability of liquidity management tools.
	Fisher Funds anticipates that all KiwiSaver providers are cognisant of FMA's Liquidity Management Guidance and have taken the time to put in place a range of appropriate liquidity management systems, processes and practices. Providers with such tools will also have noted that using such tools as side-pocketing and gating will bring greater risks in respect of reputation and administrative complexity.
5	Do you support the proposed approach? Why/why not?
	Fisher Funds does not support the proposed approach to side-pocketing and gating as we believe this introduces complexity and disadvantage for clients. We are of the opinion that individual assets are best managed within the wider liquidity of any KiwiSaver scheme fund.
6	If redemption gates were allowed, would you consider developing new products more focussed on private assets?
	Redemption gates, as a feature on their own, are unlikely to drive the development of new retail products focussed on private assets. New product development is more likely to be driven by innovation, market competitiveness, or client demand.
7	Will you face implementation costs if this change is made? If yes how much will they be and will they be one-off or ongoing?
	For KiwiSaver managers who have not already amended their governing documents to allow for a range of liquidity management tools, the one-off costs are likely to be material as they will require legal advice, member or supervisor consent, updates to disclosure documents etc. Process changes will flow from the changes referred to above. If the proposed regulatory changes limiting withdrawals and allowing memberships of multiple KiwiSaver schemes for members invested in funds with private assets, there would also need to be a significant communications exercise to inform members.
8	Do you have any comments on the detailed design considerations noted above?
	The design considerations are predicated on multiple memberships of KiwiSaver schemes and a provider being entitled to invoke side-pocketing and/or gating to limit or deny withdrawal or transfer requests. Fisher Funds does not support this approach. Referencing the example in para 48 of a member invested in a scheme with private asset investments being able to move 98% of their money but having to leave 2% behind until the side-pocket was resolved: • That 2% may be immaterial to the scheme's assets but to an individual member it is part of their account and they would reasonably expect that it would transfer in

accordance with their request or be available for a first home withdrawal where every last dollar is needed

- The 2% may be locked in for a very long time as private assets are typically long run investments – if that is the case, the member could have retired and closed their account with their current (main) provider. Who manages this situation?
- The member's side-pocketed amount may, in some circumstances, represent a very small dollar value and, as such, materially outweigh the efforts necessary to administer it and continue to report to the member.
- New registry system developments would likely be required to account for side-pocketed amounts and the cost of development and implementation have the potential to increase complexity and add cost to the management and administration of KiwiSaver schemes.
- The member may make a 2nd, 3rd or later transfer request and find that each time they move, they are effectively docked another 2% of their savings. What this means is that the original 2% has the potential to blow out in circumstances where some KiwiSaver managers are not appropriately managing their liquidity to meet everyday withdrawal/transfer requests.

Separately, it will be difficult to prescribe when side-pocket and gating can be used whether it's through FMA guidance or legislation. Given the same set of circumstances, Manager A may elect to side-pocket or gate v. Manager B, with better liquidity management skills, can process the withdrawal/ transfer within the current timeframes.

This has the effect of distorting the competitive landscape in the KiwiSaver world as the better liquidity manager (Manager B) is being penalised by being denied the member's full transfer balance.

Imposing regulatory conditions, whether as tools of last resort or otherwise, is seen as challenging and again could be applied unevenly to benefit the less skilful manager.

Also, not all managers will invest in the same private assets, so an event which impacts one manager may have no effect on another manager.

Having regard to 48(f), ensuring KiwiSaver members understand the nature and impacts of side-pocketing and gating is more than challenging. Whilst, as stated earlier, members are progressively uplifting their financial literacy, these concepts are very difficult to communicate to a retail investor who thinks KiwiSaver is a vanilla product with pre-agreed withdrawal parameters and, at its core, a central concept of portability.

Additionally, members who are defaulted into KiwiSaver schemes, may have already started contributing before sighting a Product Disclosure Statement. This lessens their opportunity to make an informed choice as to whether or not funds invested in private assets will be suitable for them.

9	Please provide any further comments on this issue of liquidity management tools.
	KiwiSaver managers who have a full suite of liquidity management tools and sophisticated liquidity management practices should not be penalised where other KiwiSaver managers are not applying practices to the same standard or otherwise not fully in accordance with the FMA's Liquidity Management Guidance. Fisher Funds considers that as KiwiSaver schemes pursue investment in private assets, the Regulator should be involved in developing further and more detailed guidance and increase its monitoring activities in this area.

Liquidity management tools—questions for the public

10	Do you support more investment by KiwiSaver funds into private assets? Why / why not?
11	Do you support the use of liquidity management tools like 'side pockets', if they may have an impact on the availability of your KiwiSaver funds? Please explain.
12	Please provide any further comments on the proposed approach.
Private asset categories – questions for KiwiSaver providers or other industry	
13	Do you consider that the current asset classes in the Financial Markets Conduct Regulations 2014 are problematic as they relate to private assets? If yes, please explain.
	When the FMCRegs were passed in 2014, it's likely there was little or no thought given to private assets with the exception of unlisted property. Fisher Funds considers the Regulations should keep pace with the changing investment environment and supports changing the current asset classes (listed below). Not to do so risks private assets being lumped in as 'Other' which masks their nature and is opaque to members. The current categories are: a. Cash and cash equivalents b. NZ fixed interest (FI assets in NZ) c. International fixed interest (non-NZ FI) d. Australasian equities (equities in AU or NZ) e. International equities (non-AU or non-NZ equities) f. Listed property g. Unlisted property h. Commodities i. Other
14	How do think the categories should be described?
	Fisher Funds supports the description of the categories proposed in Option 2 in question 14.
15	Please provide any other comments on the lack of private asset categories.
	The absence of private asset categories in the FMCRegulations is a likely consequence of the landscape of investments in 2014 not having a focus on private assets. New Zealand has been much slower than Australia in entering this particular asset class.

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Which option do you think is best and why?

Fisher Funds considers that Option Two is the most appropriate as it provides clarity without changing current reporting materially. However, we suggest that the clarifications provided in brackets are presented as "including" rather than being interpreted as an exhaustive list – for example "Equities (including New Zealand, international and unlisted assets)"

We do not believe Option One or Four are appropriate and we do not fully understand what is contemplated in Option Three.

Option		Description
1	Create new category for 'private assets'	Add a new category for private assets, to include international and New Zealand private equities and debt. This would show the private assets held, but would not differentiate by jurisdiction. This would also leave the 'other' category as a more general mop-up (e.g. including hedge funds).
2	Modify existing categories to better include private assets and jurisdictions (so they do not all get listed in 'other')	Modify some categories to deliver a new list that is (roughly): • cash / cash equivalents • fixed interest (New Zealand, international, unlisted) • equities (New Zealand, international, unlisted) • property (listed, unlisted) • infrastructure (listed, New Zealand unlisted, international unlisted) • commodities • other. This roughly mirrors the asset categories used in Australia.
3	Modify existing categories and apply categories to the underlying assets	Use the same modified categories from Option 2 but add in a requirement that the category reflect the underlying assets held. This is particularly relevant as more schemes are investing in index tracking funds or other wholesale funds (e.g. Blackrock).
4	Adding sub-categories to current categories	Add unlisted debt under 'NZ Fixed Interest'; NZ unlisted equity under 'Australasian equities' and NZ unlisted property under 'Unlisted property' and reporting infrastructure under 'other' or a separate 'Infrastructure' category for better visibility of all NZ private assets.

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Will you face implementation costs if this change is made, if yes how much will they be and will they be one-off or ongoing?

There will be some implementation costs associated with any category modifications. In addition to system and process changes, disclosure documents such as PDS and Fund Updates will need amending.

Without certainty as to the changes, it's hard to comment as to whether the costs will be a one-off or on-going.

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Please provide any further comments on this issue of including private assets in asset categories.

KiwiSaver providers have the discretion to make additional disclosures on private assets exposure / investments separate from the asset categories in any case.

Private asset categories—question for the public

19	Do you think it would be useful to have better visibility over how much KiwiSaver funds are investing into private assets?
Valuation requirements – questions for KiwiSaver providers or other industry	
20	For KiwiSaver managers: Do your governing document(s) include a valuation methodology which is challenging to apply to valuing private asset? If you do, can you please explain the impact in terms of: a. the extent to which your governing documents require amendments to allow for the inclusion and pricings of private assets within your funds. b. whether you have tried to amend the valuation provisions in the past or not, and why. Include examples of where the supervisor has or has not approved a valuation methodology.
	Fisher Funds' governing documents set high level principles regarding valuation and are operationalised through corporate policies and standard operating procedures. Accordingly, the governing documents are unlikely to require amendments for inclusion and pricing of private assets. In the event any valuation provisions required amendment, the Supervisor would first have to give its agreement to such amendments.
21	Please provide any other comments on the valuation methodologies in governing documents.
	Private asset valuation techniques are different from public / listed securities. We believe the current rules / guidance could be clarified to be more explicit around recognising this difference and accepting that it is part of investing in private assets.
22	Do you agree that this is an issue that needs addressing?
	We believe it would be supportive of private asset investment for this issue to be addressed by the Regulator.
23	Do you have views on how it should be addressed?
	See answer to question 22.
24	Will you face implementation costs if this change is made, if yes how much will they be and will they be one-off or ongoing?
	n.a.
25	Please provide any further comments on this issue of valuation requirements.
Total Expense Ratio—questions for KiwiSaver providers or other industry	
26	Do you currently outsource fund management for private assets?
	Yes, for some private asset investments.

27	Do you see any issues with the current TER calculation and if so, what are they?
	Across the industry there are differing practices regarding the inclusion of third-party manager costs. It would assist the industry and encourage better member understanding if the Regulator encouraged a consistent approach in their interactions with KiwiSaver providers.
28	Does the current TER calculation impact your decision to invest in private assets, or to utilise third-party fund management?
	No, the current TER calculation has not impacted Fisher Funds' decision to invest in private assets or to utilise third party management. Fisher Funds has commenced making investments in private assets to access attractive expected returns and deliver diversification benefits. There will always be a balance between costs and returns and a media focus solely on the former may discourage some providers from pursuing private assets until it becomes more of an industry norm.
29	Are there any other issues you would like to draw attention to on the TER?
Total Expense Ratio—questions for the public	
30	Do you look at KiwiSaver scheme fees when deciding which KiwiSaver scheme to put your money with?
31	What do you think should be included in any figure that is called "KiwiSaver scheme fees"?
32	Please share any thoughts you have around the TER (total expense ratio) and its function to inform the public of the expenses involved in KiwiSaver management.
Final comments—question for KiwiSaver providers or other industry	
33	Please provide any further comment on barriers to KiwiSaver investment in private assets that you see (including any comments in relation to issues identified in paragraph 18b-f).
	Fees The annual value for money exercise undertaken by KiwiSaver providers and their supervisors will need to take account of the fees associated with investment in private assets and the offsetting benefits of greater potential returns and diversification. In any case, KiwiSaver providers are cognisant of the need to ensure that their fees are not unreasonable. **PIE Eligibility** In private investments, particularly direct private investments, given the lack of liquidity there is a desire to have a greater level of control. Typically owning more than 20% (indeed more than 50%) would be the "norm".

	However, most New Zealand Kiwisaver vehicles are Portfolio Investment Entities. One of the PIE eligibility criteria is that a PIE generally should not hold more than 20% of voting or value interests in a company or investor. The 20% limit can be exceeded where the total of such interests does not exceed 10% of the total market value of all the entity's investments. Given the rule is based on market value it creates the following risks: a. There is a risk that a negative movement in public markets (which increases the relative proportion of private assets) could result in a breach b. There is a risk that a strong positive performance in illiquid private market assets could result in a breach Given the consequence of breaching this limit is so significant (a loss of PIE status), we think that it may over time become an obstacle to increasing levels of direct private investment. We suggest that an exemption is granted to registered Kiwisaver Schemes with respect to this PIE rule.
Final comments—question for all respondents	
34	Please use this question to provide any further information you would like that has not been covered in the other questions.
	In terms of comments on paragraphs 18(b) to (f) in the consultation document we believe that further guidance would be helpful in the context of private asset investments.