



No WARP! Network Opposed to Weapons and Related Production

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Act now: NZ Superannuation Fund investments in death and destruction

This action alert follows the NZ Superannuation Fund's announcement earlier this month that it intends to divest from companies involved in the production of cluster munitions. It revises and expands the information provided in 'Investing in whose future? NZ Super Fund investments in cluster munitions and nuclear weapons production'¹, the February 2008 No WARP! (Network Opposed to Weapons and Related Production) action alert and leaflet.

There are six sections in this update, providing information about:

- 1) The Superannuation Fund;
- 2) Investments in companies involved in cluster munitions production, and some comment on the recent announcement;
- 3) Investments in companies involved in nuclear weapons production;
- 4) Investments in companies involved in human rights violations;
- 5) What you can do about this - with points you could include in letters to the relevant politicians and Super Fund officials, as well as contact details for them; and
- 6) Where you can get more information.

This publication is available online at <http://www.converge.org.nz/pma/nwapr08.pdf>

1. About the Superannuation Fund

The Superannuation Fund (Super Fund, or Fund) is an investment fund that accumulates and invests Crown contributions. It was created to partially provide for the future cost of funding superannuation payments, and formally established under the New Zealand Superannuation and Retirement Income Act, 2001.

The Fund began investing in September 2003 with \$2.4 billion, and by 29 February 2008, its assets totaled \$13.5 billion. The Fund is expected to grow to around \$109 billion by 2025, making it one of the largest funds in Australasia².

The Fund is governed by a Crown entity called the Guardians of New Zealand Superannuation (the Guardians); and the Minister of Finance, currently Michael Cullen, is the government minister responsible for it.

The Fund's mandate is to invest the money in a way that maximises returns, without undue risk, and to avoid prejudice to New Zealand's reputation as a responsible member of the world community. It has a responsible investment policy "which aims to enhance shareholder value and protect the reputation of the Fund through encouraging high standards of corporate behaviour". Despite this, the Super Fund invests in a range of companies involved in producing offensive weapons systems, including cluster munitions and nuclear weapons, and others that are linked to gross human rights violations - including many that overseas pension funds and banks refuse to invest in.

While the Guardians apparently have a strong preference to 'engage' with such companies in the hope that their behaviour will improve, the Fund has divested in companies involved in whaling (2006), anti-personnel landmines (2006) and the tobacco sector (2007/08). Their divestment from companies involved in the tobacco sector is particularly curious given there is no international convention banning tobacco products, and thus potentially no prejudice to NZ's "reputation as a responsible member of the world community"; nor is there any domestic legislation prohibiting tobacco products or involvement with tobacco production.

There is, however, both an international convention and domestic legislation banning land mines and their production, yet the Super Fund apparently invested in companies involved in such production for three years (see Section 2 below); as well as domestic legislation prohibiting participation in nuclear weapons production and deployment - and the Super Fund continues to invest in companies involved in both, as outlined in Section 3. In addition, there are rather a lot of international conventions, as well as domestic legislation, specifying minimum acceptable human rights standards, but the Fund continues to invest in companies involved in human rights abuses, some examples of which are provided in Section 4.

On 4 April 2008, the Guardians announced their intention to exclude companies involved in the manufacture of cluster munitions³ from the Fund⁴; this decision is based on the NZ and other governments support for an international treaty prohibiting the use, production, transfer and stockpiling of cluster munitions⁵. While the Guardians move towards divestment is welcome, there are some issues with how and when they will implement their decision.

2. Investments in cluster munitions production



As of 30 June 2007, the Super Fund had investments in companies involved in cluster munitions production of around \$26 million⁶, which they list as Lockheed Martin, investment of \$21,850,772⁷, Raytheon Co. \$2,294,974, and Poongsan Corp. \$1,582,636. Not included in the Fund's list are Thales S.A. \$657,428, and Hanwha Corp. \$139,445 - both of which the Norwegian government Pension Fund has divested from because of their involvement in cluster munitions production. There may additionally be investments in other companies that have been involved in such production in the past, but whose current involvement is uncertain.

Wellington protest on 18 April 2008, Peace Movement Aotearoa / Women's International League for Peace and Freedom. Photo: Mary Wareham, Oxfam NZ

According to the Fund's Backgrounder of 4 April, the Guardians:

"will develop an engagement, divestment, and exclusion plan related to companies involved in the manufacture of cluster munitions. The plan should include: developing a list of companies that have a substantial involvement in cluster munitions; identifying and engaging with those companies the Guardians think will respond to the Guardians seeking their agreement to cease cluster munitions production; and divesting from, or excluding, the remainder of these companies (from portfolios managed exclusively for the New Zealand Superannuation Fund)."⁸

There is no indication as yet as to what the timeline for this process will be, how transparent it will be, nor how companies involved in cluster munitions production will be excluded from portfolios that are not managed exclusively for the Fund.

Furthermore, there seems to be a question about when all this will take place. The Guardians have said they will "implement their exclusion plan upon New Zealand signing the new treaty"⁹. Yet in his media release welcoming the announcement, Minister for Disarmament and Arms Control Phil Goff said it would be "once a Treaty on the weapons comes into force"¹⁰. There is a substantial difference between these two statements. The text of the international treaty (or convention) banning cluster munitions will be negotiated and most likely adopted at the next Diplomatic Conference on Cluster Munitions, to be held in Dublin, Ireland, from 19-30 May. The convention will then be opened for signature early in December 2008, with the NZ government expected to sign it at that time. However, as with all international treaties, it may be some time before the convention enters into force - the entry into force provision of the draft Cluster Munitions Convention states that will be "on the first day of the sixth month after the month in which the 20th instrument of ratification, acceptance, approval or accession has been deposited"¹¹.

Furthermore, there is likely to be a further delay in the NZ government ratifying the Convention, as after signing it they will likely enact domestic legislation before doing so - and if NZ ratifies it after the 20th state party has deposited its ratification, it will enter into force here "on the first day of the sixth month after the date on which [NZ] has deposited its instrument of ratification, acceptance, approval or accession"¹².

This process is best illustrated with reference to the 1997 Mine Ban Treaty¹³ prohibiting anti-personnel landmines, as a similar process will happen with the Cluster Munitions Convention. The Mine Ban Convention text was negotiated and adopted at the diplomatic conference in Oslo, Norway, on 18 September 1997. It opened for signature on 3 December 1997, and following ratification by the required number of states (40, for this Convention) on 16 September 1998, it entered into force on 1 March 1999. The NZ government signed the Convention on 3 December 1997, but did not ratify it until 17 January 1999, after the domestic legislation, the Anti-Personnel Mines Prohibition Act 1998, was passed.

Curiously, although this implementation legislation makes it an offence to assist or encourage anyone to "develop, produce, or otherwise acquire an anti-personnel mine; or possess, retain, or stockpile an anti-personnel mine; or transfer to anyone, directly or indirectly, an anti-personnel mine"¹⁴, the Super Fund (which began investing in 2003) did not divest from companies involved in landmines production until 2006 - eight years after the Act was passed.

Rather than the Fund similarly dithering around for years before divesting from companies involved in cluster munitions production, there is no good reason why they cannot move towards divesting in those companies right now. After all, the Norwegian Pension Fund, which seems to have a more

robust approach to 'responsible' investment, began divesting from cluster munitions producing companies in 2005, well before the Norwegian government launched the Oslo Process to ban cluster munitions, and a time when a cluster munitions Convention was a distant hope rather than an imminent reality. Furthermore, the Super Fund's own divestment from companies involved in tobacco products shows clearly that such action is not dependent on the existence of international treaties, nor domestic legislation, prohibiting a particular activity.

3. Investments in nuclear weapons production

As of 30 June 2007, the Super Fund had investments in companies involved in nuclear weapons production or deployment including (but by no means limited to): Northrop Grumman Corp. \$22,490,337; Lockheed Martin \$21,850,772; Honeywell International \$13,914,219; BAE Systems Plc. \$6,154,252; EADS Co. \$2,660,672; and Thales S.A. \$657,428 - thus, at an absolute minimum, investments of more than \$67.7 million.

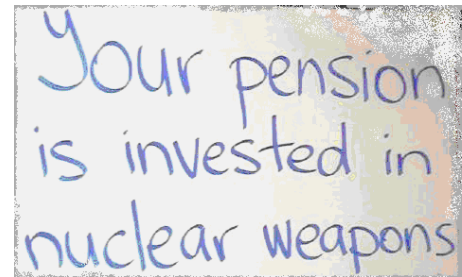


Photo: Peace Movement Aotearoa

While there is no international convention prohibiting nuclear weapons production and deployment, the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act, 1987, makes it an offence for anyone who is a citizen, or ordinarily resident here to aid or abet "any person to manufacture, acquire, possess, or have control over any nuclear explosive device" within or beyond the NZ Nuclear Free Zone¹⁵. Why the Guardians of the Fund think they are beyond the law by investing in nuclear weapons producing and deploying companies is as mysterious as it is unethical.

By way of contrast, the ACC Minister, Maryan Street, announced just last week (albeit belatedly, given the length of time since the legislation was passed) that the ACC is currently in the process of excluding investments in companies involved with the design, testing, assembly and/or refurbishment of nuclear explosive devices¹⁶. The ACC seems to have a rather stronger 'responsible' investment policy than the Super Fund, for example, it will: "not invest in activities which it believes are repugnant to the laws of New Zealand or regarded as unethical by a vast majority of the New Zealand public"¹⁷.

4. Investments in companies involved in human rights violations

Yet another area where the Guardians of the Fund display a profound lack of commitment to their 'responsible' investment policy is in the area of human rights. The Fund has investments in many overseas corporations that have well-documented records in human rights and other abuses, especially of indigenous peoples¹⁸. Such companies include:

- **Exxon Mobil Corp:** number 1 on the list of the Fund's top 10 International Equities in February 2008, investment of \$48,100,000 million¹⁹. Issues with its operations include destruction of land and livelihoods in Chad²⁰, and complicity in human rights violations at its liquid natural gas plant in Aceh²¹.

- **BHP Billiton:** BHP Billiton Ltd (Australia), investment of \$25,755,899²², and BHP Billiton Plc (Britain), investment of \$4,478,725. Issues with its mining operations include it being implicated in

human rights abuses, forced relocation, and environmental degradation around Cerrejon Zona Norte in Colombia²³, and environmental degradation on Navajo land²⁴.

- **Freeport McMoRan and the Rio Tinto Group:** investment of \$1,600,548, plus an investment of \$23,846,105 in the Rio Tinto Group (\$9,780,671 in Rio Tinto Plc, Britain, and \$14,065,434 in Rio Tinto Ltd, Australia) - Rio Tinto has a 40 per cent joint venture interest²⁵ in the Freeport McMoRan Grasberg mine in West Papua. Freeport "has an unparalleled record of human rights and environmental abuse"²⁶ in relation to that mine - it has created a 230 square kilometre barren wasteland of dumped mine tailings²⁷, and the destruction of the local environment is visible from space²⁸. The impact of the mine is particularly devastating for the indigenous Amungme and Kamoro people who have lost the traditional lands and aquatic resources that they rely on for survival, as well as being forcibly displaced from their homes and villages²⁹.

In 2005, the New York Times revealed that from 1998 through to 2004, Freeport gave Indonesian "military and police generals, colonels, majors and captains, and military units, nearly \$20 million (US). Individual commanders received tens of thousands of dollars, in one case up to \$150,000, according to the documents."³⁰ That included payments to the Mobile Brigade which has been associated with "numerous serious human rights violations, including extrajudicial killings, torture, rape, and arbitrary detention".³¹

And that's just Freeport, then of course there is Rio Tinto's appalling record³² ... the corporation described in 2001 as "a poster child for corporate malfeasance"³³.

- **Total S.A.:** investment of \$19,765,245. Aung San Suu Kyi, Burma's pro-democracy leader, has described Total as "the main supporter of the Burmese military regime"³⁴, a view shared by others³⁵. In September last year, French President Nicolas Sarkozy urged his country's businesses, including Total, to freeze their investments in Burma because of the gross human rights violations being perpetrated there³⁶.

There is no shortage of international human rights covenants and conventions that NZ has both signed and ratified³⁷ - some of which have been partially incorporated into domestic legislation via the New Zealand Bill of Rights Act and the Human Rights Act. There is thus clearly no lack of legally binding human rights obligations setting minimum standards of behaviour in this regard, but these appear to be completely ignored by the Guardians of the Fund.

5. What you can do

If you are of the view that our future pension funds should not be based on investments in companies involved in destroying the future for people in other parts of the world, then here are some suggestions of things you can do.

Auckland protest on 18 April 2008, Investment Watch Aotearoa New Zealand. Photo: Investment Watch



* Help get the word out about the dodgy Super Fund investments

Put a link to this update from your web site, distribute the 'Investing in whose future?' leaflets on stalls, at meetings, in your newsletters, in public places, or anywhere else you can think of - please

email nowarp@xtra.co.nz and let us know how many copies you'd like and your postal address to send them to.

*** Contact Michael Cullen, the Super Fund and your MP**

Tell them what you think about the Fund investing in companies engaged in offensive weapons production and human rights abuses.

As well as your own points, others you could include are:

General points: the Fund has divested in companies involved in whaling, anti-personnel mines and the tobacco sector. If they can divest from those companies, surely they can divest from others. Remind them of the Fund's mandate "to avoid prejudice to NZ's reputation as a responsible member of the world community", and point out that NZ is clearly not a responsible member of the world community when it continues to allow the Fund to invest in companies that other government pension funds have divested from (eg, the Norwegian Pension Fund has divested from companies involved in cluster munitions and nuclear weapons production, and human rights violations).

Much stronger ethical investment policies and practices must be developed for the Fund's investments as a matter of urgency; the current guidelines are clearly inadequate. Some MPs have already told people from their electorates that "the government, in framing the legislation which governs the operation of the Super Fund, expressly decided that responsibility for determining the investment strategy of the Fund should rest with independent investment experts (the Board of Guardians), and outside the sphere of politics" - you could point out that this is a lame excuse for inaction in the face of injustice, if the legislation was framed that way, it can readily be changed so that the government takes some responsibility to ensure the investments are ethical and that they do not breach NZ legislation, nor internationally binding legal obligations.

Specifically on cluster munitions: tell them that the move to divest is positive, but there is no good reason for the Fund not to begin divesting from companies involved in cluster munitions immediately. At the absolute minimum there needs to be a clear timeline, to be made publicly available with updates, on when the Fund will divest from those companies.

Specifically on nuclear weapons: remind them of the provisions of the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act, and tell them to begin divestment from companies involved with nuclear weapons production and deployment immediately.

Specifically on human rights abuses: remind them of the international human rights covenants and conventions that the government has signed and ratified, as well as the domestic human rights legislation, and tell them that you expect the Fund to act in accordance with those legal obligations. It is simply unacceptable for any government funds to be invested in any company engaged in human rights violations that would not be permitted here.

Contact details: Michael Cullen, Minister of Finance, Freepost Parliament, PO Box 18-888, Wellington, email mcullen@ministers.govt.nz or fax (04) 495 8442. **Super Fund:** Adrian Orr, Chief Executive Officer of the Guardians of New Zealand Superannuation, David May, Chairman of the Board, and Sir Douglas Graham, Deputy Chairman - post to NZ Superannuation Fund, Private Bag 106607, Auckland, email c/o scoker@nzsuperfund.co.nz or fax (09) 300 6981, and Anne-Maree O'Connor, Head of Responsible Investment, email aconnor@nzsuperfund.co.nz - if

any of the Super Fund email addresses bounce back, then resend your message to email enquiries@nzsuperfund.co.nz with a note saying who it is for.

It is very helpful for our work if you can send us copies of your letters and of any replies you receive - by post No WARP! c/o Peace Movement Aotearoa, PO Box 9314, Wellington 6141; by fax to (04) 382 8173, or bcc to email nowarp@xtra.co.nz - thank you.

6. Where you can get more information

In addition to the specific references below, the following sites have related information:

- Investment Watch Aotearoa New Zealand at <http://investmentwatch.wordpress.com>
- No WARP! (Network Opposed to Weapons and Related Production) at <http://www.converge.org.nz/pma/nowarp.htm>
- Council for Socially Responsible Investment at <http://www.csri.org.nz>
- and for everything you might ever want to know about cluster munitions, including a 'take action' page, Aotearoa New Zealand Cluster Munition Coalition at <http://www.stopclusterbombs.org.nz>

• References

¹ 'Investing in whose future? NZ Super Fund investments in cluster munitions and nuclear weapons production', No WARP! (Network Opposed to Weapons and Related Production) , February 2008 - <http://www.converge.org.nz/pma/nwfeb08.htm>

² More information about the Fund is available on their site at <http://www.superfund.co.nz>

³ Cluster bombs or munitions are weapons that release dozens or hundreds of smaller bomblets or sub-munitions. Dropped from the air or launched from the ground, they maim and kill combatants and civilians alike. Many bomblets fail to explode on impact as designed and instead can remain active (like landmines) for decades - endangering lives, hampering post-conflict reconstruction, and hindering development

⁴ 'GNZS Announce Decision on Cluster Munitions', Guardians of New Zealand Superannuation , 4 April 2008 - <http://www.nzsuperfund.com/news.asp?pageID=2145831983&RefID=2141736138>

⁵ For more information about the negotiations for a convention banning cluster munitions, see the government site at <http://www.mfat.govt.nz/clustermunitionswellington> and the Aotearoa New Zealand Cluster Munition Coalition site at <http://www.stopclusterbombs.org.nz>

⁶ 'Background Information on Cluster Munitions and Investments', NZ Superannuation Fund, 4 April 2008 - http://www.nzsuperfund.com/files/Guardians%20Background%20Paper%20on%20Cluster%20Munitions%2004%20April%202008_.pdf

⁷ All figures for Super Fund investments in this update are based on those in the Fund's equity portfolio of 30 June 2007, unless stated otherwise.

⁸ 'Background Information on Cluster Munitions and Investments', as at note 6, p1

⁹ 'GNZS Announce Decision on Cluster Munitions', and 'Background Information on Cluster Munitions and Investments', p1

¹⁰ 'NZ Super Fund decision on Cluster Munitions', Minister of Disarmament and Arms Control, 4 April 2008 - <http://www.beehive.govt.nz/release/nz+super+fund+decision+cluster+munitions> * Please note, after this No WARP! Update was published, the wording in Phil Goff's media release on the Beehive site was altered with the section quoted changed to: "when New Zealand signs up to a Treaty on the weapons." The original release is available from email nowarp@xtra.co.nz and at www.scoop.co.nz/stories/PA0804/S00156.htm

- ¹¹ Draft Cluster Munitions Convention, 21 January 2008, Article 17 - <http://www.mfat.govt.nz/clustermunitionswellington/conference-documents/draft-cluster-munitions-convention.doc>
- ¹² Reference at note 11
- ¹³ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997
- ¹⁴ Anti-Personnel Mines Prohibition Act, 1998, Part 2:7
- ¹⁵ New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act, 1987, Sections 5:1 and 5:2
- ¹⁶ 'The Challenge of Socially Responsible Investment', Maryan Street, 9 April 2008 - <http://www.beehive.govt.nz/speech/challenge+socially+responsible+investment>
- ¹⁷ Reference at note 16
- ¹⁸ For more information on the companies listed below, and others, see for example 'NGO Parallel Report to the UN Committee on the Elimination of Racial Discrimination', Peace Movement Aotearoa, 21 May 2007 (Section J: Impact of NZ companies and government investments on indigenous communities in other parts of the world), at <http://www.converge.org.nz/pma/CERD71-PMA.pdf> and 'On the International Day of the World's Indigenous People', Peace Movement Aotearoa, 9 August 2007 (Section C: government investments in companies involved in violation of indigenous peoples' human rights), at <http://www.converge.org.nz/pma/idwip07.pdf> - please note, the investment figures in those two documents are from the Super Fund June 2006 equity portfolio
- ¹⁹ Performance and portfolio update at 29 February 2008, NZ Superannuation Fund
- ²⁰ See, for example, <http://www.corpwatch.org/article.php?id=14430>
- ²¹ See, for example, <http://www.corpwatch.org/article.php?id=11442>
- ²² This, and subsequent figures are from the Super Fund's June 2007 equity portfolio
- ²³ See, for example, <http://www.minesandcommunities.org/Company/bhp04.htm>
- ²⁴ See, for example, <http://www.corpwatch.org/article.php?id=14435>
- ²⁵ http://www.riotinto.com/ourapproach/5204_our_non_managed_operations.asp
- ²⁶ Letter to the NZ Super Fund re Freeport, Indonesia Human Rights Committee, 1 December 2006 - <http://www.converge.org.nz/pma/wp011206a.htm>
- ²⁷ Reference at note 26
- ²⁸ http://www.tewahanui.info/news/190806_wpFreeport.shtml
- ²⁹ Reference at note 28
- ³⁰ 'Below a Mountain of Wealth, a River of Waste', Jane Perlez and Raymond Bonner, 27 December 2005 - <http://www.corpwatch.org/article.php?id=12985>
- ³¹ Reference at note 30
- ³² See, for example, <http://www.greenleft.org.au/2000/419/22857>
- ³³ 'Rio Tinto: Global Compact Violator - PT Kelian: A Case Study of Global Operations', Danny Kennedy, 13 July 2001 - <http://www.minesandcommunities.org/Company/kelian1.htm>
- ³⁴ See, for example, http://www.burmacampaign.org.uk/total_briefing.html
- ³⁵ See, for example, <http://www.corpwatch.org/article.php?id=14745>
- ³⁶ 'Global firms provide lifeline to Myanmar's junta', Agence France-Presse, 30 September 2007
- ³⁷ The International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child to name but some.