

# Superannuation Schemes Amendment Act 2004

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## Contents

	Page
1 Title	1
2 Commencement	2
3 Annual reports	2
4 New heading and section 15A inserted	2
<i>Prospective members' rights to information</i>	
15A Prospective members' rights to information	2
5 Members' rights to information	2
6 Receiver or liquidator to designate or appoint independent trustee if required	3
7 Winding up of registered schemes	3
8 Offences	4
9 Schedule 2 amended	5

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### The Parliament of New Zealand enacts as follows:

#### **1 Title**

- (1) This Act is the Superannuation Schemes Amendment Act 2004.
- (2) In this Act, the Superannuation Schemes Act 1989 is called "the principal Act".

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**3 Annual reports**

Section 14 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- “(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 New heading and section 15A inserted**

The principal Act is amended by inserting, after section 15, the following heading and section:

*“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.”

**5 Members’ rights to information**

Section 17(1)(b) of the principal Act is amended by adding the following subparagraph:

“(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).”

## **6 Receiver or liquidator to designate or appoint independent trustee if required**

(1) Section 20A of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

“(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) Section 20A(2) of the principal Act is amended by omitting the words “of subsection (1)”.

## **7 Winding up of registered schemes**

(1) Section 21(1)(b) of the principal Act is amended by omitting the word “shall”, and substituting the words “must, within 5 months of the date on which the winding up takes effect,”.

- (2) Section 21(1)(c) of the principal Act is amended by omitting the word “shall”, and substituting the words “must, within 5 months of the date on which the winding up takes effect”.
- (3) Section 21(1)(d) of the principal Act is amended by omitting the words “shall, as soon as practicable”, and substituting the words “must, within 28 days”.
- (4) Section 21 of the principal Act is amended by inserting, after subsection (1), the following subsection:  
“(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).”

## **8 Offences**

- (1) Section 25(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:  
“(ab) to allow a person to look at a document or report or copy; or”.
- (2) Section 25 of the principal Act is amended by inserting, after subsection (1), the following subsection:  
“(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.”

- (3) Section 25(2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
- “(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”.

## **9 Schedule 2 amended**

- (1) Schedule 2 of the principal Act is amended by inserting, before paragraph (a), the following clause:

“1

The following matters must be specified in the annual report:”.

- (2) Schedule 2 of the principal Act is amended by repealing paragraphs (b) and (c), and substituting the following paragraphs:
- “(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):”.
- (3) Paragraph (f) of Schedule 2 of the principal Act is amended by inserting, before the word “exceeded”, the words “equalled or”.
- (4) Schedule 2 of the principal Act is amended by adding the following paragraphs:
- “(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.”
- (5) Schedule 2 of the principal Act is amended by adding the following clause:

“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.”

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**Legislative history**

Divided from Business Law Reform Bill (Bill 56-2), third reading

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6 April 2004