

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**Human rights non-compliant companies – Divestments
Assembly Resolution of 7 February 2024**

Government Response

**Presented by
Andrew Barr MLA
Treasurer
August 2024**

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Madam Speaker, following the Assembly resolution of 7 February 2024, in relation to ***Human rights noncompliant companies – Divestments***, today I am providing an update on the Government's position in relation to investment holdings in companies identified in the database maintained by the United Nations Office of the High Commissioner for Human Rights, that raise criticisms over commercial involvement within Israeli settlements in disputed territories.

The Assembly resolution called on the Government to report back by the end of August, on divestments that have, or may be taken in relation to these companies, following advice from the Investment Advisory Board on current policy settings dealing with Environmental, Social and Corporate Governance (ESG) controversy assessments.

Today I am tabling the advice provided by the Board regarding the Government's Responsible Investment Policy, current policy settings and consideration of any deviations in the framework by reference to the companies identified in paragraphs 4 and 5 of the Assembly Resolution.

Investment Advisory Board Findings

The Investment Advisory Board concluded that:

- the ESG Controversies research methodologies and rating assessment processes as part of the ACT Government's Responsible Investment Policy framework are comprehensive, robust and consistently applied across all listed company investments;
- the comprehensive and ongoing assessments of listed company ESG Controversies help to identify and exclude investment in companies involved in "very severe" ESG-related incidents that will impact stakeholders, the environment, company operations and investment sustainability;
- the ESG Controversies investment screen provides ongoing assessment of ESG-related controversies, whether actual or alleged, in which company operations and/or products allegedly have a negative environmental, social and/or governance impact as reported by the media, nongovernmental organisations, civil society groups, academia, regulators, international organisations and other stakeholders; and
- the ESG controversy research aligns to the underlying principles of global norms comprising, for example, the UN Global Compact, the UN General Principles of Business and Human Rights, the International Labour Organization Conventions and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises.

Crucially, the Board also found that while it is always the case that different policy-makers and members of the Legislative Assembly will form views about the severity of particular incidents or situations, the current framework of the Government allows for a considered, consistent and reliable assessment approach across a wide range of situations, including those in relation to Israeli settlements, the subject of paragraphs 4 and 5 of the Resolution.

As the Advisory Board noted, using this framework the nine companies identified in Paragraph 4(b) of the Resolution have been assessed under the Responsible Investment Policy ESG Controversies methodology and framework as having a rating of 'Severe and Indirect' reflecting the relevant controversy related to their operations, governance practices, and/or products and services that allegedly violates national or international laws, regulations and/or commonly accepted global conventions and norms.

This scoring level, will not lead to a divestment of the companies at this point in time, as the framework results in divestment only when the scoring level reaches a rating of "Very severe and Direct".

As the Board notes, if we were to ensure companies in the Assembly Resolution were excluded from our investments under the current framework, this would mean adopting ESG Controversy company exclusions down to the "Severe and Indirect" rating, which would also capture a significant number of other companies. This would have an adverse impact and result in a significant narrowing of the ACT Government's investment universe, and over time, impact on investment outcomes for the Territory.

The indicative impact on the listed share investment portfolios, based on exposures as at March 2024, would be a reduction in Australian company holdings of around 15 per cent equating to an estimated 51 per cent of market investment value (\$577 million) and a reduction in international company holdings of around 40 per cent equating to an estimated 65 per cent of market investment value (\$1.693 billion).

As the Board points out, if the Government were to instead make an ad-hoc exclusion of specific companies, it would not be supported by the same level of comprehensive ESG controversy research and methodologies applying to all other listed shares exposures.

In order to keep abreast of developments for the specific nominated companies, there would need to be regular updates and evaluation undertaken by specialists.

The Investment Advisory Board has advised that the database established by the United Nations Office of the High Commissioner for Human Rights does not appear to have had regular or annual assessments and does not appear to have ongoing funding allocated at this time, and the reliability and robustness of the database as a standalone determinant of company exclusions does not provide sufficient assurance or reliability for inclusion in the ACT Government's Responsible Investment Policy framework.

In addition, recognising the multitude of issues associated with any screening policy, individual views and the relative assessment of the degree of severity or impact, consideration of individual investment exclusions outside of the ESG-related controversies framework require reliable and robust evidentiary material before any departures should be contemplated.

In this regard, the Government does not have independent expertise that would support ongoing individual company assessments identified in the resolution, and any subjective assessments made would be complicated, resource-intensive, unlikely to be cost effective, and lack independent research for the ongoing exclusion decisions within a clear decision-making framework.

I consider it essential that the inclusion of any additional investment screening outside the established policy framework be based on a reliable, robust and fully transparent research and assessment structure.

Recognising there is limited publicly available information available about the research methodology, assessment process, company engagement process, and resources of the United Nations Office of the High Commissioner for Human Rights that underpins the development and ongoing monitoring of companies either already included in their database or other companies operating in the target region, I have written to the United Nations High Commissioner for Human Rights seeking further information regarding the reliability and enduring nature of the their database referenced in the Assembly Resolution as a possible screening tool, before deciding whether to adopt it as a part of the Government's investment screening framework.

Until this additional information on the database is received and full and proper consideration can be given to this as a screening tool, it is the Government's position that will maintain the current investment assessment framework, which includes ongoing assessments of the companies identified in the Assembly resolution as part of the global assessments for the Government's Responsible Investment Policy, to ensure a cohesive, reliable and robust framework continues to be applied.

The ESG Controversies research methodologies and rating assessment processes as part of our Responsible Investment Policy framework are comprehensive, robust and consistently applied across all listed company investments. Importantly, the ESG-related controversy assessment framework is supported by independent research, clear, consistent and transparent methodologies and processes, with the assessment criteria aligned with accepted international norms and conventions.

That said, it remains the firm view of the Government that the sentiment and concerns raised by the Assembly remain as serious as they have ever been, and we restate our support for the Australian Government's efforts to address these issues through diplomatic and other channels to ensure an end to the suffering and loss of life and livelihood that sadly continues to play out.