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Superannuation Schemes Act 1989

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

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An Act to provide for the registration of superannuation schemes, and to provide a procedure to enable both benefits payable from superannuation schemes and annuities to be reduced as a result of changes in taxation

1 Short Title and commencement

- (1) This Act may be cited as the Superannuation Schemes Act 1989.
- (2) Section 32 of this Act shall come into force on the 1st day of April 1990.

- (3) Except as provided in subsection (2) of this section, this Act shall come into force on the day on which it receives the Royal assent.

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

actuary means a person who is a Fellow of the New Zealand Society of Actuaries

administration manager, in relation to any superannuation scheme, means the person (if any) to whom the trustees have contracted some or all of the administration of the scheme

auditor means a chartered accountant (within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996)

beneficiary, in relation to any superannuation scheme, means—

- (a) a natural person who is eligible to receive a benefit from the scheme:
- (b) the trustee of another registered superannuation scheme which is eligible to receive a benefit from the scheme

benefit means any lump sum, annuity, pension, allowance, refund, or other payment arising from membership of a superannuation scheme

complying fund rules means complying fund rules, as defined in section OB 1 of the Income Tax Act 2004

employee means any person who is engaged to work, or works, under a contract of service or apprenticeship with an employer

employer means any person who pays, or is liable to pay, to any person (being an employee within the meaning of this subsection) any earnings as an employee

Government Actuary includes any person for the time being authorised by delegation by the Government Actuary to exercise or perform any of the powers or functions of the Government Actuary

investment manager, in relation to any superannuation scheme, means a person (if any) to whom the trustees have

contracted the investment of some or all of the funds of the scheme

KiwiSaver scheme has the meaning given to it in the KiwiSaver Act 2006

member, in relation to any superannuation scheme, means—

- (a) a natural person who has been admitted to membership of the scheme and who is, or may become, entitled to benefits under the scheme:
- (b) the trustees of another registered superannuation scheme which has been admitted to membership of the scheme and which is, or may become, entitled to benefits under the scheme

participation agreement has the meaning given to it in section 4(1) of the KiwiSaver Act 2006

registered superannuation scheme or **registered scheme** means a superannuation scheme that, for the time being, is registered under this Act

solicitor means a person enrolled as a barrister and solicitor of the Court under or by virtue of the Law Practitioners Act 1982

superannuation scheme or **scheme** has the meaning given to it in section 2A

trustees,—

- (a) in relation to a superannuation scheme established under a trust deed, means the persons who are designated as such in the trust deed, or the successors of those trustees, and who have the responsibility for administering the trusts governing the superannuation scheme:
- (b) in relation to a superannuation scheme constituted under an Act of the Parliament of New Zealand, means the person or persons appointed to administer the scheme

trust deed means the trust deed that sets out the trusts governing a superannuation scheme, as amended from time to time.

- (2) For the purposes of this Act and any regulations made under this Act, a superannuation scheme shall be deemed to operate on the principle of unallocated funding if the contributions to

the scheme are not allocated on a defined basis to individual members.

Section 2(1) **auditor**: substituted, on 1 October 1996, by section 23 of the Institute of Chartered Accountants of New Zealand Act 1996 (1996 No 39).

Section 2(1) **auditor**: amended, on 7 July 2010, by section 10 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

Section 2(1) **beneficiary**: substituted, on 1 August 1990, by section 2(1) and (2) of the Superannuation Schemes Amendment Act 1990 (1990 No 67).

Section 2(1) **complying fund rules**: inserted, on 18 December 2006, by section 235 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 2(1) **KiwiSaver scheme**: inserted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

Section 2(1) **member**: substituted, on 1 August 1990, by section 2(1) and (2) respectively, of the Superannuation Schemes Amendment Act 1990 (1990 No 67).

Section 2(1) **participation agreement**: inserted, on 19 December 2007, by section 105 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 2(1) **superannuation scheme or scheme**: amended, on 1 August 1990, by section 2(3) of the Superannuation Schemes Amendment Act 1990 (1990 No 67).

Section 2(1) **superannuation scheme or scheme**: substituted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

2A Definition of superannuation scheme

(1) In this Act, unless the context otherwise requires, **superannuation scheme or scheme**—

- (a) means—
- (i) any trust established by its trust deed principally for the purpose of providing retirement benefits to beneficiaries who are natural persons or paying benefits to persons who are the trustees of a registered superannuation scheme or a Kiwi-Saver scheme; or
 - (ii) any arrangement constituted under an Act of the Parliament of New Zealand, other than the Social Security Act 1964, principally for the purpose of providing retirement benefits to natural persons; but
- (b) does not include any scheme that is registered as a Kiwi-Saver scheme.

- (2) In Acts other than this Act, **superannuation scheme** or **scheme** includes a KiwiSaver scheme to the extent set out in section 118 of the KiwiSaver Act 2006.

Section 2A: inserted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

Part 1

Registration of superannuation schemes

3 Applications for registration of scheme governed by trust deed

- (1) The trustees of any superannuation scheme—
- (a) that is governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and
 - (b) that has at least one trustee who is a New Zealand resident,—
- may apply to the Government Actuary for registration of the scheme.
- (2) Every such application shall be accompanied by a copy of the trust deed and of every amendment to the trust deed.

4 Applications for registration of scheme constituted under Act of Parliament

- (1) The person appointed to administer any superannuation scheme that is constituted under an Act of the Parliament of New Zealand may apply to the Government Actuary for registration of the scheme.
- (2) Every such application shall be accompanied by a copy of the Act of Parliament and any other documents governing the scheme.

5 Matters required to be specified in application

Every application for registration shall specify the matters set out in Schedule 1 to this Act.

6 Registration of schemes

- (1) The Government Actuary shall register a scheme within 14 days after receiving the application and the documents required to accompany the application.

- (2) The registration shall be deemed to take effect on whichever date is the latest of—
- (a) the commencement date of the scheme;
 - (b) the date on which the Government Actuary received the application and the documents required to accompany the application;
 - (c) such date as may be determined by agreement between the trustees and the Government Actuary.

Trust deeds

7 Content of trust deeds

The trust deed of every registered superannuation scheme shall specify the following matters:

- (a) the conditions of entry of members to the scheme;
- (b) the conditions as to termination of membership of the scheme;
- (c) the contributions payable;
- (d) the conditions under which benefits become payable and the way in which the benefits are to be determined;
- (e) the number of trustees, and provision for their appointment and retirement;
- (f) the circumstances in which the scheme may be wound up, and the way in which the assets of the scheme are to be distributed in the event of a winding up.

8 Implied provisions as to investment of scheme money

The following provisions shall be implied in every trust deed of a registered superannuation scheme:

- (a) that all money belonging to the scheme and available for investment shall be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds; and
- (b) that, notwithstanding anything to the contrary in section 13D(1) of that Act, the trustees and any investment manager of the scheme shall, in exercising the power of investment, exercise the care, diligence, and skill required of that person by section 13B or section 13C of that Act, as is applicable.

9 Implied provision as to amendments reducing accrued benefits, etc

There shall be implied in every trust deed of a registered superannuation scheme a provision that no amendment of the trust deed which would have the effect of—

- (a) reducing, postponing or otherwise adversely affecting the benefits, whether vested, contingent, or discretionary, that may in due course flow from, or are attributable to, membership of the scheme up to the date the amendment is made; or
- (b) removing any right of the members or other beneficiaries to participate in the management of the scheme; or
- (c) increasing the contributions, fees, or charges payable by any member; or
- (d) providing for the reversion of any assets of the scheme to any employer to any greater extent than already provided for in the trust deed,—

shall be made without the written consent of every member, and of every other beneficiary who is in receipt of a benefit under the scheme at the date the amendment is made, who would be adversely affected by the amendment.

9A Implied provision as to alterations to scheme

There shall be implied in every trust deed of a registered superannuation scheme a provision that no alteration to the scheme that—

- (a) would be contrary to or have the effect of nullifying or reversing or amending any matter stated in the trust deed, or any provision implied in the trust deed by this Act; or
- (b) would have the effect of extending or varying or limiting the scope of the trust deed in any material particular—

shall be effected otherwise than by way of amendment to the trust deed in accordance with section 12 of this Act.

Section 9A: inserted, on 1 August 1990, by section 2 of the Superannuation Schemes Amendment Act (No 2) 1990 (1990 No 80).

9B Implied provision as to transfer of members, etc

- (1) There shall be implied in every trust deed of a registered superannuation scheme a provision that no member or beneficiary of the superannuation scheme will be transferred to another superannuation scheme without the written consent of the member or beneficiary concerned.
- (1A) This section is subject to section 9BAA.
- (2) The trustees of each registered superannuation scheme affected must notify the persons described in subsection (2A) in accordance with subsection (2B) if it is proposed to transfer (whether at the same time or over an extended period) all or a substantial number of members or beneficiaries—
- (a) from a registered superannuation scheme to any other superannuation scheme; or
 - (b) from a superannuation scheme to a registered superannuation scheme.
- (2A) The persons referred to in subsection (2) are—
- (a) all members and beneficiaries of each registered superannuation scheme (other than those members and beneficiaries that, in the opinion of the Government Actuary, are not likely to be materially affected by the proposed transfer referred to in that subsection); and
 - (b) the Government Actuary.
- (2B) At least 1 month before the date by which the written consent of members and beneficiaries to a proposed transfer referred to in subsection (2) must be received by the trustees of each registered superannuation scheme affected,—
- (a) the trustees must notify the members and beneficiaries described in subsection (2A)(a) in writing of—
 - (i) the proposed transfer and its implications for members and beneficiaries; and
 - (ii) the date on which the proposed transfer is to occur; and
 - (iii) the date by which the written consent of members and beneficiaries to the proposed transfer must be received by the trustees; and
 - (iv) the fact that a copy of the notice has been forwarded to the Government Actuary; and

- (b) the trustees must notify the Government Actuary in writing of—
 - (i) the proposed transfer and its implications for members and beneficiaries; and
 - (ii) the date on which the proposed transfer is to occur; and
 - (iii) the date by which the written consent of members and beneficiaries to the proposed transfer must be received by the trustees.
- (3) The giving of notice under subsection (2) of this section shall not derogate from the need to comply with any other provision of this Act.
- (4) For the purposes of section 20 of this Act, and without limiting the provisions of that section, it shall be a ground for the Government Actuary to have reasonable cause to believe that a particular registered scheme to which members are transferred fails to meet the requirements of this section if—
 - (a) over any 12 month period, either—
 - (i) twenty percent or more of the members or beneficiaries of any other superannuation scheme are transferred to the particular registered scheme; or
 - (ii) the number of members or beneficiaries of the particular registered scheme is increased by 20 percent or more by reason of any transfer of members and beneficiaries from any other scheme; and
 - (b) the members and beneficiaries of the particular registered scheme have not been notified of the transfer, or any notification given has not adequately set out the implications of the transfer.
- (5) For the purpose of this section, references to the transfer of members or beneficiaries from one scheme to another include references to transfers of members or beneficiaries from one section of a registered scheme to another section of the same scheme.

Section 9B: inserted, on 1 August 1990, by section 2 of the Superannuation Schemes Amendment Act (No 2) 1990 (1990 No 80).

Section 9B(1A): inserted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

Section 9B(2): substituted, on 3 May 2001, by section 3 of the Superannuation Schemes Amendment Act 2001 (2001 No 26).

Section 9B(2A) and (2B): inserted, on 3 May 2001, by section 3 of the Superannuation Schemes Amendment Act 2001 (2001 No 26).

**9BAA When Government Actuary may approve transfers
without consent of members and beneficiaries**

- (1) The requirement in section 9B to obtain the written consent of all or any of the members and beneficiaries of a scheme does not apply if the Government Actuary approves the transfer under this section.
- (1B) This section applies despite anything to the contrary in a scheme's trust deed.
- (2) The Government Actuary may approve the transfer if, and only if, the Government Actuary is satisfied that—
 - (a) the terms and conditions of the scheme to which the members or beneficiaries are to be transferred (**new scheme**) are no less favourable to members or beneficiaries than the terms and conditions of the scheme from which they are being transferred (**old scheme**); and
 - (b) the transfer is otherwise reasonable in all the circumstances (including having regard to the value of the assets transferred from the old scheme to the new scheme); and
 - (c) the procedure in section 9BAB has been followed.
- (3) The Government Actuary may decline to approve a transfer if the Government Actuary considers that the transfer would adversely affect the interests of all or any of the members and beneficiaries of the old scheme in any material way.
- (4) In determining whether subsection (2) or (3) applies, the Government Actuary may—
 - (a) have regard to the likely effect of the new scheme on benefits to members and beneficiaries as a whole; and
 - (b) have regard to any other matter that the Government Actuary considers relevant.
- (4B) For a transfer that the Government Actuary has approved,—
 - (a) each relevant member of the old scheme is treated as offering to be a member of the new scheme on the terms and conditions for that new scheme; and

- (b) the trustee of the new scheme is treated as accepting the member's offer.
- (5) The Government Actuary may publish, in any form that the Government Actuary considers fit, guidance as to matters that the Government Actuary considers relevant under this section (including principles that the Government Actuary may use to decide whether to approve the transfer).

Section 9BAA: inserted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

Section 9BAA(1): amended, on 19 December 2007, by section 106(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 9BAA(1B): inserted, on 19 December 2007, by section 106(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 9BAA(4B): inserted, on 19 December 2007, by section 106(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

9BAB How approval under section 9BAA may be granted

- (1) The Government Actuary may accept an application for approval under section 9BAA that is made by all or any of the trustees of the old scheme, the trustees of the new scheme, or a relevant employer, provided that the Government Actuary is satisfied that—
 - (a) it is reasonable in all of the circumstances of the case that the person have standing to make the application; and
 - (b) the person falls within a class specified in any guidelines published by the Government Actuary (if any) for the purposes of this subsection.
- (2) The Government Actuary may require the applicant to give the Government Actuary, with the application or at any later time,—
 - (a) a certificate, signed by a person of any class specified by the Government Actuary, that the transfer meets the requirements of section 9BAA; and
 - (b) any other information about the new scheme, the old scheme, or the transfer.
- (3) The applicant must give notice to every member and beneficiary to whom the transfer will relate—

- (a) that the applicant has applied for approval to transfer the members and beneficiaries without their written consent; and
 - (b) that the member or beneficiary may make submissions to the Government Actuary about the transfer.
- (4) The Government Actuary must have regard to any submission before deciding whether or not to give approval.
- (5) The Government Actuary may give approval subject to any terms and conditions that the Government Actuary may specify in the notice of approval, and the approval is effective only if the transfer is carried out in accordance with those terms and conditions.
- (6) To avoid doubt, any approval given under this section is subject to section 23.

Section 9BAB: inserted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

9BA Government Actuary may exempt trustees from requirement to obtain written consent of all members and beneficiaries

- (1) The Government Actuary may exempt trustees of a registered superannuation scheme from the requirement to obtain the written consent of all members and beneficiaries of the scheme under sections 9 and 9B if the Government Actuary is satisfied that—
 - (a) the trustees have not been able to contact all members or beneficiaries of the scheme despite having taken all reasonable steps to do so; and
 - (b) the proposed action is not unreasonable in relation to the best interests of any member or beneficiary who has not been contacted.
- (2) To avoid doubt, any exemption given by the Government Actuary under this section is subject to section 23.

Section 9BA: inserted, on 3 May 2001, by section 4 of the Superannuation Schemes Amendment Act 2001 (2001 No 26).

9C Implied provisions as to deferred benefits

- (1) Notwithstanding anything contained in the trust deed of any registered superannuation scheme, there shall be implied in

every such trust deed a provision that a beneficiary who continues to be employed by an employer after that beneficiary's expected age or date of retirement (as defined in the trust deed of that registered superannuation scheme) may elect to defer the receipt of any benefit which the beneficiary is eligible to receive under that superannuation scheme until the date upon which the beneficiary ceases to be employed by that employer.

- (2) Nothing in subsection (1) of this section or in the Human Rights Act 1993 has the effect of requiring either an employer or a beneficiary to continue to contribute, or to cease to contribute, to a registered superannuation scheme after the beneficiary's expected age or date of retirement, as defined in the trust deed of that registered superannuation scheme.
- (3) Where a beneficiary has the right, under the provision described in subsection (1) of this section, to elect to defer receipt of any benefit which the beneficiary is eligible to receive under the superannuation scheme, the trustees of the scheme shall inform the beneficiary in writing of that right.

Section 9C: inserted, on 1 April 1992, by section 21 of the Human Rights Commission Amendment Act 1992 (1992 No 16).

Section 9C(2): amended by substituting a reference to the Human Rights Act (1993 No 82), being the corresponding enactment in force, for a reference to the repealed Human Rights Commission Act 1977 (1977 No 49)

9D Implied term as to reduction of scheme insurance upon transfer out of complying superannuation fund

- (1) This section applies to a registered superannuation scheme (**scheme A**) if—
 - (a) scheme A provides or facilitates the provision of insurance (the **scheme insurance**) to a member or other beneficiary (the **person**); and
 - (b) the benefit of the scheme insurance is calculated by reference to contributions for the person held by a complying superannuation fund (the **contributions**); and
 - (c) an amount of contributions is transferred out of the complying superannuation fund to a complying superannuation fund or KiwiSaver scheme (other than scheme A).
- (2) A term is implied into the trust deed of scheme A. That term must have the effect of allowing the benefit of the person's

scheme insurance to be reduced in proportion to the amount of contributions transferred out of the complying superannuation fund to a complying superannuation fund or KiwiSaver scheme (other than scheme A).

Section 9D: inserted, on 19 December 2007, by section 107 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

10 Implied provision as to reversion of scheme assets to employer

There shall be implied in every trust deed of a registered superannuation scheme that provides for the reversion of any assets of the scheme to any employer, a provision that no part of the assets shall so revert without the prior written consent of the Government Actuary.

11 Application and enforcement of implied provisions

- (1) Sections 8 to 10 of this Act shall apply notwithstanding anything to the contrary in the trust deed.
- (2) Every provision implied in a trust deed in accordance with sections 8 to 10 of this Act shall be enforceable by the trustees or any member of the scheme.

12 Amendment of trust deeds

- (1) The trustees of a registered superannuation scheme shall, before any amendment is made to the trust deed,—
 - (a) give a certificate that the trust deed, when amended as proposed, will comply with section 7 of this Act, and will not contain any provision that is contrary to those implied by sections 8 to 10 of this Act; or
 - (b) obtain a certificate to that effect from the administration manager of the scheme or a solicitor.
- (2) Within 14 days after any amendment to the trust deed is made, the trustees shall lodge a copy of that certificate and a copy of the amendment with the Government Actuary.

Financial information

13 Accounts

- (1) The trustees of a registered superannuation scheme shall ensure that—
 - (a) proper books of account are kept in respect of the scheme; and
 - (b) annual accounts in respect of the scheme are prepared in accordance with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993); and
 - (c) those annual accounts are audited by an auditor.
- (2) The annual accounts in respect of the scheme need not be audited if—
 - (a) the scheme is fully managed by an administration manager that provides to the Government Actuary annual audited accounts in respect of its total business; and
 - (b) that administration manager has prepared annual accounts in respect of the scheme that comply with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993); and
 - (c) the auditor of the administration manager certifies annually that adequate accounting systems, records, and methods of internal control are in place to ensure that the accounts prepared by the administration manager in respect of each scheme fully managed by the administration manager correctly present each scheme's financial affairs; and
 - (d) the administration manager certifies that the accounts prepared in respect of the scheme correctly present its financial affairs; and
 - (e) the trustees certify that—
 - (i) all of the contributions made to the scheme during the financial year were passed promptly to, and all of the benefits paid during the financial year were paid by, the administration manager of the scheme; and
 - (ii) the trustees hold no funds.

Section 13(1)(b): substituted, on 3 May 2001, by section 5(1) of the Superannuation Schemes Amendment Act 2001 (2001 No 26).

Section 13(2)(b): substituted, on 3 May 2001, by section 5(2) of the Superannuation Schemes Amendment Act 2001 (2001 No 26).

14 Annual reports

- (1) The trustees of a registered superannuation scheme shall, within 5 months after the end of each financial year, prepare a report on the scheme for that year.
- (2) The annual report shall include the matters specified in Schedule 2 to this Act.
- (3) The trustees must send to the Government Actuary a copy of the completed report within 28 days after its completion, and, if only abridged accounts are contained in the report, a copy of the annual accounts.
- (4) This section is subject to section 124 of the KiwiSaver Act 2006.

Section 14(1): amended, on 3 May 2001, by section 6(1) of the Superannuation Schemes Amendment Act 2001 (2001 No 26).

Section 14(3): substituted, on 3 May 2001, by section 6(2) of the Superannuation Schemes Amendment Act 2001 (2001 No 26).

Section 14(3): substituted, on 15 April 2004, by section 3 of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Section 14(4): inserted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

15 Actuarial examination

- (1) If a registered superannuation scheme—
 - (a) operates on the principle of unallocated funding; or
 - (b) provides benefits that are dependent upon the contingencies of human life, and the risks associated with those benefits are not fully insured with a company engaged in the business of life insurance,—the trustees shall ensure that an actuary examines the financial position of the scheme as at dates that are no more than 3 years apart.
- (2) The trustees shall ensure that the report of the actuary in respect of each such examination is received no later than 7 months after the date as at which the financial position of the scheme was examined.

- (3) The trustees must send a copy of the report of the actuary to the Government Actuary within 28 days after the date of its receipt by the trustees.

Section 15(2): amended, on 3 May 2001, by section 7(1) of the Superannuation Schemes Amendment Act 2001 (2001 No 26).

Section 15(3): substituted on 3 May 2001, by section 7(2) of the Superannuation Schemes Amendment Act 2001 (2001 No 26).

Prospective members' rights to information

15A Prospective members' rights to information

- (1) Each person who is eligible to become a member of a registered superannuation scheme has the right, upon request,—
- (a) to look at, at any reasonable time, a copy of the trust deed, or a copy of any report of an actuarial examination required under section 15:
 - (b) to receive, upon payment of a reasonable fee, a copy of the trust deed or a copy of any of those reports:
 - (c) to receive a statement of the specific interest, mortality, and other assumptions and bases of calculation applied in determining the value of the assets and liabilities of the scheme for the purposes of an actuarial examination required under section 15:
 - (d) to receive a copy of the annual accounts and any auditor's report or, if that report is not required or produced, the certificates required by section 13(2).
- (2) Nothing in this section limits any provision in the Securities Act 1978.

Section 15A and its preceeding heading: inserted, on 15 April 2004, by section 4 of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Members' rights to information

16 Rights to information before becoming member of registered superannuation scheme

- (1) Each person, before becoming a member of a registered superannuation scheme, shall—
- (a) be advised in writing of—
 - (i) the contributions payable:
 - (ii) the charges or fees (if any) that the members may have to pay in addition to contributions:

- (iii) the member's principal rights and benefits, including rights and benefits upon the scheme being wound up;
 - (iv) any circumstances which it would be reasonable to expect the trustees to foresee in which, given the nature of the scheme, any benefit could be expected to reduce over time;
 - (v) any circumstances which it would be reasonable to expect the trustees to foresee in which, given the nature of the scheme, any member could be expected to receive less from the scheme than the contributions made by the member;
 - (vi) the member's right to request the information required to be supplied by section 17(b) of this Act:
- (b) be given a copy of the most recent annual report of the trustees, or, if there is no such report, be advised in writing of—
- (i) the names of the trustees and any administration manager and every investment manager of the scheme (if any); and
 - (ii) the name and address of the person to whom all correspondence from the members to the trustees should be sent.
- (2) This section does not apply in respect of a person who is provided with an investment statement that relates to the registered superannuation scheme concerned and complies with the Securities Act 1978 and regulations made under that Act before he or she applies for membership of the registered superannuation scheme (whether or not the Securities Act 1978 applies in respect of the registered superannuation scheme).

Section 16(2): inserted, on 1 October 1997, by section 2 of the Superannuation Schemes Amendment Act 1996 (1996 No 102).

17 Members' rights to information

- (1) Each member of a registered superannuation scheme shall—
- (a) be given, within 6 months of the close of each financial year of the scheme, a copy of the annual report of the trustees in respect of that year; and
 - (b) have the right, upon request,—

- (i) to receive an estimate of the member's benefits:
 - (ii) to look at, at any reasonable time, a copy of the trust deed, or a copy of any report of an actuarial examination required under section 15 of this Act:
 - (iii) to receive, upon payment of a reasonable fee, a copy of the trust deed or a copy of any such report.
 - (iv) to receive a statement of the specific interest, mortality, and other assumptions and bases of calculation applied in determining the value of the assets and liabilities of the scheme for the purposes of an actuarial examination required under section 15 of this Act.
 - (v) to receive a copy of the annual accounts and any auditor's report or, if that report is not required or produced, the certificates required by section 13(2).
- (2) Nothing in this section limits sections 54A and 54B or any other provision of the Securities Act 1978.
- (3) Each member of a registered superannuation scheme to which section 15 of this Act applies, who is considering a proposed change to the member's benefits, shall have the right, upon request, to receive—
- (a) a statement of the specific interest, mortality, and other assumptions and bases of calculation applied in determining the benefits under consideration; and
 - (b) where different assumptions and bases of calculation have, within the last 12 months, been applied in determining benefits similar to those under consideration, a statement of the reasons why different assumptions and bases applied.
- (4) For the purposes of subsection (3) of this section, **a proposed change** includes but is not limited to—
- (a) an election to convert any benefit into a lump sum:
 - (b) an election to defer receipt of a benefit:
 - (c) a change to a benefit regardless of whether or not the benefit is specified in the trust deed of the scheme of which the person is a member:

- (d) an election to convert all or part of a benefit into a benefit to be provided to some other person:
- (e) an election to transfer a benefit to another superannuation scheme or from one section of a scheme to another section of the same scheme.

Section 17(1)(b)(iv): inserted, on 2 September 1996, by section 2(1) of the Superannuation Schemes Amendment Act (No 2) 1996 (1996 No 147).

Section 17(1)(b)(v): inserted, on 15 April 2004, by section 5 of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Section 17(2): inserted by, on 1 October 1997, section 3 of the Superannuation Schemes Amendment Act 1996 (1996 No 102).

Section 17(3) and (4): inserted, on 2 September 1996, by section 2(2) of the Superannuation Schemes Amendment Act (No 2) 1996 (1996 No 147).

Non-resident trustees

18 Non-resident trustees

The trustees of any registered superannuation scheme that is not constituted under an Act of the Parliament of New Zealand shall notify the Government Actuary as soon as practicable after the scheme ceases to have a trustee who is a New Zealand resident.

Disclosure of information

This heading: inserted, on 2 September 1996, by section 3 of the Superannuation Schemes Amendment Act (No 2) 1996 (1996 No 147).

18A Disclosure of information to Government Actuary

- (1) Every person—
 - (a) who holds office as an administration manager, investment manager, actuary, or auditor of a registered superannuation scheme; and
 - (b) who forms an opinion in the course of, or in connection with, the performance of the functions of that office that there is a serious problem with the scheme,—shall disclose to the Government Actuary information relating to the affairs of the scheme obtained in the course of holding that office.
- (2) For the purposes of this section, **a serious problem** means—

- (a) the scheme is not operating in accordance with this Act, and any regulations made under this Act, or fails to meet any requirements of this Act or any such regulations; or
 - (b) the financial position of the scheme, or the security of benefits, or the management of the scheme, is inadequate; or
 - (c) for a registered scheme approved as a complying superannuation fund for the purposes of the Income Tax Act 2004, the registered scheme no longer meets the requirements in section 35(1)(a) to (c).
- (3) For the avoidance of doubt, subsection (1) of this section does not require any person who holds office as an administration manager, investment manager, actuary, or auditor of a registered superannuation scheme to carry out functions additional to those functions that he or she would ordinarily carry out in the course of holding that office, other than to disclose to the Government Actuary information relating to the affairs of the scheme.

Compare: Superannuation Industry (Supervision) Act 1993 (Australia), s 129

Section 18A: inserted, on 2 September 1996, by section 3 of the Superannuation Schemes Amendment Act (No 2) 1996 (1996 No 147).

Section 18A(2)(b): amended, on 18 December 2006, by section 236(a) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81)

Section 18A(2)(c): inserted, on 18 December 2006, by section 236(b) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

18B Protection of administration managers, investment managers, actuaries, and auditors

- (1) No civil, criminal, or disciplinary proceedings shall lie against any administration manager, investment manager, actuary, or auditor arising from the disclosure in good faith of information to the Government Actuary under section 18A of this Act.
- (2) No person shall remove from office, or terminate the contract of appointment of, any administration manager, investment manager, actuary, or auditor by reason of the disclosure in good faith of information to the Government Actuary under section 18A of this Act.

- (3) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of any administration manager, investment manager, actuary, or auditor shall make any order against, or do any act in relation to, that person in respect of the fact of such disclosure.
- (4) No information received by the Government Actuary under section 18A of this Act shall be admissible as evidence in any proceedings against the administration manager, investment manager, actuary, or auditor concerned.
- (5) Nothing in subsection (4) of this section shall limit the admissibility of any information obtained in any other way.

Compare: 1989 No 11 ;s 15 1989 No 157 s 98

Section 18B: inserted, on 2 September 1996, by section 3 of the Superannuation Schemes Amendment Act (No 2) 1996 (1996 No 147).

*Powers of Government Actuary as to
cancellation of registration, etc*

19 Cancellation of registration

- (1) The Government Actuary may cancel the registration of a superannuation scheme—
 - (a) if a scheme that is not constituted under an Act of the Parliament of New Zealand ceases to have a trustee who is a New Zealand resident; or
 - (b) if the Government Actuary is satisfied on reasonable grounds that the scheme is no longer a superannuation scheme within the meaning of section 2 of this Act, and the Government Actuary has given not less than 28 days' notice in writing to the trustees.
- (2) The Government Actuary shall cancel the registration of a superannuation scheme upon receipt of an application by the trustees, if the Government Actuary is satisfied that the members and other beneficiaries of the scheme have been advised of the consequences of the scheme ceasing to be registered.
- (3) Where the registration of a scheme is cancelled, each provision set out in sections 8 to 10 of this Act shall continue to be implied in the trust deed of the scheme unless—
 - (a) evidence has been produced to the Government Actuary to his or her satisfaction that all of the members and

- other beneficiaries of the scheme have consented to the provision no longer applying; or
- (b) in any other case the Government Actuary has notified the trustees in writing that he or she is satisfied that the provision is no longer necessary.

20 Powers of Government Actuary in event of scheme operating in contravention of this Act, etc

- (1) If, in respect of any registered superannuation scheme, the Government Actuary has reasonable cause to believe that—
- (a) the scheme is not operating in accordance with this Act, and any regulations made under this Act, or fails to meet any requirements of this Act or any such regulations; or
- (b) the financial position of the scheme, or the security of benefits, or the management of the scheme, is inadequate,—
- the Government Actuary may direct the trustees to supply all members of the scheme with such information as the Government Actuary may specify, and may, upon giving 28 days' notice in writing to the trustees,—
- (c) cancel the registration of the scheme; or
- (d) direct the trustees or the administration manager or the investment manager, as the case may be, to operate the scheme in a specified manner; or
- (e) order that the scheme be wound up.
- (2) The Government Actuary shall not give a direction under subsection (1)(d) of this section if the operation of the scheme in accordance with the direction would be contrary to the provisions of the trust deed or, in relation to a superannuation scheme constituted under an Act of the Parliament of New Zealand, the provisions of the documents governing the scheme.
- (3) If the Government Actuary has reasonable cause to believe that any registered superannuation scheme has no members or other beneficiaries, the Government Actuary may, upon giving 28 days' notice in writing to the trustees,—
- (a) cancel the registration of the scheme; or
- (b) order that the scheme be wound up.

Independent trustees

This heading: inserted, on 2 September 1996, by section 4 of the Superannuation Schemes Amendment Act (No 2) 1996 (1996 No 147).

20A Receiver or liquidator to designate or appoint independent trustee if required

- (1) This section applies if a receiver has been appointed in respect of property of an employer or if a liquidator has been appointed for the employer and either—
 - (a) the receiver or liquidator is designated or appointed as a trustee of a relevant superannuation scheme; or
 - (b) before the appointment of the receiver or liquidator, the employer had the power to appoint a trustee of a relevant superannuation scheme.
- (1A) The receiver or liquidator must be satisfied that, at all times, at least 1 of the trustees of the relevant superannuation scheme is an independent person and, if the receiver or liquidator is not so satisfied, designate or appoint an independent person as trustee of the scheme.
- (1B) For the purposes of this section, a **relevant superannuation scheme** is one—
 - (a) to which the employer has contributed in respect of the employees of the employer who are members of the scheme; or
 - (b) for which the employer has paid any of the administration costs in respect of the employees of the employer who are members of the scheme.
- (2) For the purposes of this section, an **independent person** is a person who—
 - (a) has no interest in the assets of the employer or of the scheme, otherwise than as a trustee of the scheme; and
 - (b) is not associated with, or employed by, the employer, the receiver, or the liquidator.
- (3) Any independent person designated or appointed under this section as a trustee of the scheme—
 - (a) shall hold office as if he or she was designated or appointed under the trust deed of the scheme; and
 - (b) is entitled to be paid out of the assets of the scheme, reasonable remuneration for, and any expenses reasonably

incurred by that person in, acting in his or her capacity as a trustee of the scheme.

Compare: Pensions Act 1995 (UK), ss 23, 25

Section 20A: inserted, on 2 September 1996, by section 4 of the Superannuation Schemes Amendment Act (No 2) 1996 (1996 No 147).

Section 20A(1): substituted, on 15 April 2004, by section 6(1) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Section 20A(1A) and (1B): inserted, on 15 April 2004, by section 6(1) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Section 20A(2): amended, on 15 April 2004, by section 6(2) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Winding up of registered schemes

21 Winding up of registered schemes

- (1) Where a registered superannuation scheme is wound up, the trustees—
- (a) shall, within 14 days after a winding up resolution is made, lodge a copy of that resolution with the Government Actuary:
 - (b) must, within 5 months of the date on which the winding up takes effect, ensure that final accounts of the scheme, showing the financial position of the scheme as at the date on which the winding up takes effect, are prepared:
 - (c) must, within 5 months of the date on which the winding up takes effect, ensure that those final accounts are audited or, in an appropriate case, that the requisite certificates in respect of those accounts are provided in accordance with section 13(2) of this Act:
 - (d) must, within 28 day after the final accounts have been audited or those certificates have been provided,—
 - (i) send a copy of those accounts to the Government Actuary and to every person who was a member of the scheme immediately before it was wound up; and
 - (ii) advise the Government Actuary and the members in writing as to the manner in which the assets of the scheme are to be distributed:
 - (e) shall inform the Government Actuary of the date on which the distribution of the assets is completed.

- (1A) The Government Actuary may, by notice in writing to the trustees, extend the time period within which the trustees must comply with any of the requirements set out in subsection (1)(b) to (d).
- (2) Each person who was a member of a registered superannuation scheme immediately before its winding up shall continue to have the right, upon request,—
- (a) to look at, at any reasonable time, a copy of the trust deed, or a copy of any report of an actuarial examination required under section 15 of this Act:
 - (b) to receive, upon payment of a reasonable fee, a copy of the trust deed or of any such report:
 - (c) to receive a statement of the specific interest, mortality, and other assumptions and bases of calculation applied in determining the value of the assets and liabilities of the scheme for the purposes of an actuarial examination required under section 15 of this Act:
 - (d) to receive a statement of the specific interest, mortality, and other assumptions and bases of calculation applied in determining the person's benefits.
- (3) Where a scheme is wound up, the registration shall be deemed to be cancelled as soon as the distribution of assets has been completed.

Section 21(1)(b): amended, on 15 April 2004, by section 7(1) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Section 21(1)(c): amended, on 15 April 2004, by section 7(2) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Section 21(1)(d): amended, on 15 April 2004, by section 7(3) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Section 21(1A): inserted, on 15 April 2004, by section 7(4) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Section 21(2)(c) and (d): inserted, on 2 September 1996, by section 5 of the Superannuation Schemes Amendment Act (No 2) 1996 (1996 No 147).

Reversion of assets to employer

22 Consent to reversion of assets to employer

- (1) The Government Actuary shall not give consent to the reversion of any assets of a superannuation scheme to any employer unless satisfied—

- (a) that sufficient assets would remain to support the accrued benefits of all members and other beneficiaries; and
 - (b) that the reversion is fair and equitable to the members and other beneficiaries, taking into account the manner in which the scheme acquired those assets.
- (2) For the purposes of subsection (1) of this section, **accrued benefits** means the benefits, whether vested, contingent, or discretionary, which the Government Actuary considers to be attributable to membership of the scheme up to the date of the reversion.

Part 2

Miscellaneous provisions

23 Objections and appeals against decisions of Government Actuary

- (1) Any person who is dissatisfied with a decision made by the Government Actuary in the exercise of his or her powers, functions, and discretions under this Act or under section EY 11 of the Income Tax Act 2007 may object to that decision by notice in writing to the Government Actuary.
- (2) Every such objection shall be made within 28 days after notice of the decision is given, or within such extended time as the Government Actuary may allow on application made either before or after the expiration of the 28 day period.
- (3) The Government Actuary shall, if the person objecting so requests, afford that person an opportunity of being heard by him or her within 28 days after receiving that request.
- (4) The Government Actuary shall, within 28 days after receiving the objection or holding any hearing requested under subsection (3) of this section, give notice in writing of his or her decision to the person who made the objection.
- (5) Any person whose objection is disallowed by the Government Actuary may appeal against that disallowance to the High Court.
- (6) *[Repealed]*
- (7) Every such appeal shall be made by notice of appeal, and shall be lodged with the Registrar of the High Court, together with a

duplicate of that notice, within 28 days after the date on which the applicant was notified of the disallowance of the objection, or within such further time as the High Court may allow on application made either before or after the expiration of those 28 days.

- (8) Every such appeal shall be by way of rehearing of the matter in respect of which the Government Actuary made the decision.
- (9) In its determination of any appeal, the High Court may confirm, modify, or reverse the order or decision appealed against.
- (10) Subject to the provisions of this section, the procedure in respect of any such appeal shall be in accordance with the rules of the High Court.
- (11) *[Repealed]*

Section 23(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 23(1): amended, on 1 April 1993, by section 89 of the Income Tax Amendment Act (No 2) 1993 (1993 No 17),.

Section 23(1): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 23(4): substituted, on 15 December 1994, by section 2(1) of the Superannuation Schemes Amendment Act 1994 (1994 No 162).

Section 23(6): repealed, on 15 December 1994, by section 2(2) of the Superannuation Schemes Amendment Act 1994 (1994 No 162).

Section 23(11): repealed, on 15 December 1994, by section 2(2) of the Superannuation Schemes Amendment Act 1994 (1994 No 162).

24 Power of Government Actuary to require information

The Government Actuary may require the trustees or administration manager of any registered superannuation scheme, or any superannuation scheme which has been registered under this Act but has ceased to be so registered, to supply to the Government Actuary such information in respect of the scheme as the Government Actuary may specify.

25 Offences

- (1) Every person commits an offence against this Act, and is liable on summary conviction to a fine not exceeding \$500, who refuses or fails—
 - (a) to deliver any document or statement or report or copy or certificate; or

- (ab) to allow a person to look at a document or report or copy; or
 - (b) to supply any return or to give any certificate or information,—
as and when required by this Act or any regulations made under this Act.
- (1A) For the purposes of sections 15A, 16, 17, and 21(2),—
- (a) requests must be made to the trustees of the registered superannuation scheme to which the request relates; and
 - (b) if a person has a right to look at a document, report, or copy, the trustees of the registered superannuation scheme to which the document, report, or copy relates have a duty to ensure that the person is allowed to look at, at any reasonable time, that document, report, or copy; and
 - (c) if a person has a right to receive a document, statement, report, copy, certificate, or information, the trustees of the registered superannuation scheme to which the document, statement, report, copy, certificate, or information relates have a duty to ensure that the document, statement, report, copy, certificate, or information is delivered or supplied to the person; and
 - (d) if a person has a right to be advised of certain information, the trustees of the registered superannuation scheme to which the information relates have a duty to ensure that the information is supplied to the person.
- (2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$1,000, who—
- (a) refuses or fails to carry out any direction or order of the Government Actuary made under section 20 of this Act; or
 - (ab) fails to designate or appoint an independent trustee, if required to do so under section 20A(1A), within 28 days of failing to be satisfied of the matters set out in that subsection; or
 - (b) makes any statement or supplies any report or certificate required by this Act knowing that it is false or misleading; or

- (c) advertises or otherwise promotes, or describes in a written form, a registered superannuation scheme as a unit trust.
- (3) Where any company commits an offence against this Act, every officer of the company who knowingly authorises or permits the offence also commits an offence against this Act.
- Section 25(1)(ab): inserted, on 15 April 2004, by section 8(1) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).
- Section 25(1A): inserted, on 15 April 2004, by section 8(2) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).
- Section 25(2)(ab): inserted, on 15 April 2004, by section 8(3) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

26 **Secrecy**

No person, being—

- (a) the Government Actuary or a former Government Actuary; or
- (b) an officer or employee in the service of the Government Actuary; or
- (c) a person who was formerly in the service of the Government Actuary,—

shall be required to produce in any Court or tribunal any book or document, or to divulge or communicate to any Court or tribunal any matter or thing coming under that person's notice in the performance of that person's duties, except when it is necessary to do so for the purposes of carrying into effect any provision of this Act or any regulations made under this Act.

27 **Personal liability**

Neither the Government Actuary, nor any person in the service of the Government Actuary, shall be personally liable for any act done or omitted to be done by the Government Actuary or any such person in good faith in pursuance or intended pursuance of the functions or powers of the Government Actuary under this Act.

28 Annual report by Government Actuary

- (1) The Government Actuary must, within 3 months after the end of every financial year, report to the responsible Minister on the principal matters transacted under this Act during that year.
- (2) Every report must be presented to the House of Representatives by the responsible Minister as soon as practicable after it has been received by that Minister.
- (3) In this section, **responsible Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

Section 28: substituted, on 3 June 1998, by section 2 of the Superannuation Schemes Amendment Act 1998 (1998 No 62).

29 Fees

Where any fee is payable in accordance with any regulations made under this Act, the Government Actuary may decline to take any action in respect of the matter for which the fee is payable, or decline to accept the document to which the fee relates, unless the fee, or an estimate of the fee, has been paid.

30 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the fees payable, or the rate at which fees are to be calculated, for applications for registration of schemes, for the lodging of amendments to schemes, for applications under section EY 11 of the Income Tax Act 2007, and for the making of statements, requests, returns, certificates, reports, applications and the giving of notices required under this Act, or any regulations made under this Act:
- (b) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and the full administration thereof.

Section 30(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30(a): amended, on 1 August 1990, by section 3 of the Superannuation Amendment Act 1990 (1990 No 67).

Section 30(a): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

31 Consequential amendments

- (1) The enactments specified in Schedule 3 to this Act are hereby consequentially amended in the manner indicated in that Schedule.
- (2) The Reserve Bank of New Zealand Amendment Act 1975 is hereby consequentially repealed.

32 Repeals, revocations, and consequential amendments taking effect on 1 April 1990

- (1) The following enactments are hereby repealed as from the commencement of the 1st day of April 1990:
 - (a) the Superannuation Schemes Act 1976;
 - (b) the Superannuation Schemes Amendment Act 1982;
 - (c) the Superannuation Schemes Amendment Act (No 2) 1982;
 - (d) the Superannuation Schemes Amendment Act 1987.
- (2) The following regulations are hereby revoked as from the commencement of the 1st day of April 1990:
 - (a) the Superannuation Schemes Regulations 1983 (SR 1983/34);
 - (b) the Superannuation Schemes Regulations 1983, Amendment No 1 (SR 1984/65);
 - (c) the Superannuation Schemes Regulations 1983, Amendment No 2 (SR 1987/59).
- (3) The enactments specified in Schedule 4 to this Act are hereby consequentially amended in the manner indicated in that Schedule as from the commencement of the 1st day of April 1990.

33 Savings

Notwithstanding the repeal of the Superannuation Schemes Act 1976 (as amended by the Superannuation Schemes Amendment Act 1987) by section 32 of this Act, all superannuation annuities, superannuation allowances, annuities,

amounts, expenses, and refunds that are payable out of the Consolidated Account under sections 5A(2), 6(4), and 7(6) of that Act (which relate to certain payments out of the Consolidated Account as a result of the dissolution of the New Zealand Superannuation Corporation and the New Zealand Superannuation Scheme) shall continue to be so payable as if those sections and section 5A(3) of that Act had not been repealed.

34 Complying superannuation funds

- (1) A person may apply to the Government Actuary for approval of a registered scheme as a complying superannuation fund for the purposes of the Income Tax Act 2004.
- (2) The application must be accompanied by all information necessary to satisfy the Government Actuary of the matters referred to in section 35.
- (3) The application must include a copy of any participation agreements that have been ratified by employers of employees in the scheme as applicable to the registered scheme.

Section 34: substituted, on 18 December 2006, by section 237 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 34(2): substituted (with effect from 1 April 2007), on 19 December 2007, by section 108(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 34(3): added, on 19 December 2007, by section 108(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

35 Dealing with applications for complying superannuation funds

- (1) The Government Actuary must complete consideration of whether or not the relevant registered scheme is approved as a complying superannuation fund, within 28 days after receiving an application from a person under section 34 and the relevant information required to accompany the application. The Government Actuary must approve a registered scheme if—
 - (a) the registered scheme and any relevant participation agreement contain rules that subject the following to complying fund rules:
 - (i) relevant contributions:

- (ii) returns on relevant contributions:
 - (iii) relevant benefits; and
 - (b) *[Repealed]*
 - (c) the registered scheme has at least 20 members, treating all interests in the registered scheme or account held by persons associated under section OD 8(3) of the Income Tax Act 2004 as being held by 1 person; and
 - (d) the registered scheme is registered on or before 1 July 2007; and
 - (e) any relevant participation agreement is—
 - (i) an agreement entered into on or before 1 July 2007:
 - (ii) an agreement (the **successor participation agreement**) entered into after 1 July 2007, if it succeeds and replaces a participation agreement (the **prior agreement**) entered into on or before 1 July 2007 or entered into after 1 July 2007 as a successor participation agreement for an earlier prior agreement.
- (2) The Government Actuary must notify the person whether or not the relevant registered scheme is approved as a complying superannuation fund for the purposes of the Income Tax Act 2004 as soon as practicable after completing consideration under subsection (1).
- (3) If the relevant registered scheme is approved as a complying superannuation fund for the purposes of the Income Tax Act 2004, the Government Actuary must notify the Commissioner of Inland Revenue of that approval, at the same time as giving notice under subsection (2).
- (4) Approval notified under subsections (2) and (3) is effective on and after the date the Government Actuary must complete consideration under subsection (1), or earlier, if consideration is completed earlier. The notices must contain the date on and after which approval is effective, under this subsection.
- (5) For the purposes of subsection (1)(e),—
 - (a) **participation agreement** includes a trust deed:
 - (b) a participation agreement (**agreement A**) succeeds and replaces another participation agreement if—

- (i) agreement A succeeds and replaces the other participation agreement due to the merger or acquisition of a party to the other participation agreement; or
- (ii) all relevant members of a scheme covered by agreement A transfer by virtue of section 9BAA of the Superannuation Schemes Act 1989 to a scheme covered by the other participation agreement.

Section 35: substituted, on 18 December 2006, by section 237 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 35(1)(a): amended (with effect from 1 July 2007), on 19 December 2007, by section 109(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 35(1)(a): substituted, on 21 May 2007, by section 71(1) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 35(1)(b): repealed, on 21 May 2007, by section 71(1) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 35(1)(e): substituted (with effect from 1 July 2007), on 19 December 2007, by section 109(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 35(5): added (with effect from 1 July 2007), on 19 December 2007, by section 109(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

36 Revocation of approval

- (1) If the Government Actuary has reasonable cause to believe that a registered scheme that is approved as a complying superannuation fund no longer meets the requirements in section 35(1)(a) to (c), or has failed to specify in an annual report the information required by schedule 2, item (o), the Government Actuary may revoke that approval immediately.
- (2) The Government Actuary must, as soon as practicable after revoking approval under subsection (1), notify that revocation to—
 - (a) the registered scheme; and
 - (b) the person that originally applied for approval under section 34; and
 - (c) the Commissioner of Inland Revenue.
- (3) Revocation notified under subsection (2) is effective on and after the date the Government Actuary revokes approval under subsection (1). The notices must contain the date on and after which approval is revoked, under this subsection.

- (4) A registered scheme that is notified that approval is revoked must immediately notify that revocation to each member who may be affected, and to their employers. At the same time, the registered scheme must notify the Commissioner of each member who may be affected, and of their employers.

Section 36: substituted, on 18 December 2006, by section 237 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

37 Duty to notify changes about complying superannuation funds to Government Actuary

- (1) The trustees of a complying superannuation fund must give notice to the Government Actuary of any changes to—
- (a) any of the information referred to in section 161(1B) of the KiwiSaver Act 2006; or
 - (b) any information required to be contained in the register under section 161(2) of that Act.
- (2) This section does not apply if the change has been notified in an annual report sent or delivered under section 14 of this Act before the notice is required to be given under this section.

Compare: 2006 No 40 s 164

Section 37: substituted, on 1 April 2008, by section 110(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

38 Form of notice under section 37

- (1) A notice under section 37 must—
- (a) be in the prescribed form (if any); and
 - (b) contain, or be accompanied by, any other prescribed information or documentation; and
 - (c) specify the effective date of the change; and
 - (d) be given to the Government Actuary within 3 months of the later of—
 - (i) the effective date of the change; or
 - (ii) the trustees of the complying superannuation fund first becoming aware of the change.
- (2) References in this section to a prescribed form, or to prescribed information or documentation, are references—
- (a) to matters prescribed under section 30(b); or
 - (b) if the matter is not prescribed under that section, to the equivalent matter prescribed under section 228(b) of the

KiwiSaver Act 2006 in respect of notices under section 164 of that Act, with all necessary modifications.

Compare: 2006 No 40 s 165

Section 38: substituted, on 1 April 2008, by section 110(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

39 Duty to give notice to Government Actuary about fee increases

Any person referred to in clause 2 of the KiwiSaver scheme rules who increases a fee to which that clause applies in relation to a complying superannuation fund must give notice of the increase to the Government Actuary as soon as reasonably practicable after the increase takes effect.

Section 39: substituted, on 1 April 2008, by section 110(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

40 Powers of High Court in relation to unreasonable fees

- (1) If the High Court is satisfied, on the application of a member or the Government Actuary, that any of the persons referred to in section 39 have charged a fee in relation to a complying superannuation fund that is unreasonable, it may order that the fee be annulled or reduced.
- (2) The High Court may make any other order it thinks fit for the purpose of giving effect to an order under subsection (1).
- (3) An application for an order may be made within 1 year of the day that the fee is imposed or debited.
- (4) In determining whether a fee is unreasonable for the purposes of this section, the High Court—
 - (a) must have regard to any prescribed matter under the KiwiSaver Act 2006; and
 - (b) may, to the extent it thinks fit, have regard to any guidelines published by the Government Actuary under section 127 of that Act; and
 - (c) may have regard to any other matter it thinks fit.
- (5) This section does not limit section 20 of this Act and, to avoid doubt, a breach of clause 2 of the KiwiSaver scheme rules as applied by the complying fund rules is a breach of this Act.

Section 40: substituted, on 1 April 2008, by section 110(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

41 Transitional provision relating to lodging of participation agreements

The trustees of every scheme that has been approved as a complying superannuation fund before the date of commencement of this section must send to the Government Actuary, within 28 days after that commencement date, a copy of any participation agreements that have been ratified by employers of employees in the scheme as applicable to the complying superannuation fund.

Section 41: substituted, on 1 April 2008, by section 110(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Part 3
Transitional provisions relating to
reduction of benefits as result of changes
in taxation**42 Uniform reduction in existing pensions may be regarded as equitable**

[Repealed]

Section 42: repealed, on 1 October 1992, by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

43 Uniform reduction in existing and future pensions may be regarded as equitable

[Repealed]

Section 43: repealed, on 1 October 1992, by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

44 Notification of amendments made in accordance with this Part

[Repealed]

Section 44: repealed, on 1 October 1992, by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

45 Amendment to become valid on date made

[Repealed]

Section 45: repealed, on 1 October 1992, by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

45A Reduction of benefits where employer obliged to provide defined benefit

[Repealed]

Section 45A: repealed, on 1 October 1992, by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

46 Amendment to provide for variations as result of later taxation changes

[Repealed]

Section 46: repealed, on 1 October 1992, by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

47 No reductions to be made except to make benefits secure

[Repealed]

Section 47: repealed, on 1 October 1992, by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

Part 4

Transitional provisions relating to position of schemes approved under Superannuation Schemes Act 1976

48 Closing date for applications for approval

[Repealed]

Section 48: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

49 Registration of approved schemes

[Repealed]

Section 49: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

50 Effect of cancellation of approval

[Repealed]

Section 50: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

51 Application to cancel approval of scheme that is not to become registered*[Repealed]*

Section 51: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

52 Cancellation of approval of certain overseas schemes*[Repealed]*

Section 52: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

53 Position of schemes that are still approved as at 31 March 1990*[Repealed]*

Section 53: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

54 Position where two or more approved schemes share trust deed*[Repealed]*

Section 54: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

55 Certain provisions in trust deed obsolete

- (1) This section applies to a registered superannuation scheme which before its registration was an approved New Zealand scheme.
- (2) Where the trust deed of a scheme to which this section applies contains a provision to the effect that—
 - (a) no amendment of the trust deed shall be made until the Government Actuary has notified the trustees that the amendment will not affect the approval of the scheme; or
 - (b) no amendment of the scheme shall take effect until the Government Actuary has approved the amendment,—that provision shall be of no effect and shall be deemed to have been omitted from the trust deed.

56 Certain references to approved schemes deemed to include references to registered schemes

Any provision in a trust deed of a superannuation scheme, or, in relation to a superannuation scheme constituted under an Act of the Parliament of New Zealand, in the documents governing the scheme, that provides for the transfer of any amount to another approved superannuation scheme shall be read and construed as if it also provided for the transfer of that amount to any registered superannuation scheme.

57 Effect of new withholding tax on contributions to Class a funds

[Repealed]

Section 57: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

Part 5 Annuities

58 Interpretation

[Repealed]

Section 58: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

59 Reduction of annuities granted before 1 April 1990

[Repealed]

Section 59: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

60 Approval of Government Actuary needed if reduction in net benefits

[Repealed]

Section 60: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

61 Other powers to reduce benefits not affected

[Repealed]

Section 61: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

62 Non-commutable and non-assignable annuities*[Repealed]*

Section 62: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

63 Objections and appeals against decisions of Government Actuary*[Repealed]*

Section 63: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

64 Power of Government Actuary to require information*[Repealed]*

Section 64: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

65 Personal liability*[Repealed]*

Section 65: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

66 Fees*[Repealed]*

Section 66: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

67 Regulations*[Repealed]*

Section 67: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

Part 6**Transfer of superannuation business of
life offices****68 Application for approval of transfer of superannuation business***[Repealed]*

Section 68: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

69 Approval of transfer arrangement by Government Actuary

[Repealed]

Section 69: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

70 Transfer of property pursuant to approved arrangement

[Repealed]

Section 70: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

71 Liability to stamp duty, goods and services tax, and income tax in respect of transfer of property

[Repealed]

Section 71: repealed, on 1 October 1992 by section 3(1) of the Superannuation Schemes Amendment Act 1992 (1992 No 131).

Schedule 1

s 5

Matters to be specified in application for registration

- (a) the name of the scheme:
 - (b) the commencement date of the scheme:
 - (c) the names of—
 - (i) the trustees of the scheme and, where a trustee is a company, the directors of that company; and
 - (ii) every administration manager, investment manager, and insurer of the scheme (as applicable):
 - (iii) any actuaries, auditors, and solicitors acting for the scheme (or the names of their firms):
 - (d) the name and address of any trustee who is a New Zealand resident:
 - (e) the name and address of the person to whom all correspondence from the Government Actuary should be sent:
 - (f) the date upon which the financial year of the scheme ends:
 - (g) a copy of the most recent annual report on, or accounts of, the scheme (if any):
 - (h) in the case of a scheme operating on the principle of unallocated funding—
 - (i) a copy of the most recent report by an actuary concerning the level of contributions sufficient to support the benefits payable to members of the scheme; and
 - (ii) the rates or amounts of contributions that are to be paid:
 - (i) a certificate by the trustees or the administration manager or a solicitor stating that the trust deed complies with section 7 of this Act, and does not contain any provision that is contrary to those implied by sections 8 to 10 of this Act:
 - (j) a copy of the explanatory material that has been, or is intended to be, issued to members or potential members.
-

Schedule 2

s 14

Matters to be specified in annual report

- 1 The following matters must be specified in the annual report:
 - (a) a statement of numerical changes in the membership of the scheme during the financial year:
 - (b) the annual accounts of the scheme or, if the auditor's report in respect of the annual accounts is unqualified and the trustees so wish, abridged annual accounts of the scheme in respect of the financial year:
 - (c) if the annual accounts are included in the annual report, the auditor's report on the annual accounts or, if an auditor's report is not required, the certificates required by section 13(2):
 - (d) a statement by the trustees as to whether all the contributions required to be made to the scheme in accordance with the terms of the trust deed have been made:
 - (e) a certificate by the trustees as to whether all the benefits required to be paid from the scheme in accordance with the terms of the trust deed have been paid:
 - (f) a certificate by the trustees as to whether the market value of the assets of the scheme at the close of the financial year equalled or exceeded the total value of benefits that would have been payable had all members of the scheme ceased to be members at that date and had provision been made for the continued payment of all benefits being paid to members and other beneficiaries as at the close of the financial year:
 - (g) a notification by the trustees if more than 10% of the market value of the assets of the scheme at any time during the year was invested directly or indirectly (in a way in which it was reasonable for the trustees to be aware) in any employer who is a party to the scheme or in any company or entity associated with any such employer and if so, details of all such investments held during the year:
 - (h) for every scheme where an examination of the financial position and report by an actuary is required under section 15 of this Act—

- (i) a statement as to whether the rates or amounts of contributions paid are in accordance with the recommendations contained in the most recent report of the actuary; and
 - (ii) a summary of any such report received by the trustees since the date of the last annual report of the trustees:
- (i) a summary of any amendments to the trust deed that have been made since the date of the last annual report of the trustees:
 - (j) the names of, and any changes since the last annual report in, the trustees and every administration manager, investment manager, and insurer, and of any actuaries, auditors, and solicitors of the scheme (either by reference to their own names or the names of their firms):
 - (k) the name and address of the person to whom all correspondence from the members to the trustees should be sent.
 - (l) the names of, and any changes to, the directors of any corporate trustee since the last annual report:
 - (m) if any of the benefits payable from the scheme are based on the investment return of scheme assets, a statement of the crediting rate or rates applied during the year:
 - (n) the registration date of the most recent prospectus for the scheme if a prospectus is required by the Securities Act 1978:
 - (o) if the registered scheme is a complying superannuation fund,—
 - (i) the market value of assets subject to complying fund rules; and
 - (ii) the number of members to which the assets relate; and
 - (iii) the value of withdrawals subject to complying fund rules; and
 - (iv) if there has been an increase in a fee referred to in clause 2 of the KiwiSaver scheme rules during the year, a certificate signed by the trustees of the fund that the fee as increased is not unreasonable, after having regard to any matters pre-

scribed under section 228(p) of the KiwiSaver Act 2006 and any guidelines published by the Government Actuary under section 127 of that Act.

Schedule 2: amended, on 15 April 2004, by section 9(1) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Schedule 2 clause 1(b) and (c): substituted, on 15 April 2004, by section 9(2) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Schedule 2 clause 1(f): amended, on 15 April 2004, by section 9(3) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Schedule 2 clause 1(l) to (n): inserted, on 15 April 2004, by section 9(4) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Schedule 2 clause 1(n): amended, on 18 December 2006, by section 238 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Schedule 2 clause 1(o): inserted, on 18 December 2006, by section 238 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Schedule 2 clause 1(o): amended, on 19 December 2007, by section 111(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Schedule 2 clause 1(o)(iii): amended, on 1 April 2009, by section 111(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Schedule 2 clause 1(o)(iv): added, on 1 April 2009, by section 111(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

- 2 Abridged accounts included in the annual report must—
- (a) be prepared in accordance with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993:
 - (b) include a report by the auditor of the scheme that the abridged annual accounts have been correctly extracted from the annual accounts and that, in the opinion of the auditor, the information reported in the financial summary is consistent in all material respects with the annual accounts:
 - (c) if the annual accounts have not been audited because section 13(2) applies, include a certificate by the auditor of the administration manager that adequate accounting systems, records, and methods of internal control are in place to ensure that the abridged accounts prepared by the administration manager in respect of each scheme

fully managed by that manager correctly present each scheme's financial affairs:

- (d) contain a statement that they are an abridged version of the annual accounts:
- (e) contain a statement advising where the member can obtain, at no charge, a copy of the annual accounts.

Schedule 2 clause 2: inserted, on 15 April 2004, by section 9(5) of the Superannuation Schemes Amendment Act 2004 (2004 No 33).

Schedule 3

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Enactments consequentially amended

Area Health Boards Act 1983 (1983 No 134)

Amendment(s) incorporated in the Act(s).

Credit Contracts Act 1981 (1981 No 27)

Amendment(s) incorporated in the Act(s).

Estate and Gift Duties Act 1968 (1968 No 35)

Amendment(s) incorporated in the Act(s).

Government Superannuation Fund Act 1956 (1956 No 47)

Amendment(s) incorporated in the Act(s).

Income Tax Act 1976 (1976 No 65) (RS Vol 12, p1)

Amendment(s) incorporated in the Act(s).

National Provident Fund Act 1950 (1950 No 55)

Amendment(s) incorporated in the Act(s).

National Provident Fund Amendment Act 1982 (1982 No 114)

Amendment(s) incorporated in the Act(s).

Reserve Bank of New Zealand Act 1964 (1964 No 136)

Amendment(s) incorporated in the Act(s).

Securities Act 1978 (1978 No 103) (RS Vol 15, p533)

Amendment(s) incorporated in the Act(s).

State Sector Act 1988 (1988 No 20)

Amendment(s) incorporated in the Act(s).

Unit Trusts Act 1960 (1960 No 99)

Amendment(s) incorporated in the Act(s).

Unit Trusts Act 1960 (1960 No 99)—*continued*

Securities Act 1978 item : amended, on 1 February 1990, by section 182(a) of the Reserve Bank of New Zealand Act 1989 (1989 No 157).

Schedule 4

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**Consequential amendments with effect on
and after 1 April 1990**

Area Health Boards Act 1983 (1983 No 134)

Amendment(s) incorporated in the Act(s).

Credit Contracts Act 1981 (1981 No 27)

Amendment(s) incorporated in the Act(s).

Estate and Gift Duties Act 1968 (1968 No 35)

Amendment(s) incorporated in the Act(s).

Estate and Gift Duties Amendment Act 1977 (1977 No 58)

Amendment(s) incorporated in the Act(s).

Government Superannuation Fund Act 1956 (1956 No 47)

Amendment(s) incorporated in the Act(s).

Securities Act 1978 (1978 No 103) (RS Vol 15, p533)

Amendment(s) incorporated in the Act(s).

Stamp and Cheque Duties Act 1971 (1971 No 51)

Amendment(s) incorporated in the Act(s).

State Sector Act 1988 (1988 No 20)

Amendment(s) incorporated in the Act(s).

Unit Trusts Act 1960 (1960 No 99)

Amendment(s) incorporated in the Act(s).

Schedule 4: amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

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Notes**1 General**

This is an eprint of the Superannuation Schemes Act 1989. The eprint incorporates all the amendments to the Act as at 7 July 2010. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about eprints and officialisation, please *see* <http://www.pco.parliament.govt.nz/eprints/>.

3 List of amendments incorporated in this eprint (most recent first)

New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74): section 10

Taxation (KiwiSaver) Act 2007 (2007 No 110): sections 105 to 111

Income Tax Act 2007 (2007 No 97): section ZA 2(1)
