Reprint

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KiwiSaver Act 2006

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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.

This Act is administered by the Inland Revenue Department and the Ministry of Economic Development.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the KiwiSaver Act 2006.

2 Commencement

(1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

(2) One or more Orders in Council may be made bringing different provisions into force on different dates.

Part 1
Preliminary provisions

3 Purpose

(1) The purpose of this Act is to encourage a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in pre-retirement. The Act aims to increase individuals' well-being and financial independence, particularly in retirement, and to provide retirement benefits.

(2) To that end, this Act enables the establishment of schemes (**KiwiSaver schemes**) to facilitate individuals' savings, principally through the workplace.

4 Interpretation

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

address, in relation to a person, means all or any of the following

(a) the person's last known street address or post office box number:

(b) the person's last known electronic address, if the person consents to notices under this Act being given to the person's electronic address

automatic enrolment rules means sections 10 to 21

Commissioner means the Commissioner of Inland Revenue as defined in section 3(1) of the Tax Administration Act 1994

complying superannuation fund has the same meaning as in section OB 1 of the Income Tax Act 2004

complying superannuation fund: this definition was inserted, as from 1 July 2007, by section 221 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

contribution means any contribution to a KiwiSaver scheme, including an employer contribution and a Crown contribution

contribution rate, in relation to an employer and a particular employee, has the meaning given by section 64

contributions holiday, in respect of an employee, means a period in respect of which the deduction of contributions is not required to be made from his or her salary or wages in accordance with subpart 4 of Part 3

Court means, in relation to any matter, the court, tribunal, or arbitral tribunal by or before which the matter falls to be determined

Crown, for the avoidance of doubt, includes a Minister of the Crown, a Government department, and the Commissioner

Crown contribution means—

(a) the contribution made by the Crown under section 226:

(b) the amount of tax credit under section KJ 1 of the Income Tax Act 2004 that is treated as a Crown contribution for a member under section KJ 5(2) of that Act

Crown contribution: this definition was substituted, as from 1 July 2007, by section 58 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

deduction rate means the rate at which deductions must be made under section 66 or 66A, as the case may be

default investment product, in relation to a default KiwiSaver scheme, means the investment product specified as the default investment product of the scheme under an instrument of appointment to which section 177 applies

default KiwiSaver provider means a person that is appointed under section 177 as the provider of a default investment product of a default KiwiSaver scheme

default KiwiSaver scheme means a scheme specified as the default KiwiSaver scheme under an instrument of appointment to which section 177 applies

defined benefit scheme member means an employee in relation to whom the employer pays, credits, or provides for amounts (**defined benefit contributions**), and—

(a) the defined benefit contributions are employer's superannuation contributions made to, or amounts credited from within, a registered superannuation scheme (the **contributions scheme**) to fund the agreed benefits for the employee, and—

(i) the contributions scheme was registered before 17 May 2007, or the contributions scheme is one (a **succeeding scheme**) for which there is, due to all relevant members transferring to the succeeding scheme by virtue of section 9BAA of the Superannuation Schemes Act 1989, a prior reg-

istered superannuation scheme (a **prior scheme**) and that prior scheme or another prior scheme for the contributions scheme were registered before 17 May 2007; and

(ii) the employer provided access to eligible employees to the contributions scheme or a prior scheme for the contributions scheme before 17 May 2007; and

(iii) the employee—

(A) is employed by the employer before 1 April 2008, and the employer makes or has agreed with the employee before 1 April 2008 to make defined benefit contributions to the contributions scheme or a prior scheme for the contributions scheme; or

(B) is covered by a collective agreement that is in force before 17 May 2007 and expires after 1 April 2008 under which the employer is required to make defined benefit contributions to the contributions scheme or a prior scheme for the contributions scheme; or

(C) has had defined benefit contributions paid or credited to the contributions scheme or a prior scheme for the contributions scheme by a previous employer, and those contributions met the requirements of this definition; and

(b) the defined benefit contributions are made in respect of a retirement benefit for the employee that is calculated by reference to their salary or wages; and

(c) the employer is required to make the defined benefit contribution by statute, trust deed, or under an employment contract (including a collective agreement)

defined contribution scheme means a scheme in which contributions are allocated to members on an individual basis

Department means the department of State that, with the authority of the Prime Minister, is responsible for the administration of Part 4 and Schedules 1 and 2

employee means a natural person who receives, or is entitled to receive, salary or wages

employer means,—

(a) in relation to a person (**person A**) who is not a private domestic worker, the person (**person B**) who pays, or is liable to pay, salary or wages to person A:

(b) for the purposes of subparts 1 and 3 of Part 3, in relation to a private domestic worker who is liable to pay tax to the Commissioner under section RA 8, RA 10, or RD 4(2) of the Income Tax Act 2007, the private domestic worker, not person B:

(c) for the purposes of subpart 3A of Part 3, in relation to a private domestic worker who is liable to pay tax to the Commissioner under section RA 8, RA 10, or RD 4(2) of the Income Tax Act 2007, the private domestic worker, not person B, if the worker chooses to be the employer by applying subpart 3A of Part 3

employer contribution—

(a) means an employer's superannuation contribution made by an employer for an employee's KiwiSaver scheme or complying superannuation fund; and

(b) includes a compulsory employer contribution under subpart 3A of Part 3; and

(c) does not include—

(i) an amount that does not count as a contribution under section 68(2); and

(ii) for the purposes of section 99, a compulsory employer contribution to the extent provided by that section

employer contributor, in relation to a KiwiSaver scheme, means an employer who—

(a) contributes in respect of some or all of the employees of the employer who are members of the scheme; or

(b) pays any of the administration costs or costs in relation to benefits to be provided under the scheme in respect

of the employees of the employer who are members of the scheme

employer monthly schedule has the same meaning as in section YA 1 of the Income Tax Act 2007

employer's chosen KiwiSaver scheme means a KiwiSaver scheme chosen by an employer under section 47 to be the scheme of which the employer's employees will become members if the employees do not choose their own KiwiSaver schemes

employer's superannuation contribution has the same meaning as in section YA 1 of the Income Tax Act 2007

employment means employment (including the activities referred to in paragraph (a) of the definition of that term in section YA 1 of the Income Tax Act 2007) for which salary or wages is payable

ESCT rules has the same meaning as in section YA 1 of the Income Tax Act 2007

exempt employer means an employer who has been approved under section 30 as an exempt employer

fee—

(a) means a fee charged directly or indirectly in respect of a member's membership of a KiwiSaver scheme; and

(b) includes a fee charged to a member's account for—

(i) administration of the member's account:

(ii) management of the member's funds in the KiwiSaver scheme:

(ii) the transfer of the member's account or the member's funds in the KiwiSaver scheme to different sections of the KiwiSaver scheme or to a different KiwiSaver scheme; and

(c) includes any other fee or charge prescribed to be a fee for the purposes of this Act; but

(d) does not include a fee referred to in section 200 or charged under regulations made under section 228(c) except in the context of those provisions

fee subsidy means a Crown subsidy for fees that are payable by a member or a class of members of a KiwiSaver scheme as prescribed under section 228(n) or (o)

Government Actuary includes any person authorised by delegation by the Government Actuary to exercise or perform any of the duties, functions, or powers of the Government Actuary

gross salary or wages means salary or wages before the deduction of tax (as tax is defined in section 3(1) of the Tax Administration Act 1994)

holding account means the Inland Revenue KiwiSaver Holding Account established by the Commissioner under section 72

inactive account, in relation to a member of a KiwiSaver scheme, means a member's account in respect of which no contribution has been received for at least 2 years

independent trustee, in relation to a KiwiSaver scheme, means—

(a) a trustee, including a corporate trustee that is not a trustee corporation, that—
  (i) is not a promoter of the scheme; and
  (ii) is not a related company of a corporate trustee that is an investment manager, promoter, or another trustee of the scheme; and
  (iii) *[Repealed]*
  (iv) is not a director of, employee of, or shareholder in, any of the persons referred to in subparagraphs (i) to (iii); and
  (v) is not a member of the scheme; and
  (vi) is not a representative in any capacity of an organisation (such as a trade union) that represents the interests of 1 or more members of the scheme; and
  (vii) is not a representative in any capacity of an organisation that represents the interests of 1 or more employer contributors to the scheme; and
  (viii) in the case of a corporate trustee, has no director that would fail to meet any of the requirements described in subparagraphs (i) to (vii) if that person were a trustee; or

(b) a trustee corporation that has a director that would meet any of the requirements described in paragraph (a)(i) to (vii) if that person were a trustee

information pack means an information pack that is supplied by the Commissioner under section 40 and contains the matters required by section 41

investment statement, in relation to a KiwiSaver scheme, has the meaning given to it by section 38C of the Securities Act 1978

KiwiSaver deduction notice means a notice given by an employee to his or her employer under section 22 or 34 that requires deductions of contributions to be made from his or her salary or wages

KiwiSaver scheme means a scheme that is registered in the KiwiSaver schemes register but does not include a scheme that is provisionally registered under section 137 or a scheme that is included in the register only under section 161

KiwiSaver scheme rules means the provisions implied in the trust deed of a KiwiSaver scheme under section 126 and Schedule 1

KiwiSaver schemes register means the register established under section 156

member, in relation to a scheme, means a natural person who has been admitted to membership of the scheme and who is, or may become, entitled to benefits under the scheme

member's account, in relation to a member of a KiwiSaver scheme, includes any account held by that member in the KiwiSaver scheme

member's accumulation, in relation to a member of a KiwiSaver scheme or a member of a registered superannuation scheme, means the net value of the total of—

(a) the member's contributions; and
(b) any vested employer contributions in respect of the member; and
(c) any fee subsidies paid in respect of the member; and
(d) the Crown contribution paid in respect of the member

member's interest, in relation to a member of a KiwiSaver scheme or a member of a registered superannuation scheme, means the net value of the total of—

(a) the member's accumulation; and

(b) any unvested employer contributions

Minister means—

(a) 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 Part 4 and Schedules 1 and 2; or

(b) for the purposes of sections 177 to 182, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for making an appointment under section 177 (or, if more than 1 Minister is authorised to act jointly, the Ministers who are jointly responsible for making an appointment under section 177)

net value means,—

(a) in relation to contributions, the values of the contributions once appropriate debits and credits have been made for positive and negative returns; and

(b) in relation to a member's accumulation, or a member's interest, means the value of the member's accumulation or member's interest (as applicable) once any other appropriate debits and credits have been made to account for things like fees, permitted withdrawals, and positive and negative returns

new employment has the meaning given to it by sections 11 to 14

New Zealand superannuation qualification age means the age specified in section 7(1) of the New Zealand Superannuation and Retirement Income Act 2001, irrespective of whether or not the particular person qualifies for New Zealand superannuation at that or any other age

opt in means to opt in to the overall KiwiSaver scheme as provided in sections 33 to 39

opt out means to opt out of the overall KiwiSaver scheme as provided in sections 16 to 21

opt-out notice means a notice given under section 17

participation agreement means an agreement or any instrument in writing related to an arrangement between an employer and a provider of a scheme that determines some of the conditions on which the employer's employees may be members of the scheme as amended from time to time

pay period has the same meaning as in section YA 1 of the Income Tax Act 2007)

PAYE period has the same meaning as in paragraph (a) of the definition of payment period in section MK 10 of the Income Tax Act 2007

PAYE rules has the same meaning as in section YA 1 of the Income Tax Act 2007

permitted withdrawal means a withdrawal that is permitted under the KiwiSaver scheme rules

personal information has the same meaning as in the Privacy Act 1993

personal representative, in relation to a deceased person, means a person to whom probate of the will of the deceased person, letters of administration of the estate of the deceased person, or any other similar grant, has been granted, whether in New Zealand or anywhere else

private domestic worker has the same meaning as in section YA 1 of the Income Tax Act 2007

promoter has the same meaning as in the Securities Act 1978

provider has the meaning given by section 5

provisionally allocated means provisionally allocated to a KiwiSaver scheme under section 50

registered superannuation scheme means a superannuation scheme registered under the Superannuation Schemes Act 1989

related company has the same meaning as in the Companies Act 1993

remittance certificate means a PAYE payment form as defined in section YA 1 of the Income Tax Act 2007

salary or wages, in relation to any person, means salary or wages as defined in section RD 5(1)(a) to (c) of the Income

Tax Act 2007 (whether the salary or wages are primary or secondary employment earnings) except that, in this Act,—

(a) it excludes—

(i) salary or wages described in sections RD 5(4), (6)(b), and (6)(c) and RD 68 of the Income Tax Act 2007; and

(ib) allowances paid in place of a benefit under section CE 1(c) of that Act; and

(ii) payments that are income under section CF (1)(b) to (e), (g), or (h) of that Act; and

(iii) expenditure on account of an employee and allowances calculated by reference to reasonable actual costs, if the expenditure or allowances are for accommodation overseas or other costs of living overseas; and

(iv) for the purposes of contributions to complying superannuation funds, bonuses, commissions, and other amounts not included in an employee's gross base salary or wages by the relevant complying superannuation fund; and

(v) for the purposes of subpart 3A of Part 3 of this Act,—

(A) salary or wages described in section RD 5(1)(b)(iii) and (7) of the Income Tax Act 2007; and

(B) payments of weekly compensation, as defined in the Injury Prevention, Rehabilitation, and Compensation Act 2001, made by an employer, unless the employer chooses to not exclude the payments from this definition of **salary or wages**:

(b) it includes extra pay (as defined in section YA 1 of the Income Tax Act 2007), unless—

(i) otherwise excluded under paragraph (a) of this definition; or

(ii) the amount is a **redundancy payment** (as defined in section YA 1 of the Income Tax Act 2007)

tax file number has the same meaning as in section YA 1 of the Income Tax Act 2007

trust deed includes—

(a) a participation agreement and any other document that, under the terns of the relevant trust deed, forms part of or determines any of the terms of the trust deed; and

(b) in relation to a registered superannuation scheme or KiwiSaver scheme constituted under an Act of the Parliament of New Zealand, the documents governing the scheme

trustee corporation —

(a) means the Public Trust or the Maori Trustee or any corporation authorised by any Act of the Parliament of New Zealand to administer the estates of deceased persons and other trust estates; and

(b) includes any wholly-owned subsidiary of the trustee corporation that is guaranteed by the trustee corporation

trustees,—

(a) in relation to a scheme, means the persons who are designated as trustees in the trust deed of the scheme, or the successors of those trustees, and who have the responsibility for administering the trusts governing the scheme:

(b) in relation to a scheme constituted under an Act of the Parliament of New Zealand, means the person or persons appointed to administer the scheme

umbrella trust, in relation to a KiwiSaver scheme, or a registered superannuation scheme, means an umbrella trust of the type referred to in section 148.

(2) References in a provision to a period **after the Commissioner receives the first contribution** in respect of a person are references to the expiry of the relevant number of days or months after the date on which the first amount of contribution is received, or treated as received, by the Commissioner for the person in the current context of the provision, ignoring any earlier contribution received in a prior context (for example, a prior automatic enrolment and opt out of the person).

(3) References in this Act to **3 months** are references to a period of 92 days.

(4) An outline provision in this Act is only a guide to the general scheme and effect of the part of the Act that it describes.

Section 4(1) **deduction rate**: substituted, on 1 April 2008, by section 27(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **defined benefit scheme member**: inserted, on 1 April 2008, by section 27(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **employer**: substituted (with effect from 1 July 2007), on 19 December 2007, by section 27(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **employer** paragraph (b): amended, on 1 April 2008, by section 27(5)(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **employer** paragraph (c): amended, on 1 April 2008, by section 27(5)(b) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **employer contribution**: inserted, on 1 April 2008, by section 27(6) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **employer monthly schedule**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **employer's superannuation contribution**: inserted, on 1 April 2008, by section 27(7) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **employment**: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **ESCT rules**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **independent trustee** paragraph (a)(i): amended, on 19 December 2007, by section 27(8)(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **independent trustee** paragraph (a)(ii): substituted, on 19 December 2007, by section 27(8)(b) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **independent trustee** paragraph (a)(iii): repealed, on 19 December 2007, by section 27(8)(b) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **independent trustee** paragraph (a)(viii): amended, on 19 December 2007, by section 27(8)(c) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **independent trustee** paragraph (b): amended (with effect from 1 July 2007), on 19 December 2007, by section 27(8)(d) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **KiwiSaver scheme**: amended, on 1 April 2008, by section 27(9) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **pay period**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **PAYE period**: substituted, on 1 April 2008, by section 27(10) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **PAYE period**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **PAYE rules**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **private domestic worker**: substituted, on 1 April 2008, by section 27(12) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **private domestic worker**: inserted (with effect from 1 July 2007), on 19 December 2007, by section 27(11) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **remittance certificate**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **salary or wages**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **salary or wages** paragraph (a): substituted, on 1 April 2008, by section 27(13)(b) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **salary or wages** paragraph (a): substituted (with effect from 1 July 2007), on 19 December 2007, by section 27(13)(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **salary or wages** paragraph (a)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **salary or wages** paragraph (a)(ib): inserted (with effect from 1 April 2008), on 29 May 2008, by section 58(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 4(1) **salary or wages** paragraph (b): substituted, on 1 April 2008, by section 27(13)(b) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **salary or wages** paragraph (b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **SSCWT rules**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **tax file number**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(2): substituted, on 1 April 2008, by section 27(14) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

5 Meaning of provider

(1) For the purpose of anything that must or may be done by or to or in relation to a provider of a KiwiSaver scheme or a complying superannuation fund under this Act, **provider**, unless the context otherwise requires, means—

(a) the trustees of the scheme; or

(b) in a case in which the trustees of the scheme have made a lawful delegation to do any thing to another person (for example, an administration manager), that person.

(2) Subsection (1)(b) does not apply if a person who may or must do something to or in relation to a provider has not been given notice of, and could not reasonably be expected to know about, the delegation.

Section 5(1): amended (with effect from 1 July 2007), on 19 December 2007, by section 28 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

6 Application

(1) This Act applies to an employee or other natural person only if, at the time when the person becomes subject to the automatic enrolment rules or opts in, the person—

(a) is, or normally is, living in New Zealand, or is an employee of the State services (within the meaning of the State Sector Act 1988) who is—

(i) serving outside New Zealand; and

(ii) employed on New Zealand terms and conditions; and

(iii) serving in a jurisdiction where offers of KiwiSaver scheme membership are lawful; and

(b) is a New Zealand citizen or is entitled, in terms of the Immigration Act 1987, to be in New Zealand indefinitely.

(2) This Act applies to an employer only if—

(a) the employer is a New Zealand resident (within the meaning of sections YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007); or

(b) the employer carries on a business from a fixed establishment in New Zealand (within the meaning of section YA 1 of the Income Tax Act 2007); or

(c) the employer does not meet the requirements in subsections (a) and (b), and the employer chooses to apply this Act.

(3) This Act applies to an employer only in respect of the employer's employees who are referred to in subsection (1).

Section 6(1)(a): amended, on 1 April 2008, by section 29(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Subsection (1)(a) was amended, as from 21 May 2007, by section 59 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19) by substituting "who is—" for "who is serving outside New Zealand; and".

Subsection (1)(a)(i) to (iii) were inserted, as from 21 May 2007, by section 59 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19) .

Section 6(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 6(2)(b): amended, on 1 April 2008, by section 29(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 6(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 6(2)(c): added, on 1 April 2008, by section 29(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

7 Act binds the Crown

This Act binds the Crown.

8 Outline

(1) Part 2 provides for employees and other persons to become members of a KiwiSaver scheme.

(2) Part 3 provides for the deduction and treatment of KiwiSaver contributions.

(3) Part 4 regulates KiwiSaver schemes.

(4) Schedule 1 sets out the KiwiSaver scheme rules. These are some of the main terms and conditions of KiwiSaver schemes, and are implied in the trust deeds of those schemes.

(5) Part 5 and Schedules 2 and 3 contain miscellaneous provisions.

(6) This Act also contains some of the rules that apply to complying superannuation funds. However, other rules about those funds are contained in the Income Tax Act 2007 and the Superannuation Schemes Act 1989.

Section 8(6): added, on 1 April 2008, by section 30 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Part 2
Membership of overall KiwiSaver scheme

Subpart 1—Becoming members of overall KiwiSaver scheme

9 Outline of how people become members of overall KiwiSaver scheme

(1) This subpart provides for employees and other persons to become members of the overall KiwiSaver scheme by—

(a) the operation of the automatic enrolment rules when an employee starts new employment, with the effect that a person becomes subject to automatic deductions from his or her salary or wages, but may opt out within specified time limits; or

(b) opting in (whether as an employee who becomes liable for automatic deduction of contributions from his or her salary or wages or otherwise).

(2) This subpart also provides for employers to be exempt employers, with the effect that the automatic enrolment rules will not apply to their employees when they start new employment.

Automatic enrolment rules

10 Who automatic enrolment rules apply to

The automatic enrolment rules apply to every employee who is not a secondee and—

(a) starts new employment with an employer that is not an exempt employer; and

(b) is aged 18 or over, but less than the New Zealand superannuation qualification age, when he or she starts that new employment.

Section 10: amended, on 19 December 2007, by section 31 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

11 Meaning of new employment and secondee

(1) **New employment** means any employment that is started on or after the date of commencement of the automatic enrolment rules, but—

(a) does not include temporary employment (except as provided in section 12); and

(b) does not include employment in respect of which the employee remains on the same payroll as the payroll that he or she was on immediately before starting that employment; and

(c) does not include employment with an employer that carries on the same business as the business in which the employee was employed immediately before starting the employment; and

(d) does not include employment, at the end of a secondment, by the employer from which a secondee was seconded.

(2) **Same business** means a business that, in substance, carries on the same or a similar role (regardless of whether or not the legal entity carrying on the business changes), and includes, without limitation,—

(a) a company that results from, or continues after, an amalgamation under the Companies Act 1993 involving the company by which the employee was employed immediately before that employee started the employment; and

(b) a business that takes over as a going concern the business in which the employee was employed immediately before that employee started the employment.

(2B) **Secondee** means an employee seconded from an employer to the employment of another employer (**employer B**), in respect of which the employee is on employer B's payroll.

(3) However, subsection (1)(c) applies only if an employer has given to the Commissioner the notice (if any) that is required by the Commissioner for the purposes of the administration of this section.

Section 11 heading: amended, on 19 December 2007, by section 32(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 11(1)(c): amended, on 19 December 2007, by section 32(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 11(1)(d): added, on 19 December 2007, by section 32(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 11(2B): inserted, on 19 December 2007, by section 32(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

12 Temporary employment

(1) Employment is **temporary**, and the automatic enrolment rules do not apply, if—

(a) the employment is as a casual agricultural worker within the meaning of section YA 1 of the Income Tax Act 2007; or

(b) the employment is under a contract of service that is for a period of 28 continuous days or less; or

(c) the employment is described in section 28(1)(a)(ii) of the Holidays Act 2003.

(2) However, employment ceases to be temporary, and the automatic enrolment rules then apply (as if the employee then started new employment)—

(a) on the day after the date on which the employee ceases to be a casual agricultural worker within the meaning of section YA 1 of the Income Tax Act 2007; or

(b) in the case of employment which was temporary under subsection (1)(b), on the 28th day after the employee started the employment.

Section 12(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 12(1)(b): amended, on 1 April 2008, by section 33(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 12(1)(c): added, on 1 April 2008, by section 33(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 12(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 12(2)(b): substituted, on 1 April 2008, by section 33(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

13 Employment in schools

(1) If a person is employed by a board of trustees to work in a state school or integrated school, the relevant board of trustees must be treated as the employer for the purposes of this Act.

(2) If a person is employed to work in a state school or integrated school after being employed to work in another state school or integrated school, the person is treated as starting new employment for the purposes of this Act, despite the fact that the person stays on the same payroll.

(3) In this section,—

board of trustees means a board of trustees constituted under Part 9 of the Education Act 1989

integrated school has the same meaning as in section 145 of the Education Act 1989

state school has the same meaning as in section 2(1) of the Education Act 1989.

14 Other situations when automatic enrolment rules do not apply

(1) Despite sections 10 to 13, the following are not new employment, and the automatic enrolment rules do not apply:

(a) if the person is an employee only because they are in receipt of payments of salary or wages of a type referred to in any of the following sections in the Income Tax Act 2007:

(i) section RD 5(1)(b)(iii) (which relates to certain ACC payments):

(ii) section RD 5(3) (which relates to payments to working partners):

(iii) section RD 5(7) (which relates to parental leave payments paid under Part 7A of the Parental Leave and Employment Protection Act 1987):

(b) if the new employment is as an election day worker or a private domestic worker as those terms are defined in section YA 1 of the Income Tax Act 2007:

(c) if the employee is not required to have tax deductions made from his or her salary or wages under the PAYE rules:

(d) if amounts are withheld for an employee under the PAYE rules solely because section OE 1(5) of the Income Tax Act 2004 applies to them.

(2) Despite sections 10 to 13, the automatic enrolment rules do not apply if the employee is already a member of a KiwiSaver scheme.

Section 14(1)(a): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 14(1)(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 21 May 2007, by section 60 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19) by substituting "PAYE rules:" for "PAYE rules.".

Subsection (1)(d) was inserted, as from 21 May 2007, by section 60 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

15 Effect of automatic enrolment

(1) An employee who is subject to the automatic enrolment rules—

(a) becomes liable in accordance with subpart 1 of Part 3 to automatic deduction of contributions—

(i) from the salary or wages paid in respect of the new employment that triggered the automatic enrolment rules; and

(ii) from the salary or wages paid in respect of any other new employment that the employee starts after becoming subject to the automatic enrolment rules; and

(b) must become a member of a KiwiSaver scheme under subpart 2 of this Part.

(2) The employee must continue to be a member of a KiwiSaver scheme until the earliest of—

(a) an opt-out notice taking effect; or

(b) the KiwiSaver end payment date referred to in clause 4 of the KiwiSaver scheme rules (which relates to lock-in of funds); or

(c) the provider terminating the employee's membership of a KiwiSaver scheme under clause 4(5) of the KiwiSaver scheme rules (which relates to zero account balances); or

(d) the date of withdrawal or transfer to a foreign scheme in the case of permanent emigration under clause 14 of the KiwiSaver scheme rules.

(3) The employee continues to be liable for automatic deduction of contributions in accordance with subsection (1)(a) in respect of salary or wages until the earliest of—

(a) the dates referred to in subsection (2); or

(b) the date on which section 62 otherwise applies to that payment of salary or wages.

16 Time limit for opting out

Every employee to whom the automatic enrolment rules apply when starting new employment may opt out at any time in the period beginning on the 13th day after the date on which the person started the new employment and ending on the close of the 55th day after the date on which the person started the new employment.

17 How to opt out

(1) Every employee who wishes to opt out must, within the time limit in section 16, give an opt-out notice either—

(a) to the Commissioner; or

(b) to the employer in respect of the new employment that triggered the automatic enrolment rules.

(2) An opt-out notice must be—

(a) given in the form of the opt-out notice in an information pack; or

(b) given in any other form and manner permitted by the Commissioner.

(3) In order to be effective, an opt-out notice must contain the information required by that form or by the Commissioner, as the case may be.

(4) An opt-out takes effect on the later of—

(a) the 13th day after the date on which the person started the new employment that triggered the automatic enrolment rules; and

(b) the date on which the opt-out notice is—

(i) accepted by the Commissioner, in the case of a notice given to the Commissioner; or

(ii) received by the employer, in the case of a notice given to the employer.

(5) An employer who receives an opt-out notice must give notice of that opt-out to the Commissioner no later than the time that the next employer monthly schedule is required to be delivered to the Commissioner under sections RA 5, RA 20, RD 2(3), RD 4(1), and RD 22 of the Income Tax Act 2007 and sections 24J and 24P of the Tax Administration Act 1994.

(6) For the purposes of sections 17 to 20, a PAYE intermediary (within the meaning of section YA 1 of the Income Tax Act 2007) acting under sections RP 2 and RP 6 to RP 16 of that Act is treated as an employer.

Section 17(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 17(6): substituted, on 1 April 2008, by section 34(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 17(6): added (with effect from 1 July 2007), on 19 December 2007, by section 34(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

18 Extension of opt-out period

(1) This section applies if—

(a) an employee gives an opt-out notice outside the time limit in section 16; and

(b) 1 or more of the following applies:

(i) the employer did not supply the employee with an information pack within 7 days of the employee starting new employment with the employer; or

(ii) the Commissioner did not send an investment statement under section 50(3)(c); or

(iii) the employer did not supply an investment statement under section 43 (if an employer's choice of KiwiSaver scheme is effective); or

(iv) events outside the control of the employee meant that the opt-out notice could not be given within the time limit and, in the opinion of the Commissioner, it is reasonable that a late opt-out notice be accepted; or

(v) a mistake described in section 59A(b) has occurred.

(2) The Commissioner may accept the opt-out notice, if it is received by the Commissioner or the employer in the period that ends 3 months after the date on which the Commissioner receives the first contribution in respect of the employee.

(3) If an opt-out notice is received by the Commissioner outside the time limit in section 16, and the Commissioner does not exercise his or her discretion to accept it under this section, the Commissioner must treat the notice as if it were an application

for a contributions holiday under section 102, if the person could have applied under that provision.

Section 18(1)(b)(iv): amended (with effect from 1 July 2007), on 19 December 2007, by section 35(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 18(1)(b)(v): added (with effect from 1 July 2007), on 19 December 2007, by section 35(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 18(2): amended (with effect from 1 July 2007), on 19 December 2007, by section 35(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

19 Commissioner must give notice to employer of opting out

The Commissioner must, as soon as practicable after accepting an opt-out notice from an employee, give notice to the employee's employer in respect of the new employment that triggered the automatic enrolment rules stating that—

(a) the employee has opted out; and

(b) the employer must not make any further deductions of contributions in respect of the employee, from the effective date of the opt-out.

20 Effect of opting out

(1) An employee who opts out ceases, on the date on which the opt-out takes effect under section 17(4), to be a member of any KiwiSaver scheme of which the employee might have become a member.

(2) The employer must stop making deductions, with effect on the next payment of salary or wages that the employer calculates,—

(a) if the employee opts out by giving the opt-out notice to the employer, after the effective date of the opt-out notice under section 17(4); or

(b) if the employee opts out by giving the opt-out notice to the Commissioner, after the date on which the employer receives notice of the employee opting out under section 19.

(3) The employer may refund any deduction to the employee, rather than pay it to the Commissioner.

21 Opt-out only applies to employment that triggered automatic enrolment rules

An opt-out notice given in respect of one employment terminates the application of the automatic enrolment rules only in respect of that 1 employment, and does not apply to any other new employment in respect of which the employee may become subject to the automatic enrolment rules in the future.

Notice requirements for people who start new employment

22 Employees must give information to employers

(1) Every person who starts new employment must give notice to the employer of—

- (a) his or her name and address; and
- (b) his or her tax file number; and
- (c) whether or not he or she is already a member of a KiwiSaver scheme and, if that person is a member, must either—
  - (i) give to his or her employer a KiwiSaver deduction notice; or
  - (ii) give or show to his or her employer a copy of a notice given by the Commissioner under section 105 that grants a contributions holiday that has not yet ended.

(2) That information must be given as soon as practicable after the person starts the new employment.

23 Employers must give information to Commissioner

(1) Every employer of a person who starts new employment must give notice to the Commissioner of the information referred to in section 22(1)(a) and (b) that the employee gives the employer, if the employer is satisfied that the employee is subject to the automatic enrolment rules.

(2) That information must be given no later than the time that the employer is next required to deliver an employer monthly schedule to the Commissioner under sections RA 5, RA 20, RD 2(3), RD 4(1), and RD 22 of the Income Tax Act 2007 and

sections 24J and 24P of the Tax Administration Act 1994 after the information is given to the employer.

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

23A PAYE intermediaries

For the purposes of sections 22 and 23, a PAYE intermediary (within the meaning of section YA 1 of the Income Tax Act 2007) acting under sections RP 2 and RP 6 to RP 16 of that Act is treated as an employer.

Section 23A: substituted, on 1 April 2008, by section 36(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 23A: inserted (with effect from 1 July 2007), on 19 December 2007, by section 36(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Exempt employers

24 Purpose of being exempt employer

(1) A person who starts new employment with an exempt employer is exempt from the automatic enrolment rules.

(2) For the avoidance of doubt, subsection (1)—

(a) does not prevent an employee of an exempt employer from opting in under this subpart; and

(b) does not prevent a person who is already a member of a KiwiSaver scheme from becoming liable for automatic deduction of contributions from the salary or wages paid in respect of employment with an exempt employer under section 15(1)(a)(ii) or 36(1)(a)(ii).

25 Eligibility to be exempt employer

(1) An employer is eligible to be approved as an exempt employer if the Government Actuary is satisfied that the employer provides access to a superannuation scheme for its employees that complies with the following rules:

(a) every person who becomes, on or after the date of commencement of the automatic enrolment rules, a permanent employee (including a part-time employee) of that employer, and who is aged 18 or over but less than the New Zealand superannuation qualification age, must be

eligible, in practice, at the time when the person so becomes an employee,—

(i) to become a member of the scheme; and

(ii) to transfer to the scheme the member's accumulation in relation to other superannuation schemes (to the extent that transfers are available from those other superannuation schemes); and

(b) the scheme must be a registered superannuation scheme; and

(c) the trust deed of the scheme must have the effect that each member who satisfies the scheme's requirements for a withdrawal benefit, and who elects to withdraw from membership of the scheme, may transfer the member's accumulation to another registered superannuation scheme or KiwiSaver scheme (to the extent that transfers are available to those other schemes); and

(d) the trust deed of the scheme must provide for an amount equal to at least 4% of annual gross base salary or wages to be contributed to, or otherwise credited within, the scheme in respect of each person who becomes, on or after the date of commencement of the automatic enrolment rules, a permanent employee of that employer and a member of the scheme.

(2) However, subsection (1)(d) does not apply—

(a) to the extent that an employee is, in accordance with the terms of the scheme, temporarily relieved from contributions at that rate (for example, in the event of financial hardship); or

(b) if the scheme is a defined benefit scheme of a type that does not satisfy the 4% minimum amount rule in subsection (1)(d), and if the actuary of the scheme certifies, to the satisfaction of the Government Actuary, that the value of each employee's accrued benefits to be provided by the scheme is, as a matter of fact, increasing, during each membership period, by an amount at least equivalent to such minimum amount that would otherwise be required by this section and section 26.

(3) In this section,—

defined benefit scheme means a superannuation scheme that is not a defined contribution scheme

permanent employees means employees—

(a) who are not employed in temporary employment (as described in section 12); and

(b) to whom the automatic enrolment rules would apply, but for the application of this section.

permanent employees: this definition was substituted, as from 21 May 2007, by section 61 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

26 How 4% minimum amount may be calculated for exempt employer defined contribution schemes

(1) For the purposes of section 25(1)(d),—

(a) the minimum amount required by section 25(1)(d) may be made up—

(i) entirely of contributions by the employee; or

(ii) entirely of contributions by an employer; or

(iii) partially of contributions by the employee and partially of contributions by an employer; and

(b) the minimum amount required by section 25(1)(d) must be treated as satisfied if the sum of the following amounts is equal to at least 4% of annual gross base salary or wages:

(i) the minimum prescribed amount that the employee must contribute:

(ii) the maximum prescribed amount that the employer would be required to contribute if the member were to contribute the maximum prescribed amount:

(c) any amount contributed to the scheme by an employer in respect of an employee does not count towards the minimum amount required by section 25(1)(d) unless—

(i) the employee is legally entitled to require the employer to contribute that amount on his or her behalf; and

(ii) the trust deed of the scheme provides for the minimum amount required by section 25(1)(d) to vest completely in the employee no later than the

time when the employee begins his or her sixth year as a member of the scheme; and

(d) any amount contributed to the scheme by an employer in respect of an employee must be calculated, for the purposes of the minimum amount required by section 25(1)(d), before any ESCT payable under the ESCT rules is deducted.

(2) Subsection (1)(b) does not limit subsection (1)(c) or (d).

Example

Company A provides access to a superannuation scheme for its employees. The trust deed provides that employees, if they decide to become members, must contribute at either 1% or 3% of annual gross base salary. The employer is obliged to match the employee's contributions (eg, if employee contributes 1%, company must contribute 1%).

The scheme complies with the rule as to the 4% minimum contribution as follows:

Minimum amount employee member must contribute
1%
Maximum amount that employer must contribute in respect of employee member
3%
4%

Section 26(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

27 Eligibility of employers who provide access to more than one scheme

An employer who provides access to more than 1 superannuation scheme for its employees is eligible to be approved as an exempt employer if the Government Actuary is satisfied that, if all of those schemes were considered as a whole (as if they were one scheme), the rules in section 25 would be complied with.

28 Eligibility of employers who have schemes established under master trusts

An employer who provides access to a superannuation scheme for its employees that is established under a master trust is eli-

gible to be approved as an exempt employer if the Government Actuary is satisfied that the rules in section 25 would be complied with if the Government Actuary considered only—

(a) the master trust in so far as it relates to the employer's scheme; and

(b) the participation agreement executed between the employer and the trustees of the master trust in relation to the membership of the employer's employees in the scheme; and

(c) anything else that the Government Actuary decides is relevant to evidencing compliance with the rules in section 25, in respect of the employer's employees.

Section 28(b): amended (with effect from 1 July 2007), on 19 December 2007, by section 37 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 28(c): added (with effect from 1 July 2007), on 19 December 2007, by section 37 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

29 How to apply to be exempt employer

(1) A person may apply to the Government Actuary for approval of an employer as an exempt employer.

(2) The application must be accompanied by—

(a) information that satisfies the Government Actuary that the scheme complies with the rules in section 25; and

(b) the names, addresses, and tax file numbers of each employer in respect of whom the application is made; and

(c) if the application is made in respect of an employer that is part of a group of companies, such details of the names, addresses, tax file numbers, and payroll arrangements of any other members of the group that the Government Actuary may request.

30 How applications to be exempt employer must be dealt with

(1) The Government Actuary must, within 28 days after receiving an application under section 29 and the documents required to accompany the application,—

(a) consider whether he or she is satisfied that each employer in respect of whom the application is made is eligible to be approved as an exempt employer; and

(b) if so satisfied, approve the employer as an exempt employer and register the employer on the register of exempt employers.

(2) The Government Actuary must—

(a) give notice to the employer as soon as practicable after approving, or declining to approve, the employer as an exempt employer; and

(b) specify in that notice an effective date after which an employee who starts new employment with the employer will be exempt from the automatic enrolment rules (unless those rules do not otherwise apply).

31 Revocation of exempt employer approval

(1) The Government Actuary may revoke an approval given under section 30 if—

(a) the Government Actuary has given not less than 28 days' notice to the employer that the Government Actuary is considering whether to revoke the approval; and

(b) the Government Actuary is satisfied on reasonable grounds that the employer no longer provides access to a scheme for its employees that complies with the rules in section 25.

(2) The revocation may be on application by the employer or on the Government Actuary's initiative.

(3) The Government Actuary must—

(a) give notice to the employer as soon as practicable after revoking the approval; and

(b) specify in that notice an effective revocation date after which an employee who starts new employment with the employer will be subject to the automatic enrolment rules (unless those rules do not otherwise apply); and

(c) remove the employer from the register of exempt employers.

32 Government Actuary must give notice to Commissioner of exempt employers

The Government Actuary must give notice to the Commissioner as soon as practicable after an employer is approved under section 30 or an approval is revoked under section 31.

Opting in

33 Certain persons may opt in

A person may opt in at any time provided—

(a) the person is less than the New Zealand superannuation qualification age; and

(b) the person is not already a member of a KiwiSaver scheme; and

(c) the person is not subject to the automatic enrolment rules.

34 How to opt in

(1) A person who wishes to opt in may do either or both of the following:

(a) contract directly with a provider of a KiwiSaver scheme to become a member of a KiwiSaver scheme:

(b) if the person is an employee, give his or her employer a KiwiSaver deduction notice.

(2) A person who opts in by giving his or her employer a KiwiSaver deduction notice must give the employer—

(a) his or her name and address; and

(b) his or her tax file number.

(3) The employer must give notice to the Commissioner of the information that the employee gives the employer under subsection (2), if the employer is satisfied that the employee is eligible to opt in under section 33.

(4) That information must be given no later than the time that the employer is next required to deliver an employer monthly schedule to the Commissioner under sections RA 5, RA 20, RD 2(3), RD 4(1), and RD 22 of the Income Tax Act 2007 and sections 24J and 24P of the Tax Administration Act 1994.

(5) For the purposes of sections 34 to 37, a PAYE intermediary (within the meaning of section YA 1 of the Income Tax Act 2007) acting under sections RP 2 and RP 6 to RP 16 of that Act is treated as an employer.

Section 34(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 34(5): substituted, on 1 April 2008, by section 38(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 34(5): added (with effect from 1 July 2007), on 19 December 2007, by section 38(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

35 Opting in by persons under 18

(1) A person who is less than 18 years and who wishes to opt in may only opt in in accordance with section 34(1)(a).

(2) If a provider of a KiwiSaver scheme accepts a person who is less than 18 years as a member of the KiwiSaver scheme, the contract between the provider and the person under 18 years must be treated, for the purposes of the Minors' Contracts Act 1969, as if the person were aged 18 years.

Compare: 1992 No 141 s 63A

36 Effect of opting in by employees

(1) An employee who opts in under section 34(1)(a) or (b)—

(a) is liable in accordance with subpart 1 of Part 3 to deduction of contributions—

(i) from the salary or wages paid by the employee's employer; and

(ii) from the salary or wages paid in respect of any other new employment that the employee starts after opting in; and

(b) must become a member of a KiwiSaver scheme under subpart 2 of this Part.

(1B) If an employee to whom subsection (1)(a)(i) applies has more than 1 employer who pays salary or wages to them, then, despite subsection (1)(a)(i), they may choose 1 or more employers who must make deductions of contributions from salary or wages in accordance with subpart 1 of Part 3.

(2) The employee must continue to be a member of a KiwiSaver scheme until the earliest of—

(a) the KiwiSaver end payment date referred to in clause 4 of the KiwiSaver scheme rules (which relates to lock-in of funds); or

(b) the provider terminating the employee's membership of a KiwiSaver scheme under clause 4(5) of the KiwiSaver scheme rules (which relates to zero account balances); or

(c) the date of withdrawal or transfer to a foreign scheme in the case of permanent emigration under clause 14 of the KiwiSaver scheme rules.

(3) The employee continues to be liable for automatic deduction of contributions in accordance with subsection (1)(a) in respect of salary or wages until the earliest of—

(a) the dates referred to in subsection (2); or

(b) the date on which section 62 (other than section 62(a)) otherwise applies to that payment of salary or wages.

Section 36(1): amended, on 19 December 2007, by section 39(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 36(1)(a): amended, on 19 December 2007, by section 39(b)(i) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 36(1)(a): amended, on 19 December 2007, by section 39(b)(ii) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 36(1)(a)(i): amended, on 19 December 2007, by section 39(b)(iii) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 36(1B): inserted, on 19 December 2007, by section 39(c) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

37 Effect of opting in by persons other than employees

A person other than an employee who opts in must continue to be a member of a KiwiSaver scheme until the earliest of the events in section 36(2).

Information about people who contract directly with providers

38 Providers must give notice to Commissioner if they contract directly with members

(1) Every provider who contracts directly with a person (**A**) for membership of its KiwiSaver scheme must give notice to the Commissioner of that fact as soon as practicable after entering into the contract.

(2) The notice must include all of the following information:

(a) A's name and address; and

(b) A's tax file number; and

(c) the date of the first contribution received by the provider in respect of A (if any); and

(d) if A is an employee,—

(i) the name and address of each of A's employers in respect of whom deductions of contributions are to be made from salary or wages; and

(ii) the contribution rate in relation to each of those employers; and

(e) the name and address and tax file number of both the provider and the scheme; and

(f) any other information that the Commissioner requires.

39 Commissioner must give notice to employer if provider gives notice that employee has opted in under section 38

The Commissioner must, as soon as practicable after receiving a notice under section 38 in respect of an employee who has opted in, give notice to each of the person's employers to whom the opt-in notice relates, stating—

(a) that the employer must start to make deductions of contributions from each payment of the person's salary or wages that is calculated by the employer after the date on which the employer receives the notice under this section; and

(b) the contribution rate; and

(c) the person's name and tax file number.

Information about overall KiwiSaver scheme that must be provided

40 Commissioner must supply information pack

(1) The Commissioner must initially supply to each employer the number of information packs that the Commissioner reasonably believes will be a sufficient number to enable the employer to meet the employer's obligations to supply information packs under this Act.

(2) The Commissioner must also supply 1 or more information packs, on any reasonable request, to any person who so requests.

Section 40(1): amended (with effect from 1 July 2007), on 19 December 2007, by section 40(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 40(2): amended (with effect from 1 July 2007), on 19 December 2007, by section 40(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

41 What information pack must contain

Every information pack supplied by the Commissioner under this subpart must contain—

(a) a description of the overall KiwiSaver scheme; and

(b) a statement that membership of the overall KiwiSaver scheme, and of any individual KiwiSaver scheme, is at the member's own risk; and

(c) a summary of what could happen under the default allocation rules or if an employer has a chosen KiwiSaver scheme; and

(d) a description of how to access information about KiwiSaver schemes; and

(e) a statement that people should seek financial advice from a professional financial adviser (rather than an employer) if they want information in relation to—

(i) their personal financial circumstances; or

(ii) deciding whether to opt in or opt out or not; or

(iii) choosing a KiwiSaver scheme or investment product of a KiwiSaver scheme; or

(iv) the overall KiwiSaver scheme or its financial concepts; and

(f) an opt-out notice form; and

(g) a statement about collection of personal information that complies with principle 3 of the information privacy principles in the Privacy Act 1993; and

(h) any other prescribed information.

42 Employer must supply information pack to certain employees

(1) Every employer must supply an information pack to—

(a) each employee who starts new employment with the employer and to whom the automatic enrolment rules apply, within 7 days of the employee starting the new employment; and

(b) each employee who opts in under section 34(1)(b), within 7 days of the employee giving the employer the KiwiSaver deduction notice; and

(c) each employee who requests an information pack in contemplation of opting in.

(2) An employer is not liable for a penalty for a failure to supply an information pack under this section if the employer proves that—

(a) the failure of the employer to supply the information pack was caused by the fact that the Commissioner had not given the employer enough information packs to enable the employer to meet its obligations under this Act; and

(b) the employer notified the Commissioner that the employer needed more information packs, as soon as practicable after realising that the employer did not have enough.

43 Employer must also supply investment statement for employer's chosen KiwiSaver scheme (if any)

Every employer who supplies an information pack under section 42 must also, if an employer's choice of KiwiSaver scheme is effective under section 47, supply to the employee at the same time—

(a) an investment statement for that scheme; and

(b) a statement that, if the employee does not choose his or her own KiwiSaver scheme, the employee will be allocated to the employer's chosen KiwiSaver scheme (and not to one of the default KiwiSaver schemes by the Commissioner).

Subpart 2—Allocation of people to KiwiSaver schemes

44 Outline of how people are allocated to KiwiSaver schemes under subpart

This subpart provides for people to be allocated to KiwiSaver schemes—

(a) by the person choosing his or her own KiwiSaver scheme; or

(b) if the person does not so choose, but if his or her employer has a chosen KiwiSaver scheme, by the person being allocated to the employer's chosen KiwiSaver scheme; or

(c) in any other case, by the person being allocated to a default KiwiSaver scheme nominated by the Commissioner.

People may choose their own KiwiSaver scheme

45 People may choose their own KiwiSaver scheme

A person may, at any time, choose the KiwiSaver scheme of which he or she will be a member by contracting directly with the provider of the scheme to become a member of that scheme.

Employer choice of KiwiSaver scheme

46 Employer may choose scheme for employees

(1) An employer may, at any time, choose a KiwiSaver scheme of which the employer's employees will become members if the employees do not choose their own KiwiSaver scheme.

(2) However, an employer may choose a KiwiSaver scheme under this section only if all permanent employees of the employer are eligible to be members of the scheme (to the extent that this Act applies to the employees).

(3) In this section, **permanent employees** means employees—

(a) who are not employed in temporary employment (as described in section 12); and

(b) to whom the automatic enrolment rules apply, or would apply but for the application of section 14.

Section 46(2): amended, on 19 December 2007, by section 41(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Subsection (3) was substituted, as from 21 May 2007, by section 62 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 46(3)(b): amended, on 19 December 2007, by section 41(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

47 When employer choice of KiwiSaver scheme is effective

(1) The method by which an employer may choose a KiwiSaver scheme is—

(a) by agreeing with the provider that the provider will provide access to the scheme for the employer's employees; and

(b) by giving notice to the Commissioner of—

(i) the name, address, and tax file number of the employer; and

(ii) the name, address, and tax file number of both the provider and the chosen KiwiSaver scheme.

(2) The employer's choice of KiwiSaver scheme is effective—

(a) as from the date on which the notice in subsection (1)(b) is accepted by the Commissioner, or on any later date specified in the notice; and

(b) until the effective date of the earliest of any of the following notices:

(i) notice given by the employer to the Commissioner of an alternative choice of scheme under subsection (1); or

(ii) notice given by the employer to the Commissioner stating that the employer no longer has a chosen KiwiSaver scheme; or

(iii) notice given by the Commissioner to the employer stating that the employer's choice of KiwiSaver scheme has been revoked by the Commissioner on the grounds that the Commissioner is not satisfied that the scheme is eligible to be the employer's chosen scheme under section 46.

48 Effect of employer choice of KiwiSaver scheme

(1) This section applies when—

(a) an employer's choice of KiwiSaver scheme is effective under section 47; and

(b) an employee of the employer has not directly contracted to be a member of a KiwiSaver scheme with the provider of a scheme; and

(c) the employee is an employee—

(i) to whom the automatic enrolment rules apply; or

(ii) who opted in under section 34(1)(b); and

(d) more than 3 months have passed since the Commissioner received the first contribution in respect of the employee; and

(e) there is no relevant dispute under section 212 or 213 in relation to Part 2 or 3.

(2) On the first day that this section applies, the employee is treated as having—

(a) offered to be a member of the employer's chosen KiwiSaver scheme; and

(b) subscribed for securities in that scheme.

(3) The provider of the employer's chosen KiwiSaver scheme must accept that offer and allot those securities.

(4) The membership contract of the KiwiSaver scheme is binding on the employee and the provider, and enforceable as if it were a contract that was freely and voluntarily entered into.

(5) The contract may be amended or replaced or otherwise terminated, and the allotment of any securities relating to the contract may be voided, in the same way as if the contract were freely and voluntarily entered into.

(6) Subsection (5) is subject to section 220(3).

(7) The Commissioner must, as soon as practicable, give notice to the provider of the scheme of the employee's name, address, date of birth (if known to the Commissioner), tax file number, and any other personal information that the Commissioner considers relevant.

Section 48(1): substituted (with effect from 1 July 2007), on 19 December 2007, by section 42 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 48(2): substituted (with effect from 1 July 2007), on 19 December 2007, by section 42 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

49 Effect on existing members of change, etc, in employer chosen scheme

(1) A notice under section 47(2)(b) does not affect any person who became a member of a KiwiSaver scheme while the scheme was the employer's chosen KiwiSaver scheme.

(2) However, subsection (1) does not limit section 9BAA of the Superannuation Schemes Act 1989 (which provides for transfers without consent in certain circumstances).

Default KiwiSaver schemes

50 Commissioner provisionally allocates certain people to default KiwiSaver schemes and sends investment statement

(1) This section applies, in respect of a person who is an employee of an employer and their employment with that employer, when the Commissioner has received from the employer,—

(a) notice under section 23 of the person's automatic enrolment; or

(b) notice under section 34(3) of a person's opt-in under section 34(1)(b).

(2) However, this section does not apply to a person referred to in subsection (1)(a) or (b)—

(a) who is an employee of an employer whose chosen KiwiSaver scheme is effective under section 47; or

(b) who has opted out; or

(c) if the Commissioner has been notified by a provider that the person has become a member of a KiwiSaver scheme.

(3) As soon as practicable, the Commissioner must, in respect of the person's employment with the employer,—

(a) provisionally allocate, on a sequential basis, the person to a default investment product of a default KiwiSaver scheme that is nominated by the Commissioner; and

(b) give notice to the person of that allocation, including the name and address of the provider of the nominated default KiwiSaver scheme, and of the name of the default investment product of that scheme, to which the person has been provisionally allocated; and

(c) send to the person the investment statement relating to that product in that scheme; and

(d) give notice to the person of what will happen if the person does not choose his or her own KiwiSaver scheme.

(4) Subsection (3) also applies, with necessary modifications, and as provided in section 57 in cases to which that section applies, to a person if the Commissioner receives—

(a) notice under section 58 of the person having ceased to be eligible to be a member of his or her employer's chosen KiwiSaver scheme; or

(b) notice under section 173(1)(b) that the person must transfer to another scheme on a scheme's winding up; or

(c) notice under section 210(2); or

(d) notice of any other situation where a person is not, or is no longer, eligible to become or be a member of a certain KiwiSaver scheme and needs to be allocated to a KiwiSaver scheme under this section in order to comply with this Act.

Section 50(1): substituted (with effect from 1 July 2007), on 19 December 2007, by section 43(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 50(3): amended (with effect from 1 July 2007), on 19 December 2007, by section 43(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

51 Completion of allocation to default KiwiSaver scheme if person does not choose his or her own KiwiSaver scheme

(1) This section and section 52 apply, at the final allocation date specified in subsection (4), to a person (**A**) who has been provisionally allocated under section 50 if the Commissioner has not been notified by that date by a provider that A has applied to become a member of a KiwiSaver scheme.

(2) The Commissioner must give notice to A that the allocation of A is now completed as per the provisional allocation.

(3) The Commissioner must give notice to the provider of the default KiwiSaver scheme that A has been allocated to the scheme, and A's name, address, date of birth (if known to the Commissioner), tax file number, and any other personal information that the Commissioner considers relevant.

(4) The final allocation date is—

(a) in the case of a person referred to in section 50(1)(a) or (b), as soon as practicable after 3 months after the Commissioner receives the first contribution in respect of A:

(b) in the case of a person referred to in section 50(4), 3 months after the date on which the Commissioner receives that notice.

(5) However, if a dispute in relation to Part 2 or 3 is underway under section 212 or 213 as at the date which would otherwise be the final allocation date, the final allocation date is the effective date of the notice given by the Commissioner to the effect that the dispute has been resolved or has otherwise been terminated.

Section 51(4)(a): amended (with effect from 1 July 2007), on 19 December 2007, by section 44(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 51(5): amended (with effect from 1 July 2007), on 19 December 2007, by section 44(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

52 Effect of completion of allocation

(1) A person whose allocation is completed under section 51 is treated as having offered to become a member of that default KiwiSaver scheme and as having subscribed for securities in that scheme.

(2) The provider of the default KiwiSaver scheme to which the person has been allocated must accept that offer and allot those securities.

(3) The membership contract of the default KiwiSaver scheme is binding on the person and the provider, and enforceable as if it were a contract that was freely and voluntarily entered into.

(4) The contract may be amended or replaced or otherwise terminated, and any allotment relating to the contract may be voided, in the same way as if the contract were freely and voluntarily entered into.

(5) Subsection (4) is subject to section 220(3).

Miscellaneous provisions

53 Person may be member of only 1 KiwiSaver scheme at any one time

(1) A person may be a member of only 1 KiwiSaver scheme at any one time.

(2) This section does not limit subpart 3.

(3) This section does not prevent people from having more than 1 account or investment product of any one KiwiSaver scheme.

Subpart 3—Transfers between KiwiSaver schemes and between complying superannuation fund and KiwiSaver scheme

This heading was amended, as from 1 July 2007, by section 222 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting "KiwiSaver schemes and between complying superannuation fund and KiwiSaver scheme" for "KiwiSaver schemes".

54 Application

(1) Sections 55 and 56 apply if a person wishes to transfer KiwiSaver schemes or to transfer from a complying superannuation fund to a KiwiSaver scheme (a **voluntary transfer**).

(2) Sections 57 to 59 apply if a person has to transfer KiwiSaver schemes or to transfer from a complying superannuation fund to a KiwiSaver scheme (an **involuntary transfer**). An example of an involuntary transfer may be where a person ceases to be eligible to be a member of their current KiwiSaver scheme, or their complying superannuation fund.

Section 54 was substituted, as from 1 July 2007, by section 223 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Voluntary transfers

55 People may transfer between KiwiSaver schemes and between complying superannuation fund and KiwiSaver scheme

(1) A person may, at any time, transfer from a KiwiSaver scheme or a complying superannuation fund (an **old scheme**) to a new KiwiSaver scheme (a **new scheme**) by contracting directly with the provider of the new KiwiSaver scheme to become a member of that scheme.

(2) The transfer is effective in relation to the Commissioner's functions under this Act only when the Commissioner receives notice of the transfer under section 56(1).

The heading to section 55 was amended, as from 1 July 2007, by section 224(1) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting "KiwiSaver schemes and between complying superannuation fund and KiwiSaver scheme" for "KiwiSaver schemes".

Subsection (1) was amended, as from 1 July 2007, by section 224(2) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting "a KiwiSaver scheme or a complying superannuation fund

(an **old scheme**) to a new KiwiSaver scheme" for "one KiwiSaver scheme (an **old scheme**) to another KiwiSaver scheme".

56 Notification of transfers and requirement to transfer funds and information

(1) The provider of the new scheme must, as soon as practicable, give notice—

(a) to the Commissioner—

(i) that the person has transferred to the new scheme; and

(ii) of the person's name, address, date of birth, and tax file number; and

(iii) of the new scheme's name and tax file number; and

(b) to the provider of the old scheme—

(i) that the person has ceased to be a member of the old scheme and the effective date of the transfer; and

(ii) of the new scheme's name and address; and

(iii) that the provider of the old scheme must transfer the funds and information required to be transferred in accordance with subsection (3).

(2) The provider of the new scheme must also give evidence to the provider of the old scheme that the member wishes to transfer to the new scheme.

(3) The provider of the old scheme that is given notice under subsection (1) must—

(a) transfer the member's accumulation to the new scheme; and

(b) give notice to the member of the amount so transferred; and

(c) give notice to the provider of the new scheme—

(i) of the date on which the member first became a member of a KiwiSaver scheme, if the old scheme is a KiwiSaver scheme; and

(ii) as to whether the member has made a withdrawal for the purpose of the purchase of a first home under clause 8 of the KiwiSaver scheme rules; and

(iii) of any contribution holidays in force:

(iv) as to whether the Crown contribution under section 226 is included in the member's accumulation transferred to the new scheme.

(v) *[Repealed]*

(vi) of any information held by a provider of the old scheme that would be relevant to a provider of the new scheme making a claim under section 68C of the Tax Administration Act 1994, including information as to the periods for which claims have already been made.

(4) The provider must comply with subsection (3) within 35 days of receiving that notice or any longer period agreed between the providers of the old and new schemes.

Subsection (3)(c)(i) was amended, as from 1 July 2007, by section 225 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting "KiwiSaver scheme, if the old scheme is a KiwiSaver scheme" for "KiwiSaver scheme".

Subsection (3)(c)(iii) was amended, as from 1 July 2007, by section 63 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19) by substituting "in force; and" for "in force.".

Section 56(3)(c)(iv): substituted, on 19 December 2007, by section 45 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Subsection (3)(c)(iv) to (vi) was inserted, as from 1 July 2007, by section 63 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 56(3)(c)(v): repealed, on 19 December 2007, by section 45 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Involuntary transfers

57 Involuntary transfers

(1) This section applies if a person has to transfer KiwiSaver schemes or from a complying superannuation fund to a KiwiSaver scheme, including if—

(a) the Commissioner has received a notice under section 58 that an employee has ceased to be eligible to be a member of an employer's chosen scheme; or

(b) the Commissioner has received a notice under section 173(1)(b) that a person is a member of a KiwiSaver scheme that is being wound up; or

(c) the Commissioner has received a notice in respect of a member of a KiwiSaver scheme under section 210(2); or

(d) the Commissioner has received notice in accordance with paragraph (h) of the definition of complying fund rules in section OB 1 of the Income Tax Act 2004.

(2) However, this section does not apply if section 9BAA of the Superannuation Schemes Act 1989 applies.

(3) The person must be allocated to a new scheme in accordance with the principles in section 44, but excluding section 44(b) (which relates to allocation to an employer's chosen KiwiSaver scheme).

(4) The Commissioner must take whatever steps the Commissioner thinks appropriate to ensure that, so far as practicable, the process for an involuntary transfer follows the process for a voluntary transfer under section 56.

(5) Section 56(3) and (4) applies to an involuntary transfer, but as if the requirement in section 56(4) referred to 3 months instead of 35 days.

(6) Sections 45 to 53 apply to an involuntary transfer with necessary modifications.

(7) Subsections (5) and (6) do not limit subsection (4).

Subsection (1) was amended, as from 1 July 2007, by section 226(a) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting "transfer KiwiSaver schemes or from a complying superannuation fund to a KiwiSaver scheme" for "transfer KiwiSaver schemes".

Subsection (1)(c) was amended, as from 1 July 2007, by section 226(b) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting "section 210(2); or" for "section 210(2).".

Subsection (1)(d) was inserted, as from 1 July 2007, by section 226(c) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 57(3): amended (with effect from 1 July 2007), on 19 December 2007, by section 46 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

58 Information if employee ceases to be eligible to be member of employer's chosen KiwiSaver scheme

The employer must give notice to the employee and the Commissioner if, under the terms of the employer's chosen KiwiSaver scheme, the employee ceases to be eligible to be a member of that KiwiSaver scheme (for example, if the employee

ceases to be an employee of the employer and the scheme applies only to the employer's employees).

59 Commissioner must send information to involuntary transferees

The Commissioner must send to every person who is subject to an involuntary transfer under this subpart, as soon as practicable after the Commissioner receives the notice in respect of that person under section 57(1),—

(a) an information pack; and

(b) advice as to the effect of this subpart and of section 50.

Subpart 4—Initial and confirmed back-dated validation of invalid membership

Subpart 4: added (with effect from 1 July 2007), on 19 December 2007, by section 47 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

59A When this subpart applies

This subpart applies when, because of a mistake,—

(a) this Act has been applied to a person to whom, as a matter of law, this Act does not apply because the person fails to meet the requirements of section 6:

(b) the automatic enrolment rules have been applied to a person to whom, as a matter of law, those rules do not apply because the person fails to meet the requirements for the rules to apply:

(c) the rule allowing opt-in, in section 33, has been applied to a person to whom, as a matter of law, that rule does not apply because the person fails to meet the requirement of section 33(a).

Section 59A: inserted (with effect from 1 July 2007), on 19 December 2007, by section 47 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

59B Initial back-dated validation

(1) As soon as practicable after anyone discovers the mistake, they must notify the Commissioner or the relevant KiwiSaver scheme provider.

(2) The person described in section 59A is treated as a person who meets the requirements of section 6, the requirements for the

application of the automatic enrolment rules, or the requirement of section 33(a), for a period—

(a) starting on the earliest day on which this Act applies, the automatic enrolment rules, or the rule allowing opt-in were applied to the person because of the mistake described in section 59A; and

(b) ending on the earlier of—

(i) 3 months after the mistake is discovered by the person's KiwiSaver scheme provider:

(ii) 3 months after the mistake is notified to the provider by the Commissioner or another person:

(iii) the day the provider pays the member's accumulation for the person to the Commissioner.

Section 59B: inserted (with effect from 1 July 2007), on 19 December 2007, by section 47 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

59C Confirmed back-dated validation

(1) This section applies if, during the period of initial back-dated validation under section 59B, the person described in section 59A—

(a) is a person to whom this Act has been applied because of a mistake described in section 59A(a), and they meet the requirements of section 6 or become a person who meets the requirements of section 6:

(b) is a person to whom the automatic enrolment rules were applied because of the mistake described in section 59A(b), and—

(i) they meet the requirements of section 6 or become a person who meets the requirements of section 6; and

(ii) they are less than the New Zealand superannuation qualification age; and

(iii) they do not opt out.

(2) The person is treated as a person in relation to whom no mistake described in section 59A was made, and, at that time, met the requirements of section 6 or the requirements of the automatic enrolment rules.

(3) The Commissioner must notify the provider that this section applies.

(4) The relevant provider does not pay the member's accumulation for the person to the Commissioner.

Section 59C: inserted (with effect from 1 July 2007), on 19 December 2007, by section 47 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

59D What happens when initial back-dated validation ends, with no confirmed back-dated validation?

(1) This section applies when the period of initial back-dated validation under section 59B ends, and confirmed back-dated validation under section 59C has not occurred.

(2) The relevant provider must immediately—

(a) provide the Commissioner with a notice stating, for the relevant person:

(i) the amount of contributions received directly by the provider (not via the Commissioner) and when they were received; and

(ii) the amounts paid out by the provider under a mortgage diversion facility, and when they were paid out; and

(iii) the amounts paid out by the provider to the person as permitted withdrawals, when they were paid out, the types of permitted withdrawals, and the amount of Crown contributions included in the permitted withdrawals; and

(b) pay the member's accumulation for the person to the Commissioner, if the provider has not already done so.

(3) The Commissioner must pay, in accordance with subsection (4), as soon as practicable and without further authority than this section, an amount (the refund amount) equal to the total of—

(a) the contributions received by the provider (whether directly or via the Commissioner), less the total of—

(i) the amounts paid out by the provider under a mortgage diversion facility:

(ii) the amounts paid out by the provider to the person as permitted withdrawals, excluding the

amount of Crown contributions included in the permitted withdrawals:

(iii) Crown contributions:

(b) the contributions held in respect of the person in the holding account described in section 72, net of interest under section 84:

(c) the total amount of interest that the Commissioner would be liable for under section 84 on contributions described in paragraphs (a) and (b), excluding amounts described in paragraph (a)(i) to (iii) on a first-in first-out basis. For the purposes of calculating the amount of interest payable on the relevant contributions, the **interest period** in section 87 is treated as the number of days in the period—

(i) beginning on the day the Commissioner received the contribution or the provider received the contribution (if the contribution was not via the Commissioner):

(ii) ending with the day that the Commissioner pays the refund amount under this section.

(4) The refund amount must be paid to the person, their employer, the Crown, and any other person making a contribution in respect of the person, in proportion to the Commissioner's best estimate of what they contributed, taking into account amounts described in paragraph (a)(i) and (ii).

(5) When the Commissioner has paid the refund amount, the amount of member's accumulation for the person previously paid to the Commissioner (the **accumulation money**), and the contributions held by the Commissioner in respect of the person in the holding account described in section 72 including interest under section 84 (the **holding account money**) are treated in the following ways:

(a) the accumulation money and the holding account money are public money, and are not trust money for the purposes of sections 66 to 68 of the Public Finance Act 1989:

(b) Subpart 2 of Part 3 does not apply to the accumulation money and holding account money, and the Commis-

sioner must pay the money into the Crown Bank account.

Section 59D: inserted (with effect from 1 July 2007), on 19 December 2007, by section 47 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Part 3
KiwiSaver contributions

Subpart 1—Deductions of contributions from salary or wages

Payments of salary or wages to which deduction rules apply

60 Application of subpart

(1) This subpart applies to an employer in respect of any employee to whom 1 or more of the following applies:

(a) the employee has started new employment with the employer and the automatic enrolment rules apply:

(b) the employee has given the employer a KiwiSaver deduction notice:

(c) the Commissioner has given the employer a notice requiring the deduction of contributions from the employee's salary or wages.

(2) This subpart applies to all payments of salary or wages—

(a) after the employee starts that new employment (in a case to which subsection (1)(a) applies); or

(b) that are calculated by the employer after the employer receives that notice (in a case to which subsection (1)(b) or (c) applies).

61 Commissioner may give notice

The Commissioner may give a notice to an employer requiring the deduction of contributions in order to achieve the effect of section 15 or section 36 (including if the employer fails to comply with section 23).

62 When subpart does not apply

This subpart does not apply to an employer in respect of an employee, or to a payment of salary or wages,—

(a) if section 20(2) has required the employer to stop making deductions after an opt-out; or

(b) if the employee has given or shown the employer a notice of a contributions holiday, or the Commissioner has notified the employer of a contributions holiday, that has been granted under subpart 4, for so long as the employer is satisfied that the employee is on that contributions holiday; or

(c) if, in accordance with the PAYE rules, no tax deduction is required to be made from the payment of salary or wages at the time the payment is made and the payment is not salary and wages for a private domestic worker..

Section 62(c): amended (with effect from 1 July 2007), on 19 December 2007, by section 48 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

63 Part also applies to PAYE intermediaries

This Part applies to a PAYE intermediary (within the meaning of section YA 1 of the Income Tax Act 2007) who is acting under sections RP 1 to RP 16 of that Act as if references to the employer were a reference to the PAYE intermediary and with other necessary modifications.

Section 63: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

63A How subpart applies to private domestic workers

For the purposes of this subpart, a private domestic worker who is an employer under paragraph (b) of the definition of **employer** is treated as making payments of salary or wages to themselves in the capacity of employee. Consequently, the private domestic worker may be both employer and employee.

Section 63A: inserted (with effect from 1 July 2007), on 19 December 2007, by section 49 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Deduction rules

64 Contribution rate

(1) The **contribution rate**, in relation to an employee and to an employer and to each payment of salary or wages, is—

(a) 4% of the employee's gross salary or wages; or

(b) 8% of the employee's gross salary or wages if the employee gives his or her employer a notice requiring contributions to be deducted at that rate.

(2) The employee may change his or her contribution rate from 4% to 8%, or from 8% to 4%, by giving notice to his or her employer of the new rate.

(3) The new rate applies to the next payment of salary or wages that is calculated after the employer receives that notice.

(4) An employee may not change his or her contribution rate in relation to an employer at intervals that are less than 3 months apart unless the employer agrees.

65 Contribution rates may be changed by Order in Council

(1) The Governor-General may, by Order in Council, do either or both of the following:

(a) alter either or both of the rates specified in section 64:

(b) provide for additional rates at which employees may contribute under this subpart, instead of at the rates under that section.

(2) The Order in Council must state the date from which the rate or rates is to have effect (which must be the first day of a tax year (as defined in section YA 1 of the Income Tax Act 2007)).

(3) The Order in Council must state how it will apply (for example, whether it applies to the persons to whom this subpart already applies).

(4) Every Order in Council made under this section and laid before the House of Representatives pursuant to the Regulations (Disallowance) Act 1989 expires with the close of the 12-month period commencing on the date on which it was so laid, except in so far as it is expressly validated and confirmed by an Act of Parliament passed before that expiry date.

(5) Every Order in Council made under this section has the force of law as if it were enacted by this Act.

(6) The validity of any Order in Council made under this section is not affected by reason only of the repeal of an Act of Parliament validating and confirming it.

Section 65(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

66 Obligation to make deductions: general rule

The employer must make deductions of contributions from each payment of the employee's gross salary or wages of an amount equal to the contribution rate, unless section 66A applies.

Section 66: substituted, on 1 April 2008, by section 50 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 66(b)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

66A Obligation to make deductions: transitional rule

(1) This section applies to a payment of the employee's gross salary or wages that is for a pay period in the period starting on 1 April 2008 and finishing on 31 March 2012 if—

- (a) the employer and the employee agree that they will use the transitional rates in Schedule 4; and
- (b) the employer contribution for the payment of salary or wages is equal to or greater than the relevant transitional rate for the employer, given in Schedule 4; and
- (c) the employer contribution vests in the employee, as provided by the trust deed of the KiwiSaver scheme, immediately after it is made.

(2) The employer must make deductions of contributions from the payment of gross salary or wages equal to the relevant transitional rate for the employee, given by Schedule 4.

Section 66A: inserted, on 1 April 2008, by section 50 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

67 PAYE rules apply to deductions

(1) The PAYE rules apply to the deduction of contributions under this subpart, as far as applicable and with the necessary modifications, as if—

- (a) every reference to income tax were a reference to contributions; and
- (b) every reference to amounts of tax withheld were a reference to the deduction of contributions; and
- (c) every reference to a tax code were a reference to a deduction rate; and

(d) every reference to an amount required to be deducted under the PAYE rules were a reference to an amount required to be deducted under this Act.

(2) Every employer and employee must comply with the requirements of the PAYE rules to the extent to which those rules apply under this section.

(3) However, the following do not apply to any amount required to be deducted under this subpart:

(a) sections BC 1, LA 6, RA 2, RD 9 to RD 11, RD 16, RD 17, and RD 18 of the Income Tax Act 2007 and sections 24B to 24P of the Tax Administration Act 1994; and

(b) sections 139C, 140 to 140DB, 141FD, 141JA, 142E, 144, and 150B of the Tax Administration Act 1994.

(4) Any deduction made under this subpart is not part of or included in any amount of tax withheld under the PAYE rules on account of income tax.

(5) The deductions made under this subpart are in addition to any amounts of tax required to be withheld under the PAYE rules.

(6) This section is subject to sections 212 to 216.

Section 67(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 67(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 67(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 67(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

68 Money paid for things other than retirement benefits does not count as contribution under this Act

(1) This section applies if money is paid to a provider of a KiwiSaver scheme in respect of all or any of—

(a) the provision of retirement benefits for the member of the scheme; and

(b) other things (for example, life insurance premiums).

(2) The money paid in respect of the other things—

(a) does not count as a contribution under this Act or towards the contribution rate; and

(b) cannot be paid via the Commissioner.

(3) This subpart does not require an employer to make deductions from salary or wages in respect of that money.

(4) This section does not apply to permitted withdrawals.

69 Unremitted deductions made by employers

(1) This section applies if—

(a) the Commissioner is satisfied that a deduction has been made in any PAYE period by an employer under this subpart; and

(b) the amount of the deduction is not paid to the Commissioner by the employer on or before the date on which an employer is required to pay the deduction to the Commissioner under section RA 15 of the Income Tax Act 2007 (as applied by section 67 of this Act).

(2) The amount of the deduction is treated, for the purposes of this Act, as having been received by the Commissioner on the 15th day of the month in which the deduction is made.

Section 69(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

70 Unexplained remittances of deductions received from employers

(1) This section applies if—

(a) the Commissioner receives an amount (the **received amount**) from an employer in relation to the amounts deducted by the employer under this subpart; and

(b) the employer has failed to supply to the Commissioner the particulars required by the Commissioner in relation to those amounts deducted; and

(c) the Commissioner is unable to ascertain to the Commissioner's satisfaction, in sufficient time prior to the cut-off day for the making of on-payments to the providers of KiwiSaver schemes, the portion of the received amount attributable to each of the persons from whom an amount was deducted by the employer.

(2) The Commissioner may, for the purposes of this Part, hold the received amount until the amount attributable to each of the persons from whom an amount has been deducted by the em-

ployer has been established to the satisfaction of the Commissioner.

Compare: 1991 No 142 s 149

71 Time at which unexplained remittances deemed to be received

Any amount that is held by the Commissioner under section 70(2) is treated, for the purposes of this Act (other than sections 84 to 91 (interest on contributions) and clause 8 of the KiwiSaver scheme rules (withdrawal for purpose of purchase of first home)), as not having been received by the Commissioner until the day on which the amount attributable to each of the persons from whom an amount has been deducted by the employer has been established to the satisfaction of the Commissioner.

Compare: 1991 No 142 s 150

Subpart 2—Miscellaneous provisions relating to contributions

Inland Revenue KiwiSaver Holding Account

72 Inland Revenue KiwiSaver Holding Account

(1) The Commissioner must establish a memorandum account, called the Inland Revenue KiwiSaver Holding Account (the **holding account**), for the purpose of recording the receipt, deduction, payment, and refund of contributions and interest under this Act.

(2) The holding account established under subsection (1) is not a facility for the purposes of the Financial Transactions Reporting Act 1996.

73 Deductions entered in and paid out of holding account

(1) This section applies to any amount—

(a) that the Commissioner is satisfied has been deducted from salary or wages under this Act; and

(b) that is shown on an employer monthly schedule delivered under section RD 4 of the Income Tax Act 2007 as a deduction made from an employee's salary or wages under subpart 1.

(2) As soon as practicable after receiving that monthly schedule, the Commissioner must enter that amount in the holding account in respect of the person from whose salary or wages the deduction was made.

(3) Subject to sections 75 to 77, as soon as practicable after entering an amount in the holding account under this section, the Commissioner must pay the amount to the provider of the relevant KiwiSaver scheme, without further authority than this section.

(4) Money entered in the holding account under this section is not trust money for the purposes of sections 66 to 68 of the Public Finance Act 1989.

(5) This section is subject to sections 70 and 71.

(6) The Commissioner is entitled, for the purpose of subsection (1)(a), to assume, in the absence of information to the contrary, that amounts entered on an employer monthly schedule have been deducted from salary or wages.

Section 73(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 73(3): amended (with effect from 1 July 2007), on 19 December 2007, by section 51 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

74 Other contributions entered in and paid out of holding account

(1) This section applies to any amount of contribution that is received by the Commissioner other than an amount referred to in section 73.

(2) As soon as practicable after receiving the amount, the Commissioner must enter that amount in the holding account in respect of the person to whom the contribution relates.

(3) Subject to sections 75 to 77, as soon as practicable after entering an amount in the holding account under this section, the Commissioner must pay the amount to the provider of the relevant KiwiSaver scheme.

(4) Money entered in the holding account under this section is trust money for the purposes of sections 66 to 68 of the Public Finance Act 1989.

75 Initial contributions stay in holding account for 3 months

(1) This section applies to all contributions received by the Commissioner in respect of a person in the 3-month period starting on the earlier of—

(a) the day on which the Commissioner receives the first contribution in respect of the person:

(b) the day on which the Commissioner is given notice or otherwise knows that the person is a member of a KiwiSaver scheme.

(2) The Commissioner must hold those contributions in the holding account.

(3) The Commissioner must pay those contributions to the provider of the person's KiwiSaver scheme as soon as practicable after the expiry of that 3 months (without further authority than this section where those contributions meet the requirements of section 73(1)).

(4) The Commissioner must give notice to the person as soon as practicable after paying those contributions to the provider of the person's KiwiSaver scheme.

(5) The provider must give notice to the person as soon as practicable after receiving those contributions.

(6) Subsection (3) is subject to section 77.

Section 75(1): substituted (with effect from 1 July 2007), on 19 December 2007, by section 52(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 75(3): amended (with effect from 1 July 2007), on 19 December 2007, by section 52(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

76 Employer contributions may stay in holding account until deducted contributions paid

(1) This section applies if the Commissioner receives a contribution under subpart 3 (contributions other than deductions from salary or wages) from an employer in respect of a person to whom subpart 1 (deductions from salary or wages) also applies.

(2) The Commissioner may hold the contribution made under subpart 3 in the holding account, and then pay it to the provider of the person's KiwiSaver scheme at the same time as the contribution that is deducted under subpart 1 is paid by the Commissioner to the KiwiSaver scheme.

77 Small amounts of contributions may be held until big enough to be on-paid

(1) This section applies if the Commissioner and the provider of a KiwiSaver scheme agree on a minimum threshold for the payment of contributions to the provider.

(2) The Commissioner may hold in the holding account any amount of contribution that relates to a person until the amount meets that minimum threshold.

(3) Then the Commissioner must pay that amount to the provider of the person's KiwiSaver scheme (without further authority than this section where that amount meets the requirements of section 73(1)).

Section 77(3): amended (with effect from 1 July 2007), on 19 December 2007, by section 53 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

78 Treatment of unremitted deductions in holding account

To the extent that an amount referred to in section 73(1) is not paid to the Commissioner on or before the date on which the employer is required to pay the deduction to the Commissioner under section RD 4 of the Income Tax Act 2007,—

(a) the Commissioner must pay the amount out of a Crown Bank Account, without further authority than this section; and

(b) the amount is treated, for the purposes of section 73, as having been received by the Commissioner on the 15th day of the month in which the deduction is made.

Section 78: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

79 Information that Commissioner must supply to providers when paying contributions

The Commissioner must supply, to the provider of a KiwiSaver scheme to which the Commissioner makes any payment under this subpart, any information, and in any format, that the Commissioner determines after consultation with the provider of the KiwiSaver scheme.

80 Refund by Commissioner of amounts paid in excess of required amount of deduction or if employee opts out

(1) The Commissioner may refund any amount of contribution to a person in relation to whom a contribution was made, or from whose salary or wages the amount was deducted if—

(a) the person opts out and the contribution is in the possession of the Commissioner; or

(b) the contribution is in excess of the amount that this Act requires to be deducted and the contribution is in the possession of the Commissioner; or

(c) the person has opted out and the contribution was deducted from salary or wages but was not refunded to the person or paid to the Commissioner.

(2) However, if a request is made under section 173L of the Tax Administration Act 1994, the Commissioner may apply any amount of that contribution in accordance with that request.

Section 80(1): amended (with effect from 1 July 2007), on 19 December 2007, by section 54 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

81 Refund by provider of amounts paid in excess of required amount of contribution

(1) A provider must refund to the Commissioner no more than the amount of contribution paid to the provider by the Commissioner in respect of a member of that provider's KiwiSaver scheme that is in excess of the amount that is required to be paid to the provider under the KiwiSaver scheme and this Act.

(2) The Commissioner must refund or give credit for the amount refunded under subsection (1) in the manner that the Commissioner thinks fit.

(3) However, if a request is made under section 173L of the Tax Administration Act 1994, the Commissioner may apply any amount of that contribution in accordance with that request.

Section 81(1): amended, on 19 December 2007, by section 55 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

82 Trustee investment rules do not apply to contributions in holding account

Part 2 of the Trustee Act 1956 does not apply to the Commissioner in respect of money in the holding account.

83 Unclaimed money held by Commissioner

(1) This section applies to any money—

(a) that has been in the Commissioner's possession under this Act for a period of no less than 6 years; and

(b) about which the Commissioner has insufficient information in order to process that money in accordance with this Act.

(2) No interest is payable on that money under this subpart in respect of the period that this section applies.

(3) The Unclaimed Money Act 1971, and not sections 70 and 74 of the Public Finance Act 1989, applies to that money—

(a) as if the Commissioner is the holder of the money for the purposes of the Unclaimed Money Act 1971; and

(b) as if the money must be processed in accordance with this Act, and not paid to the owner, if a valid claim is made to the money; and

(c) as if the money would not cease to be unclaimed money under subparagraph (i) of the proviso to section 4(1) of the Unclaimed Money Act 1971 (which sets a $100 cap); and

(d) with other necessary modifications.

(4) If the Commissioner enters into a special arrangement under section 9 of that Act, the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Unclaimed Money Act 1971 must carry out, after consultation with the Minister of Finance, the responsibilities that would otherwise have been carried out by the Commissioner under that Act.

Interest on contributions

84 Interest on money in holding account

(1) The Commissioner is liable to pay interest in accordance with sections 85 to 91 on any amount of contribution that is received, or treated as received, by the Commissioner in respect of a person under this Act.

(2) Sections 68(2) and 69 of the Public Finance Act 1989 do not apply to the holding account.

Section 84(2): amended, on 19 December 2007, by section 56(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

85 Time when contributions treated as received for interest purposes

(1) Every amount of contribution that is deducted from salary or wages under this Act is treated, for the purpose of the payment of interest, as received by the Commissioner on the 15th day of the month in which the deduction is made.

(2) Subsection (1) applies if the Commissioner is satisfied that a deduction has been made in any month under this Act.

(3) Every amount of employer contribution is treated, for the purpose of the payment of interest, as received by the Commissioner on the first day of the month in which the Commissioner receives the amount of employer contribution.

Section 85 heading: amended, on 1 April 2008, by section 57(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 85(3): added, on 1 April 2008, by section 57(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

86 Interest rate

(1) The interest rate at which interest is payable under sections 84 to 91 is—

Commissioner's paying rate × (1 − lowest tax rate)

where—

Commissioner's paying rate is the rate of interest established and notified as the Commissioner's paying rate by an Order in Council made under section 120H of the Tax Administration Act 1994 as the Commissioner's paying rate applying on the day on which the contribution is received or treated as received

lowest tax rate is the tax rate in schedule 1, part A, table 1, row 1, column 2 of the Income Tax Act 2007.

(2) The interest rate calculated using the formula is expressed as a percentage, rounded to 2 decimal places, with numbers at the midpoint or greater being rounded up and other numbers being rounded down.

Section 86(1) **lowest tax rate**: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 86(2): added, on 19 December 2007, by section 58 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

87 Amount of interest payable

The amount of interest payable by the Commissioner in respect of a person is calculated in accordance with the following formula:

$$(\text{interest rate} \times \text{contribution}) \times \frac{\text{interest period}}{365}$$

where—

contribution is the amount of contribution in respect of the person to whom the interest is payable

interest period is the number of days in the period that begins on the day on which the Commissioner receives, or is treated as receiving, the amount of contribution and ends with the day on which the Commissioner on-pays the amount of contribution to the provider of the person's KiwiSaver scheme or refunds the amount under this Part (except section 81)

interest rate is the rate calculated under section 86.

88 How and when interest is paid on on-payments

Interest that is payable under section 84 on an amount of contribution that is on-paid to a provider must be paid to the provider of the person's KiwiSaver scheme, in respect of the person, at the same time that the amount of contribution is on-paid to the provider.

89 How and when interest is paid on refunds

(1) This section applies to interest that would be payable under section 84 in respect of an amount of contribution that is refunded under this Part (except section 81).

(2) Interest must be paid with the refund.

(3) However, no interest is payable if the amount of the interest in respect of that refund is less than $5:

(4) The Governor-General may, by Order in Council, increase the amount in subsection (3).

90 Position if Commissioner's paying rate changes

(1) This section applies if the rate of interest established and notified as the Commissioner's paying rate by an Order in Council made under section 120H of the Tax Administration Act 1994 changes during an interest period in respect of which interest is payable under section 84.

(2) The Commissioner's paying rate, for the purposes of section 86, must be taken to be the weighted-average rate based on the number of days on which each rate applied during that period.

91 Overpaid interest

Interest overpaid by the Commissioner under sections 84 to 90 may be recovered in the same manner as income tax that is payable under the Income Tax Act 2007.

Section 91: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subpart 3—Contributions other than deductions from salary or wages

92 Application of this subpart

This subpart applies to contributions to a KiwiSaver scheme other than contributions deducted from salary or wages under subpart 1.

92A How subpart applies to private domestic workers

For the purposes of this subpart, a private domestic worker who is an employer under paragraph (b) of the definition of **employer** is treated as making payments of salary or wages to themselves in the capacity of employee. Consequently, the private domestic worker may be both employer and employee.

Section 92A: inserted (with effect from 1 July 2007), on 19 December 2007, by section 59 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

93 Employer contributions paid via Commissioner

(1) An employer must pay all amounts of employer contributions to the Commissioner.

(2) The payment of an amount of employer contribution must be accompanied by a PAYE payment form.

(3) If the employer is not a private domestic worker, the contribution must be paid to the Commissioner within the time prescribed in section RA 15 of the Income Tax Act 2007 for the payment of amounts of tax withheld relating to the payment of salary or wages to which the contribution relates, as if the contribution were an amount of tax.

(4) If the employer is a private domestic worker, the contribution must be paid to the Commissioner within the time prescribed in sections RA 8, RA 10, and RD 4(2) of that Act for the payment of tax relating to the payment of salary or wages to which the contribution relates, as if the contribution were tax.

(5) The employer must include details of employer contributions paid in respect of each employee on the employer monthly schedule for the payments of salary or wages to which the contribution relates.

(6) For the purposes of the Tax Administration Act 1994, to the extent to which an employer fails to comply with subsection (5) in respect of an amount of employer contribution that the employer must pay to the Commissioner, that amount is treated as a short payment for the PAYE period for which the failure occurs.

Section 93: substituted, on 1 April 2008, by section 60 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

The heading to section 93 was amended, as from 1 July 2007, by section 64(1) Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19) by substituting "**may only**" for "**may**".

Section 93(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 July 2007, by section 64(2) Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19) by substituting "may only" for "may".

Section 93(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 93(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 93(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

94 Employer must give notice that employer contributions to be paid via Commissioner

[Repealed]

Section 94 was repealed, as from 1 July 2007, by section 65 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

95 Contributions from persons other than employers may be paid via Commissioner

A person other than an employer (including a member of a KiwiSaver scheme) may make a contribution to a person's (**A's**) KiwiSaver scheme by paying it to the Commissioner provided that the contribution is accompanied by—

(a) A's name and address; and

(b) A's tax file number; and

(c) any other information that the Commissioner may require.

96 What Commissioner must do with contributions received under this subpart

(1) The Commissioner must, in accordance with subpart 2,—

(a) first, pay the contribution into the holding account; and

(b) secondly, on-pay the contribution to the provider of the person's KiwiSaver scheme.

(2) The payments required under subsection (1) must be made net of ESCT payable under the ESCT rules (if any).

Section 96(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

97 Commissioner must give notice if employer contributions not remitted

(1) This section applies if—

(a) an employer, for a PAYE period, shows a payment of employer contribution under this subpart on either or both of a remittance certificate or an employer monthly schedule; and

(b) the payment is not received in full by the Commissioner by the time the Commissioner receives either or both of the remittance certificate or the employer monthly schedule for that PAYE period.

(2) The Commissioner must give notice to the employer that the payment has not been received.

98 Short payments by employers if not enough money remitted to Commissioner to cover all of employees' deductions and employer contributions

(1) This section applies if—

(a) an employer, for a PAYE period, shows payments of employer contribution under this subpart on either or both of a remittance certificate or an employer monthly schedule; and

(b) the total amount received by the Commissioner for that PAYE period by way of total deductions and employer contribution in respect of all of the employer's employees is less than the amounts shown on either or both of the remittance certificate or employer monthly schedule in respect of those matters.

(2) The amount of employer contribution (gross of any ESCT payable under the ESCT rules) that is treated as received by the Commissioner for the purpose of this subpart is so much of the payment that is actually received by the Commissioner that exceeds the amounts shown on the remittance certificate and employer monthly schedule in respect of total deductions.

(3) In this section, **total deductions** means the total of the following:

(a) the total amount of combined tax and earner-related payments (within the meaning of the Income Tax Act 2007); and

(b) the total child support deductions; and

(c) the total student loan deductions; and

(d) the total contributions deducted under subpart 1; and

(e) employer contributions that are not compulsory employer contributions.

Section 98(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 98(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 98(3)(d): amended, on 1 April 2008, by section 61 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 98(3)(e): added, on 1 April 2008, by section 61 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

98A Quantifying short payments for the purposes of Income Tax Act 2007 and Tax Administration Act 1994

For the purposes of the Income Tax Act 2007 and the Tax Administration Act 1994, an employer is treated as having an amount of short payment for a PAYE period equal to the difference between—

(a) the amount of employer contribution that is treated as received by the Commissioner under section 98(2) of this Act for the PAYE period; and

(b) the amount, for the PAYE period, of employer contribution shown on either or both of a PAYE payment form and an employer monthly schedule in accordance with this subpart.

Section 98A: inserted, on 1 April 2008, by section 62 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

99 Short payments if not enough employer contribution remitted to cover all employees

(1) This section applies if—

(a) an employer, for a PAYE period, shows payments of employer contribution under this subpart on a remittance certificate or employer monthly schedule in respect of more than 1 of the employer's employees; and

(b) the total amount received by the Commissioner for that PAYE period in respect of employer contribution under this subpart is less than the amounts shown on the remittance certificate and employer monthly schedule in respect of all of those employees.

(2) For the purposes of this subpart, the amount of employer contribution (gross of any ESCT) that the Commissioner is treated as receiving for any 1 employee is given by the following formula:

$$\frac{a \times b}{c}$$

where—

a is the total employer contributions received by the Commissioner under this subpart for all of the employer's employees for the month to which the employer monthly schedule relates

b is the employer contribution shown on the employer monthly schedule for the relevant employee for the month to which the employer monthly schedule relates

c is the total employer contributions shown on either or both of the remittance certificate or employer monthly schedule for all of the employer's employees for the month to which the employer monthly schedule relates.

(3) Subsection (2) does not prevent the provider of a KiwiSaver scheme from crediting amounts on the basis provided for in the trust deed or other document governing employer contributions, rather than in accordance with the calculation under subsection (2).

(4) For the purposes of this section, employer contribution does not include compulsory employer contribution to the extent of the employer's entitlement to a tax credit under section MK1(2)of the Income Tax Act 2007 in relation to the contribution.

Section 99(2): amended, on 1 April 2008, by section 63(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 99(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 99(2): amended (with effect from 1 July 2007), on 19 December 2007, by section 63(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 99(4): added, on 1 April 2008, by section 63(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

100 Refunds of employer contribution by Commissioner if employee opts out

If an employee opts out after an employer contribution is paid to the Commissioner, the Commissioner may, if it is still in his or her possession, refund the employer contribution to the employer.

101 Refunds of employer contribution by provider

(1) The provider of a KiwiSaver scheme must refund to the Commissioner any amount of employer contribution that was paid under this Act by the Commissioner in excess of the amount of the employer contribution that this Act requires.

(2) *[Repealed]*

Section 101(1): amended, on 19 December 2007, by section 64(1)(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 101(1): amended, on 19 December 2007, by section 64(1)(b) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 101(2): repealed, on 19 December 2007, by section 64(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Subpart 3A—Compulsory employer contributions to KiwiSaver schemes and complying superannuation funds

Subpart 3A: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

101A General

(1) An employer must pay, in accordance with sections 101E and 101F, an amount of employer contribution (a **compulsory employer contribution**) calculated under section 101D for an employee, to the extent to which the employee meets the requirements in section 101C for a period to which a payment of salary or wages relates.

(2) Section 101B provides rules relevant to parties to an employment relationship, and how they bargain in respect of compulsory employer contributions and associated matters.

(3) Section 101G provides rules relevant to providers who receive compulsory employer contributions directly or from the Commissioner.

(4) The rest of this subpart provides rules relating to compulsory employer contributions to complying superannuation funds. Also, subpart 3 provides some rules for employer contributions to KiwiSaver schemes.

(5) For the purposes of this subpart, a private domestic worker who is an employer under paragraph (c) of the definition of **employer** is treated as making payments of salary or wages to

themselves in the capacity of employee. Consequently, for the purposes of this subpart, the private domestic worker may be both employer and employee, if the worker chooses.

Section 101A: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

101B Compulsory contributions must be paid on top of gross salary or wages except to extent that parties otherwise agree after 13 December 2007

(1) The purpose of this section is to ensure that, for contractual arrangements of parties to an employment relationship (as defined in section 4(2) of the Employment Relations Act 2000), compulsory contributions are paid in addition to an employee's gross salary or wages described in section 101D(3).

(2) The contractual arrangements of parties to an employment relationship must not have the effect of defeating the purpose of this section described in subsection (1).

(3) A contractual term or condition has no effect to the extent to which it is contrary to the purpose of this section described in subsection (1).

(4) However, on and after 13 December 2007,—

(a) parties to an employment relationship are free to agree contractual terms and conditions that ignore the purpose of this section described in subsection (1); and

(b) to the extent of such agreement described in subparagraph (a), subsections (1) to (3) do not apply.

(5) For the avoidance of doubt, the duty of good faith described in section 4 of the Employment Relations Act 2000 always applies when parties to an employment relationship bargain for terms and conditions relating to compulsory contributions and associated matters.

(6) In this section, **compulsory contributions** means an amount of employer contributions equal to the amount of compulsory employer contributions that would be required by this subpart in the absence of section 101D(5)(a).

Section 101B: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

101C Employee's requirements

For the purposes of section 101A(1), the requirements are that the employee—

(a) is paid salary or wages from which the employer deducts or is required to deduct an amount for the employee's KiwiSaver scheme or complying superannuation fund; and

(b) is aged 18 or over; and

(c) is not entitled to withdraw an amount from a fund or scheme under clause 4(3) of the KiwiSaver scheme rules (which relates to lock-in of funds) or a rule the same as that clause; and

(d) is not a defined benefit scheme member.

Section 101C: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

101D Compulsory employer contribution amount: general rule

(1) The amount of a compulsory employer contribution is a positive amount calculated using the following formula:

(payment of gross salary or wages × CEC rate) − other contributions − hybrid schemes amount.

(2) The items in the formula are defined in subsections (3) to (6).

(3) **Payment of gross salary or wages** is the amount of a payment of gross salary or wages from which the employer deducts or is required to deduct an amount for the employee's KiwiSaver scheme or complying superannuation fund.

(4) **CEC rate** is, for the payment of gross salary or wages,—

(a) 1%, if the payment of gross salary or wages is made for a pay period that is in the year starting on 1 April 2008:

(b) 2%, if the payment of gross salary or wages is made for a pay period that is in the year starting on 1 April 2009:

(c) 3%, if the payment of gross salary or wages is made for a pay period that is in the year starting on 1 April 2010:

(d) 4%, if the payment of gross salary or wages is made for a pay period that is in a year starting on or after 1 April 2011.

(5) **Other contributions** is the total of amounts that the employer pays or credits in relation to the employee for the period to

which the payment of gross salary or wages relates, to the extent to which the amounts are—

(a) employer contributions made in the absence of this section:

(b) employer's superannuation contributions made to, or amounts credited from within, (collectively, the **contributions**) a registered superannuation scheme (the **contributions scheme**), and—

(i) the contributions scheme was registered before 17 May 2007, or the contributions scheme is one (a **succeeding scheme**) for which there is, due to all relevant members transferring to the succeeding scheme by virtue of section 9BAA of the Superannuation Schemes Act 1989, a prior registered superannuation scheme (a **prior scheme**) and that prior scheme or another prior scheme for the contributions scheme were registered before 17 May 2007; and

(ii) the employer provided access to eligible employees to the contributions scheme or a prior scheme for the contributions scheme before 17 May 2007; and

(iii) the employee is—

(A) employed by the employer before 1 April 2008, and the employer makes or has agreed with the employee before 1 April 2008 to make or credit the contributions to the contributions scheme or a prior scheme for the contributions scheme; or

(B) covered by a collective agreement that is in force before 17 May 2007 and expires after 1 April 2008 under which the employer is required to make or credit the contributions to the contributions scheme or a prior scheme for the contributions scheme; and

(iv) the contributions scheme provides that the contributions vest completely in the employee in a period starting on or after the employee first be-

comes a member of the contributions scheme and ending no more than 5 years later:

(c) employer's superannuation contributions or superannuation subsidies in relation to an employee—

(i) whose employment is as a member of Parliament, a judicial officer, or a sworn member of the police:

(ii) who is in a class of employees prescribed in regulations made under section 230A.

(6) **Hybrid schemes amount** is the amount given by subsection (7) for a registered superannuation scheme, employer and employee described in subsection (5)(b)(i) to (iii)—

(a) which do not have an amount of other contributions for the period to which the payment of gross salary or wages relates; and

(b) for which relevant retirement benefits are calculated by adding to the employee's total contributions a percentage of those contributions.

(7) For the purposes of subsection (6), the amount is calculated using the following formula:

member's contribution × vesting percentage.

(8) In the formula,—

(a) **member's contribution** is the amount of the employee's contribution for the period to which the payment of gross salary or wages relates:

(b) **vesting percentage** is the percentage of the employee's total contributions to be added to those contributions 5 years after the employee first becomes a member of the registered superannuation scheme.

Section 101D: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

101E Payment: allocation between schemes and funds

(1) If the employer and employee agree to an allocation of compulsory employer contributions between an employee's KiwiSaver scheme and complying superannuation funds, the contribution allocation agreed is used for allocating payments.

(2) If the employer and employee cannot agree what allocation of the amount of compulsory employer contribution is for an

employee's KiwiSaver scheme or complying superannuation funds, the amount is—

(a) first, for the employee's KiwiSaver scheme, up to the maximum required to meet an employer's compulsory employer contribution obligations:

(b) second, for the employee's complying superannuation funds, pro-rata, to the extent to which an amount remains after applying paragraph (a).

Section 101E: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

101F Payment rules: employers

(1) If an amount of employer contribution for a payment of salary or wages is for the employee's KiwiSaver scheme, the amount must be paid by the employer to the Commissioner. The amount is subject to the rules provided in subpart 3.

(2) If an amount of compulsory employer contribution for a payment of salary or wages is for the employee's complying superannuation fund, the amount must be paid by the employer to the fund's provider no later than 1 month after the payment of salary or wages.

Section 101F: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

101G Rules: providers

(1) A provider must use the contribution allocation for a member to credit the amount of compulsory employer contribution they receive across the investment products to which a member has subscribed or has been allocated.

(2) The contribution vests in the member immediately after it is paid to the provider, despite any provision to the contrary.

(3) If a member of a KiwiSaver scheme or complying superannuation fund will be entitled within 2 months to withdraw an amount from the fund or scheme under clause 4(3) of the KiwiSaver scheme rules (which relates to lock-in of funds) or a rule the same as that clause, the provider must send a notice to the Commissioner stating the date on which the member will be entitled to withdraw. The Commissioner may notify the mem-

ber's employer of the date, for the purposes of the employer applying this subpart.

Section 101G: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Complying superannuation funds

Heading: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

101H Failure to pay: provider notice

(1) This section applies if the provider of a complying superannuation fund knows that an employer has failed to pay to the provider an amount of compulsory employer contribution in accordance with this subpart.

(2) The provider must, as soon as practicable, give a notice to the employer, requesting the payment of the amount of compulsory employer contribution. The provider must send to the Government Actuary a copy of the notice.

(3) If the employer does not pay the amount of compulsory employer contribution to the provider within 1 month of this section first applying for the amount, and the total of the amounts of compulsory employer contributions unpaid is more than $500, then the provider must immediately give a notice to the Government Actuary.

(4) A notice under subsection (3) must show the following:
- (a) the name of the employer; and
- (b) the amounts of compulsory employer contributions unpaid; and
- (c) the employer's name, address, and tax file number (if known); and
- (d) specify the relevant employees to whom the failure to pay relates, their tax file numbers, and addresses; and
- (e) the pay periods and relevant amounts for the employees to whom the failure to pay relates; and
- (f) other information required by the Government Actuary.

(5) If the employer pays an amount of compulsory employer contribution remedying a failure to pay that was notified to the Government Actuary under subsection (3), the provider must

immediately give a notice to the Government Actuary showing relevant details of the employer's payment.

Section 101H: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Subpart 4—Contributions holiday

Applications for contributions holiday

102 Who may apply for contributions holiday

A person to whom subpart 1 (deductions of contributions from salary or wages) applies may apply to the Commissioner for a contributions holiday—

(a) at any time after the Commissioner receives the first contribution in respect of that person, if the person is suffering, or likely to suffer, financial hardship; or

(b) at any time after 12 months have expired since the earlier of—

(i) the date that the Commissioner received the first contribution in respect of that person; or

(ii) the date that a provider received the first contribution in respect of that person's membership of a KiwiSaver scheme; or

(iii) the date that the person is first a member of a complying superannuation fund.

Section 102(b)(ii): amended, on 19 December 2007, by section 67 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 102(b)(iii): added, on 19 December 2007, by section 67 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

103 How to apply for contributions holiday

(1) An application for a contributions holiday may be made by any means that the Commissioner accepts.

(2) The application must tell the Commissioner—

(a) the person's name and address; and

(b) the person's tax file number; and

(c) the name and address of each of the person's employers to whom the person intends that the holiday will apply; and

(d) the period of time for which the holiday is required; and

(e) in the case of an application made under section 102(a), details of the financial hardship; and

(f) any other information that the Commissioner requires.

104 Granting of contributions holiday

(1) The Commissioner must accept an application for a contributions holiday, and grant a contributions holiday, if the Commissioner is satisfied that the person meets the requirements of section 102, and the application is made in accordance with section 103.

(2) A contributions holiday granted in respect of an application made under section 102(a) must be granted for a period of 3 months, unless the Commissioner agrees to a longer period.

(3) A contributions holiday granted in respect of an application made under section 102(b) must be granted for—

(a) a minimum period of 3 months; and

(b) a maximum period of whichever is the shorter of—

(i) 5 years; or

(ii) the period specified in the application.

105 Commissioner must give notice of grant of contributions holiday

(1) The Commissioner must, as soon as practicable after granting a contributions holiday, give notice—

(a) to the person who applied for the holiday—

(i) that the holiday has been granted; and

(ii) of the date on which the holiday will end; and

(b) to each relevant employer—

(i) that a contributions holiday has been granted in respect of the person; and

(ii) that the employer must stop making deductions of contributions from the salary or wages of the person; and

(c) to the provider of the person's KiwiSaver scheme—

(i) that a contributions holiday has been granted in respect of the person; and

(ii) of the names of the relevant employers; and

(iii) that deductions of contributions may not be made from the salary or wages paid to the person by

the relevant employers during the period of the holiday.

(2) In this section, **relevant employer** means each employer to whom the person stated, in the application for the contributions holiday, that the contributions holiday was intended to apply.

106 When deductions stop at start of contributions holiday

If an employer is notified under section 105, subpart 1 ceases to apply—

(a) to the employer in respect of the person who applied for the contributions holiday; and

(b) with effect on the next payment of salary or wages that the employer calculates after the date on which the employer receives the notice.

107 Employers to whom contributions holiday applies

A contributions holiday granted under this subpart, while it is in force,—

(a) has effect, subject to section 108, in respect of each employer to whom the person stated, in the application for the contributions holiday, that the contributions holiday was intended to apply; and

(b) may be used, if the person chooses, in respect of any other employer.

108 Contributions holidays have 3-month minimum life

(1) The purpose of this section is to prevent employees requesting employers to stop and start deductions of contributions too often.

(2) No contributions holiday may be used in respect of an employer for less than 3 months unless the employer agrees.

End of contributions holiday

109 Commissioner must give notice before contributions holiday ends

The Commissioner must give notice to a person who is on a contributions holiday before the holiday ends.

110 Commissioner must give notice to employer of end of contributions holiday

The Commissioner must give notice to each affected employer known to the Commissioner, as soon as practicable after the end of a contributions holiday,—

(a) of the date on which the contributions holiday ended; and

(b) that the employer must start making deductions of contributions from the salary or wages of the person.

111 When deductions start at end of contributions holiday

(1) If an employer is notified under section 110 about the end of a person's contributions holiday, or under section 112 about the revocation of a person's contributions holiday, subpart 1 applies—

(a) to the employer in respect of that person; and

(b) with effect on the next payment of salary or wages that the employer calculates after the date on which the employer receives the notice.

(2) This section is subject to any new contributions holiday that is granted under this subpart.

Revocation and reinstatement of contributions holiday

112 Revocation and reinstatement of contributions holiday

(1) Subject to section 108, a person may at any time revoke his or her contributions holiday in respect of an employer by giving notice to the employer requiring the employer to start making deductions from salary or wages under subpart 1.

(2) A person may at any time reinstate his or her contributions holiday in respect of an employer by giving notice to the employer requiring the employer to stop making deductions from salary or wages under subpart 1.

(3) Sections 106 and 108 apply, with necessary modifications, as if the reinstatement of a contributions holiday were the granting of a contributions holiday.

113 Refund of initial contributions

(1) A person may apply to the Commissioner for a refund of any contributions that are being held in the holding account under section 75 if the person is suffering, or likely to suffer, significant financial hardship or is suffering serious illness.

(2) In this section, **significant financial hardship** has the same meaning as in clause 11 of the KiwiSaver rules and **serious illness** has the same meaning as in clause 12 of those rules.

(3) The application may be made by any means that the Commissioner accepts.

(4) The application must tell the Commissioner—

(a) the person's name and address; and

(b) the person's tax file number; and

(c) details of the significant financial hardship or serious illness; and

(d) any other information that the Commissioner requires.

(5) The Commissioner must refund the contributions to which the application relates, if the Commissioner is reasonably satisfied that—

(a) the person and the application meet the requirements of this section; and

(b) reasonable alternative sources of funding have been explored and have been exhausted.

(6) However, the Commissioner—

(a) must not refund under this section any employer contributions that were made under section 93; and

(b) may direct that, despite subsection (5), the amount to be refunded under this section is limited to a specified amount that, in the Commissioner's opinion, is required to alleviate the particular hardship.

(7) The Commissioner must give notice of the refund to the provider of the relevant KiwiSaver scheme (if any).

Section 113(5): substituted, on 19 December 2007, by section 68 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 113(6): substituted, on 19 December 2007, by section 68 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

114 Refunds if employee loses, etc, contributions holiday notice

(1) This section applies if—

(a) an employee has a contributions holiday that has not yet ended; and

(b) the employee starts new employment, but cannot comply with section 22(1)(c)(ii).

(2) The employer may, at any time after the employee complies with section 22(1)(c)(ii), refund to the employee any contributions that were deducted from the employee's salary or wages before the employee complied.

(3) The Commissioner may refund that money to the employee if the money is held by the Commissioner.

Part 4
KiwiSaver schemes

Subpart 1—Preliminary provisions

115 Interpretation

In this Part, unless the context otherwise requires, any term or expression that is used but not defined in this Act but that is defined in the Superannuation Schemes Act 1989—

(a) has the meaning given to it by that Act; and

(b) has the same meaning in relation to a KiwiSaver scheme as it has in relation to a registered superannuation scheme.

Subpart 2—Main features of KiwiSaver schemes

116 Schemes eligible to be KiwiSaver scheme

(1) A scheme is eligible to be a KiwiSaver scheme if—

(a) it is—

(i) established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; or

(ii) in the case of a proposal under section 135 or 148, proposed to be established as a KiwiSaver

scheme and governed under a trust deed that meets the criteria in subparagraph (i); or

(iii) a scheme constituted under an Act of the Parliament of New Zealand; and

(b) its principal purpose is to provide retirement benefits directly or indirectly to natural persons; and

(c) it is a defined contribution scheme; and

(d) the benefits provided by the scheme are fully funded as they accrue; and

(e) the scheme has at least 1 independent trustee; and

(f) in the case of a scheme that is not constituted under an Act of the Parliament of New Zealand,—

(i) it has at least 1 trustee who is a New Zealand resident; or

(ii) if any of the trustees is a corporate trustee, at least 1 of the directors of the corporate trustee is a New Zealand resident.

(2) However, subsection (1)(e) does not apply in the case of a scheme that is, or is to be, registered under section 141 or 150 if the registered superannuation scheme in respect of which the proposal under section 135 or 148 is made was in existence before this section came into force.

(3) The provisions of the trust deed referred to in subsection (1)(a)(i) and (ii) may also govern a registered superannuation scheme.

(4) This section is subject to the requirement for registration under subpart 3.

117 Additional duty of independent trustees

(1) This section applies to a trustee if—

(a) the trustee is named as an independent trustee in an application or proposal submitted in relation to the KiwiSaver scheme under sections 131, 132, 135, or 148 (unless a substitute has been appointed for that person in accordance with paragraph (c)); or

(b) the trustee is, in fact, an independent trustee in the event that no trustee is named as an independent trustee in an application or proposal submitted in relation to the KiwiSaver scheme under sections 131, 132, 135, or

148 or none of the persons so named in the application or proposal, or their substitutes appointed under paragraph (c), continue to be trustees; or

(c) the trustee is appointed as a substitute for a person named as an independent trustee in an application or proposal submitted in relation to the KiwiSaver scheme under sections 131, 132, 135, or 148 (or as a substitute for a person subsequently appointed) if the trustees notify the Government Actuary of the appointment.

(2) A trustee to whom this section applies—

(a) must, in managing the affairs of the KiwiSaver scheme, exercise the care, diligence, and skill that a prudent person engaged in the profession or business of managing trusts must exercise; and

(b) is liable in any civil proceedings for any act or omission as if that standard of care, diligence, and skill applied.

117A Restrictions on transactions

(1) This section applies to a KiwiSaver scheme if the scheme has less than 20 members, treating all interests in the scheme held by persons associated under the 1988 version provisions of the Income Tax Act 2007 as being held by 1 person.

(2) A transaction between a scheme's provider, and a person associated (under the 1988 version provisions of the Income Tax Act 2007) with either a provider or a member must use arm's length amounts of consideration.

(3) Despite subsection (2),—

(a) the KiwiSaver scheme must not have more than 5% of its assets in investments related to or managed by—

(i) a provider (other than in their capacity of provider):

(ii) a member:

(iii) a person associated (under the 1988 version provisions of the Income Tax Act 2007) with a provider or member; and

(b) the provider must not lend money or provide financial assistance to—

(i) a member:

(ii) a person associated (under the 1988 version provisions of the Income Tax Act 2007) with a provider or member.

Section 117A: inserted, on 1 April 2008, by section 69 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Application of Superannuation Schemes Act 1989 to KiwiSaver scheme

118 KiwiSaver scheme must be treated as registered superannuation scheme for most purposes

(1) A KiwiSaver scheme must, for the purposes of any other enactment (unless the enactment indicates otherwise), be treated as a registered superannuation scheme and, accordingly,—

(a) a reference in an enactment to a scheme registered under the Superannuation Schemes Act 1989 includes a reference to a KiwiSaver scheme:

(b) a reference in an enactment to any person, right, obligation, duty, interest, property, funds, or any other matter that would apply in relation to a registered superannuation scheme applies with necessary modifications in relation to a KiwiSaver scheme.

(2) Despite subsection (1), but subject to subsection (3), a KiwiSaver scheme—

(a) must not be treated as a registered superannuation scheme for the purposes of this Act or the Superannuation Schemes Act 1989 except as provided in sections 119 to 123; and

(b) must instead be established, registered, and wound up in accordance with this Part and subject to the express provisions of this Part.

(3) This section is subject to sections 119 to 124.

119 Application of section 7 of Superannuation Schemes Act 1989

(1) The requirement in section 7 of the Superannuation Schemes Act 1989 to specify certain matters in the trust deed of a registered superannuation scheme applies to the trust deed of a KiwiSaver scheme so as to require the same matters to be specified in relation to a KiwiSaver scheme.

(2) Despite subsection (1), if this Act expressly sets out requirements in relation to the matters set out in section 7 of the Superannuation Schemes Act 1989 (for example, by terms implied by the KiwiSaver scheme rules or provision for how a scheme must be wound up),—

(a) the provisions of this Act prevail; and

(b) section 7 of the Superannuation Schemes Act 1989 (as applied by this section) is satisfied by reference to the relevant provisions in this Act in respect of those matters.

120 Application of sections 8 to 11 of Superannuation Schemes Act 1989

(1) Sections 8 to 11 of the Superannuation Schemes Act 1989 (which relate to trust deeds and their provisions) apply with necessary modifications to a KiwiSaver scheme as if it were a registered superannuation scheme.

(2) However,—

(a) section 9B of the Superannuation Schemes Act 1989 applies as if a reference to section 20 of the Superannuation Schemes Act 1989 were a reference to section 169 of this Act; and

(b) section 9BA of the Superannuation Schemes Act 1989 applies as if a reference to section 23 of the Superannuation Schemes Act 1989 were a reference to section 186 of this Act.

(3) This section is not limited by any requirement in this Act for the Government Actuary to consider or be satisfied of any matters that are certified by the trustees under Schedule 2.

(4) This section is subject to section 121.

121 Further modifications to application of sections 8 to 11 of Superannuation Schemes Act 1989

(1) Nothing in this section limits the application of sections 8 to 11 of the Superannuation Schemes Act 1989 under section 120 with necessary modifications.

(2) Despite section 120,—

(a) sections 9B to 9BA of the Superannuation Schemes Act 1989 do not apply in relation to transfers to which subpart 3 of Part 2 applies; and

(b) nothing in sections 9 to 9BA of the Superannuation Schemes Act 1989 applies in relation to amendments to the trust deed of a registered superannuation scheme, alterations to a registered superannuation scheme or the transfer of members of a registered superannuation scheme that are effected in accordance with sections 135 to 147 or sections 148 to 155.

(3) In respect of any transfer that does occur under section 9B of the Superannuation Schemes Act 1989 (as applied by section 120 and this section) from one KiwiSaver scheme to another KiwiSaver scheme,—

(a) a member (A) of the KiwiSaver scheme who gives consent to a proposed transfer under section 9B of the Superannuation Schemes Act 1989 (as applied by section 120 and this section) must give to the trustees the following information:

(i) A's name, address, and date of birth; and

(ii) A's tax file number; and

(iii) the date on which A first became a member of a KiwiSaver scheme; and

(iv) if A is an employee,—

(A) the name and address of each of A's employers; and

(B) the rate at which A intends each of those employers to make deductions of contributions from his or her salary or wages; and

(v) the name and address and tax file number of both the provider and the scheme; and

(vi) any other information that the Commissioner requires; and

(b) the trustees of the KiwiSaver scheme from which it is proposed to transfer members must, in addition to the matters to be notified in writing under section 9B(2B) of the Superannuation Schemes Act 1989, provide to the satisfaction of the Government Actuary evidence that

they have provided in respect of each member of the scheme the information set out in paragraph (a) to the Commissioner.

(4) Despite subsection (3)(b), the trustees of a registered superannuation scheme are not required to provide any or all of the information listed in subsection (3)(a) in respect of any or all of the members of the scheme to the Commissioner if the information is not in the control or possession of the trustees.

Section 121(3)(a): amended, on 19 December 2007, by section 70 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

122 Application of other provisions of Superannuation Schemes Act 1989

(1) Sections 13, 15A, 16, 17, and 18 of the Superannuation Schemes Act 1989 apply, as far as applicable and with necessary modifications, in relation to a KiwiSaver scheme.

(2) Despite subsection (1), section 13(2) of the Superannuation Schemes Act 1989 does not apply in relation to a KiwiSaver scheme.

(3) Section 15A of the Superannuation Schemes Act 1989 applies as if the references to a trust deed exclude participation agreements that would not relate to a person if the person were to become a member of the KiwiSaver scheme.

(4) Section 16(2) of the Superannuation Schemes Act 1989 applies in relation to KiwiSaver schemes subject to any exemptions made under regulations made under section 228(t).

(5) Section 17 of the Superannuation Schemes Act 1989 applies subject to the following:

(a) the requirement in section 17(1)(a) (which relates to a requirement to give members a copy of the annual report) does not apply in relation to a member's account that is an inactive account unless the member requests a copy of the annual report; and

(b) the requirements in section 17(1)(b)(ii) and (iii) must be treated as if the references to a trust deed exclude participation agreements that do not relate to the relevant member.

(6) Section 18 of the Superannuation Schemes Act 1989 applies in relation to a KiwiSaver scheme as if it also required the

trustees of a KiwiSaver scheme that is not constituted under an Act of Parliament, and in respect of which any of the trustees is a corporate trustee, to notify the Government Actuary as soon as practicable after the corporate trustee ceases to have at least 1 director who is a New Zealand resident.

123 Requirement for annual report

(1) The trustees of a KiwiSaver scheme must, within 5 months after the end of each financial year, prepare a report on the scheme for that year.

(2) The annual report must, to the extent the information is applicable in respect of a KiwiSaver scheme, specify the information set out in Schedule 2 of the Superannuation Schemes Act 1989.

(3) However,—

(a) clause 1(d) of Schedule 2 of the Superannuation Schemes Act 1989 does not apply; and

(b) instead, the annual report must include a statement by the trustees as to whether they have applied contributions received in respect of each member, including contributions paid via the Commissioner in respect of that member, in accordance with the trust deed.

(4) The annual report must contain a certificate signed by the trustees certifying that—

(a) they have, in respect of each member of the scheme, applied any fee subsidies received in respect of that member in accordance with prescribed requirements; and

(b) there is a scheme provider agreement between the Commissioner and the provider of the scheme that remains in force; and

(c) if there has been an increase in a fee referred to in clause 2 of the KiwiSaver scheme rules during the year, the fee as increased is not unreasonable, after having regard to any matters prescribed under section 228(p) and any guidelines published by the Government Actuary under section 127.

(5) The annual report must also specify—

(a) the number of members of the scheme who during the year have made a withdrawal for the purchase of a first

home under clause 8 of the KiwiSaver scheme rules and the total amount withdrawn by all of those members:

(b) the number of members of the scheme who during the year have made a withdrawal on the grounds of significant financial hardship under clause 10 of the KiwiSaver scheme rules and the total amount withdrawn by all of those members:

(c) the number of members of the scheme who during the year have made a withdrawal on the grounds of serious illness under clause 12 of the KiwiSaver scheme rules and the total amount withdrawn by all those members:

(d) the number of members of the scheme who during the year have made a withdrawal on the grounds of permanent emigration under clause 14 of the KiwiSaver scheme rules and the total amount withdrawn by all of those members:

(e) the total amount of fees that have been charged in the period subsequent to the last annual report:

(f) the total amount of each type of contribution received by the provider for the year, and the number of members credited with each type:

(g) the total amount of members' accumulations at the end of the year, and the number of members with accumulations:

(h) the total amounts of fee subsidies credited to members for the year, and the number of members credited.

(6) 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.

Section 123(4)(b): amended, on 1 April 2008, by section 71(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 123(4)(c): added, on 1 April 2008, by section 71(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 123(5)(a): amended, on 19 December 2007, by section 71(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 123(5)(e): amended, on 19 December 2007, by section 71(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 123(5)(f): added, on 19 December 2007, by section 71(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 123(5)(g): added, on 19 December 2007, by section 71(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 123(5)(h): added, on 19 December 2007, by section 71(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 123(6): added, on 19 December 2007, by section 71(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

124 Annual report in case of KiwiSaver scheme established under umbrella trust

(1) In a case in which a KiwiSaver scheme is established under an umbrella trust, the trustees may provide a combined report on the KiwiSaver scheme and the registered superannuation scheme concerned, for the purposes of—

(a) section 123, in relation to the KiwiSaver scheme; and

(b) section 14 of the Superannuation Schemes Act 1989, in relation to the registered superannuation scheme.

(2) However, a combined report must—

(a) report separately on all matters within the report that relate only to the KiwiSaver scheme or that relate only to the registered superannuation scheme concerned; and

(b) clearly identify that information as separate information relating to the relevant scheme.

(3) Nothing in this section requires information that relates to both the KiwiSaver scheme and the registered superannuation scheme to be combined.

125 Requirement for annual return

(1) The trustees of a KiwiSaver scheme must provide an annual return to the Government Actuary that—

(a) is in the prescribed form; and

(b) meets any further prescribed requirements.

(2) The prescribed requirements may include a requirement to provide statistical information in relation to the KiwiSaver scheme.

(3) The annual return must be provided before the prescribed date and relate to the prescribed 12-month period.

(4) Nothing in this section requires the trustees of a KiwiSaver scheme to provide—

(a) information about an identifiable individual; or

(b) information that is not in the possession or control of the trustees; or

(c) information that is not reasonably ascertainable from information that is in the possession or control of the trustees.

125A Requirement for annual personalised statement of contributions and accumulations for members

The trustee of a KiwiSaver scheme or a complying superannuation fund must provide annually to each person who is a member of the provider's scheme or fund during the relevant year a statement showing the following for that person:

(a) the amount of each type of contribution received by the provider for the year; and

(b) the member's accumulation at the end of the year.

Section 125A: inserted, on 19 December 2007, by section 72 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Other implied provisions

126 KiwiSaver scheme rules are implied in trust deeds establishing KiwiSaver scheme

(1) The provisions set out in Schedule 1 are to be known as the KiwiSaver scheme rules.

(2) The KiwiSaver scheme rules set out in Schedule 1 are implied in every trust deed that establishes a KiwiSaver scheme in relation to the KiwiSaver scheme.

(3) The KiwiSaver scheme rules—

(a) apply despite anything to the contrary in the trust deed; and

(b) are enforceable by the trustees or any member of the scheme.

(4) The provisions implied as KiwiSaver scheme rules under this section are in addition to the provisions implied in the trust deed of a KiwiSaver scheme by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by section 120).

(5) Nothing in sections 8 to 10 of the Superannuation Schemes Act 1989 overrides the KiwiSaver scheme rules.

127 Exercise of functions by Government Actuary relating to clause 2 of KiwiSaver scheme rules

(1) In exercising any function under this Act that requires the Government Actuary to consider whether a KiwiSaver scheme complies with clause 2 of the KiwiSaver scheme rules (which relates to a requirement that fees not be unreasonable), the Government Actuary—

(a) must have regard to any prescribed matter:

(b) may have regard to any other matter that the Government Actuary considers relevant:

(c) may make decisions in accordance with any prescribed process.

(2) The Government Actuary may publish, in any form that the Government Actuary considers fit, guidance as to matters that the Government Actuary considers relevant to considering whether a KiwiSaver scheme complies with clause 2 of the KiwiSaver scheme rules (including principles that the Government Actuary may use to make that assessment).

(3) The Government Actuary is not limited to considering matters published by the Government Actuary under subsection (2).

128 Participation agreements executed before registration

(1) In the case of a KiwiSaver scheme registered under section 141, a participation agreement relating to a member of the scheme that was executed before the registration of the KiwiSaver scheme, and that is still in force immediately before the scheme is registered, must be treated as forming part of the trust deed at the time of the registration of the KiwiSaver scheme.

(2) In the case of a KiwiSaver scheme registered under section 150, a participation agreement relating to a member of the scheme that was executed before the registration of the KiwiSaver scheme, and that is still in force immediately before the scheme is registered, must be treated as forming part of the trust deed at the time of the partial or full transfer of the member's interest under section 155.

(3) Subsections (1) and (2) apply despite anything to the contrary in the trust deed or in any other enactment or rule of law or

agreement, or any defect in the form or mode of execution of the participation agreement.

128A Terms relating to members' tax credits implied into trust deed

(1) Terms necessary for giving effect to the law relating to the tax credits described in section KJ 1 of the Income Tax Act 2004 are implied into a trust deed that establishes—

(a) a KiwiSaver scheme in relation to the KiwiSaver scheme:

(b) a complying superannuation fund in relation to the complying superannuation fund.

(2) The terms—

(a) apply despite anything to the contrary in a trust deed of a scheme or fund; and

(b) are enforceable by a trustee, and by a member, of the scheme or fund.

Section 128A was inserted, as from 1 July 2007, by section 66 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 128A(1): amended (with effect from 1 July 2007), on 19 December 2007, by section 73(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 128A(2): amended (with effect from 1 July 2007), on 19 December 2007, by section 73(b)(i) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 128A(2)(a): amended (with effect from 1 July 2007), on 19 December 2007, by section 73(b)(ii) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 128A(2)(b): amended (with effect from 1 July 2007), on 19 December 2007, by section 73(b)(iii) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

128B Terms relating to back-dated validation implied into trust deed

(1) Terms necessary for giving effect to the law relating to back-dated validation of invalid membership under subpart 4 of Part 2 are implied into a trust deed that establishes a KiwiSaver scheme in relation to the KiwiSaver scheme.

(2) The terms—

(a) apply despite anything to the contrary in a trust deed of a scheme; and

(b) are enforceable by a trustee, and by a member, of the scheme.

Section 128B: inserted (with effect from 1 July 2007), on 19 December 2007, by section 74 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

128C Terms relating to lump sum payments by complying superannuation funds

(1) Terms necessary for giving effect to paragraph (cc) of the definition of **complying fund rules** in section YA 1 of the Income Tax Act 2007 are implied into a trust deed that establishes a complying superannuation fund in relation to the complying superannuation fund.

(2) The terms—

(a) apply despite anything to the contrary in a trust deed of a fund; and

(b) are enforceable by a trustee, and by a member, of the fund.

Section 128C: inserted, on 1 April 2008, by section 75 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

128D Terms relating to compulsory employer contributions implied into trust deed

(1) Terms necessary for giving effect to the law relating to compulsory employer contributions are implied into a trust deed that establishes—

(a) a KiwiSaver scheme in relation to the KiwiSaver scheme:

(b) a complying superannuation fund in relation to the complying superannuation fund.

(2) The terms—

(a) apply despite anything to the contrary in a trust deed of a scheme or fund; and

(b) are enforceable by a trustee, and by a member, of the scheme or fund.

Section 128D: inserted, on 1 April 2008, by section 76 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Amending trust deed in relation to KiwiSaver scheme

129 Amendment of trust deed or participation agreement governing KiwiSaver scheme

(1) This section applies if the trustees of a KiwiSaver scheme propose to make any amendment to the trust deed of the scheme, or to a participation agreement related to the trust deed, that will or may affect the members of the scheme in their capacity as members of that scheme or the trustees of the scheme in their capacity as trustees of the scheme.

(2) The trustees or the trustees' solicitor must, before any amendment of the type referred to in subsection (1) is made, give a certificate that the trust deed, when amended as proposed,—

(a) will comply with section 7 of the Superannuation Schemes Act 1989 (as applied by section 119); and

(b) will not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by sections 120 and 121); and

(c) will not contain any provision that is contrary to the KiwiSaver scheme rules.

(3) Within 14 days after any amendment to the trust deed is made, the trustees must lodge a copy of that certificate and a copy of the amendment with the Government Actuary.

(4) *[Repealed]*

Section 129 heading: amended, on 19 December 2007, by section 77(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 129(1): amended, on 19 December 2007, by section 77(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 129(4): repealed, on 19 December 2007, by section 77(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

130 Consent to reversion of assets to employer

Where section 10 of the Superannuation Schemes Act 1989 (as applied by section 120) applies, the Government Actuary must not give consent to the reversion of any assets of a KiwiSaver scheme to any employer unless satisfied—

(a) that sufficient assets would remain to support the member's interests of all of the members; and

(b) that the reversion is fair and equitable to the members, taking into account the manner in which the scheme acquired those assets.

Subpart 3—Registration of KiwiSaver schemes

Application to register new scheme as KiwiSaver scheme

131 Applications for registration of scheme governed by trust deed

(1) The trustees of a scheme established under a trust deed may apply to the Government Actuary for registration of the scheme under this Act if it is eligible to be a KiwiSaver scheme under section 116.

(2) In any case in which the scheme that is proposed to be registered as a KiwiSaver scheme is a registered superannuation scheme,—

(a) this section and sections 132 to 134 do not apply; and

(b) the application must be in the form of a proposal under section 135.

(3) In any case in which the scheme that is proposed to be registered as a KiwiSaver scheme is established under a trust deed under which a registered superannuation scheme is also established,—

(a) this section and sections 132 to 134 do not apply; and

(b) the application must be in the form of a proposal under section 148.

(4) Every application under this section must include a copy of the trust deed and of every amendment to the trust deed.

132 Application 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 under this Act.

(2) Every such application must be accompanied by any documents governing the scheme (other than the Act of Parliament).

133 Matters required to be specified in application

Every application for registration under section 131 or 132 must specify the matters set out in Part 1 of Schedule 2.

134 Registration of scheme

(1) The Government Actuary must within 28 days after receiving the application for registration under section 131 or 132 and the documents required to accompany the application, or within a longer period of time agreed on by the Government Actuary and the trustees,—

(a) consider whether he or she is satisfied—

(i) that the application is made in accordance with this Act; and

(ii) that the scheme is eligible to be a KiwiSaver scheme under section 116; and

(iii) of the matters required to be certified under Part 1 of Schedule 2; and

(iv) that fees charged in accordance with any information provided in the application will comply with clause 2 of the KiwiSaver scheme rules; and

(b) if so satisfied, register the scheme as a KiwiSaver scheme.

(2) The registration of a KiwiSaver scheme under this section must be treated as having taken effect on the date on which the Government Actuary enters the scheme as a KiwiSaver scheme in the KiwiSaver schemes register.

Conversion of registered superannuation scheme

135 Trustees may submit proposal to convert superannuation scheme

(1) The trustees of a registered superannuation scheme may submit to the Government Actuary a proposal to convert the scheme to a KiwiSaver scheme.

(2) The proposed KiwiSaver scheme must be eligible to be a KiwiSaver scheme under section 116.

(3) The proposal may propose amendments to any of the provisions of the trust deed that establishes the registered superannuation scheme (including repeals and additions to those provisions) that are necessary or desirable to—

(a) implement the proposal in accordance with this Act and the Superannuation Schemes Act 1989; and

(b) ensure that the scheme complies with subsection (2).

136 Form of proposal

A proposal that is submitted to the Government Actuary under section 135 must—

(a) include—

(i) a copy of the proposed amendments to the trust deed; and

(ii) a copy of each participation agreement related to the scheme; and

(iii) a copy of the trust deed and every amendment to the trust deed; and

(iv) a copy of the explanatory material that will be notified to members in accordance with section 140(1); and

(b) contain the matters specified in Part 2 of Schedule 2.

137 Government Actuary must provisionally register scheme as KiwiSaver scheme if satisfied of certain matters

(1) The Government Actuary must, within 28 days of receiving a proposal under section 135, or within a longer period of time agreed on by the Government Actuary and the trustees,—

(a) consider whether he or she is satisfied—

(i) that the proposal is made in accordance with this Act; and

(ii) that the scheme is or will be eligible to be a KiwiSaver scheme under section 116; and

(iii) of the matters required to be certified under Part 2 of Schedule 2; and

(iv) that fees charged in accordance with any information provided in the proposal will comply with clause 2 of the KiwiSaver scheme rules; and

(b) if so satisfied,—

(i) provisionally register the registered superannuation scheme as a KiwiSaver scheme by recording the provisional registration in the KiwiSaver schemes register; and

(ii) give notice to the trustees of the scheme of the provisional registration.

(2) Provisional registration as a KiwiSaver scheme does not affect the status of the scheme as a registered superannuation scheme or have the effect that the scheme is a KiwiSaver scheme.

138 Trustees must provide evidence of consents, and information, to Commissioner

(1) The Government Actuary must not, in relation to a scheme that has been provisionally registered under section 137, proceed to final registration of the scheme as a KiwiSaver scheme unless the trustees have provided, to the satisfaction of the Government Actuary, evidence that they have—

(a) obtained the consent of the persons referred to in subsection (3) in accordance with section 140; and

(b) provided the information listed in subsection (4) in respect of each member of the scheme to the Commissioner.

(2) A member who gives consent for the purpose of subsection (1)(a) must provide the information set out in subsection (4) to the trustees.

(3) For the purposes of subsection (1)(a), the persons from whom consent must be obtained are—

(a) every member of the registered superannuation scheme; and

(b) every person who is an employer contributor in relation to that scheme.

(4) For the purposes of subsection (1)(b) and subsection (2), the information that must be provided in respect of a member (**A**) is—

(a) A's name, address, and date of birth; and

(b) A's tax file number; and
(c) if A is an employee,—
  (i) the name and address of each of A's employers; and
  (ii) the rate at which A intends each of those employers to make deductions of contributions from his or her salary or wages; and
(d) the name and address and tax file number of both the provider and the scheme; and
(e) any other information that the Commissioner requires.

139 Exceptions to requirements under section 138

(1) Despite section 138, the Government Actuary may exempt the trustees of a registered superannuation scheme from the requirement to obtain the written consent in accordance with section 140 and proceed to final registration if the Government Actuary is satisfied that—
  (a) the terms and conditions of the trust deed of the registered superannuation scheme as proposed to be amended in accordance with sections 135 and 136 are no less favourable to members than the terms and conditions of the trust deed of the scheme immediately before the proposal to the Government Actuary is made; and
  (b) the exemption is otherwise reasonable in all the circumstances; and
  (c) the procedure in section 9BAB of the Superannuation Schemes Act 1989 has been followed, as if—
    (i) an application for an exemption under this section were an application for approval of a transfer under that section; and
    (ii) the notice given under that section included the advice referred to in section 140(1)(a)(i).

(2) The Government Actuary may decline to give the exemption if the Government Actuary considers that to do so would adversely affect the interests of all or any of the members and beneficiaries of the scheme in any material way.

(3) The trustees of a registered superannuation scheme are not required to provide any or all of the information listed in sub-

section 138(4) in respect of any or all of the members of the scheme to the Commissioner if the information is not in the control or possession of the trustees.

(4) In determining whether subsection (1) or (2) applies, the Government Actuary may—

(a) have regard to the likely effect of the proposed scheme (including the effect of any amendments proposed in accordance with sections 135 and 136) on benefits to members as a whole; and

(b) have regard to any other relevant matter.

(5) The Government Actuary may publish, in any form that the Government Actuary considers fit, guidance about matters that the Government Actuary considers relevant to considering whether subsection (1) applies (including principles that the Government Actuary may use to make that assessment).

140 Process for obtaining consents and evidence to be provided to Government Actuary

(1) For the purposes of section 138(1) and (2), the trustees of a registered superannuation scheme must obtain the necessary consents by—

(a) giving notice to every member of the registered superannuation scheme and every person who is an employer contributor in relation to that scheme of—

(i) the implications of the proposal for members and employer contributors; and

(ii) the date on which the proposed conversion is intended to occur; and

(iii) the fact that the Government Actuary has provisionally approved the scheme for registration as a KiwiSaver scheme subject to the consent of all members of the registered superannuation scheme and all persons who are employer contributors in relation to that scheme; and

(iv) the date by which the written consent must be received by the trustees in order to proceed with registration on the provisional date; and

(b) providing to those persons with that notice a copy of the certificates required under Part 2 of Schedule 2 that

were provided to the Government Actuary on making the proposal.

(2) The date by which written consent must be received from each member and employer contributor must be no earlier than 28 days after the date on which notice is given under this section.

(3) For the purposes of section 138, the trustees must provide evidence to the satisfaction of the Government Actuary in the form required by the Government Actuary that the necessary consents have been obtained in accordance with subsections (1) and (2).

(4) If the trustees do not provide evidence to the Government Actuary in accordance with subsection (3), subject to any exception from those requirements, under section 139, the Government Actuary may—

(a) cancel the provisional registration of the scheme as a KiwiSaver scheme; and

(b) remove the record of provisional registration in the KiwiSaver schemes register.

141 Government Actuary must register scheme as KiwiSaver scheme if certain conditions met

(1) This section applies if the trustees provide to the Government Actuary—

(a) evidence that they have complied with sections 138 and 140, subject to any applicable exception under section 139; and

(b) a copy of the proposed amendments referred to in section 136(a)(i) with the proposal in executed form.

(2) If this section applies, the Government Actuary must, within 28 days after the provision of the things referred to in subsection (1), or within a longer period of time agreed on by the Government Actuary and the trustees,—

(a) consider whether he or she is satisfied that—

(i) the trust deed has not been amended since the time of making the proposal; and

(ii) there is no material change in facts or circumstances since the time the scheme was provisionally registered as a KiwiSaver scheme that would, had those facts or circumstances applied

and been known to the Government Actuary at that time, have resulted in the Government Actuary failing to be satisfied of the matters set out in section 137(1)(a); and

(b) if so satisfied,—

(i) remove the record of provisional registration; and

(ii) register the registered superannuation scheme as a KiwiSaver scheme under this Act; and

(iii) remove the registered superannuation scheme from the register maintained under the Superannuation Schemes Act 1989.

142 Date of registration and conversion

(1) The registration of a KiwiSaver scheme under section 141 must be treated as having taken effect on the later of—

(a) the date on which the Government Actuary enters the scheme as a KiwiSaver scheme in the KiwiSaver schemes register; or

(b) the date of commencement of the automatic enrolment rules.

(2) A registered superannuation scheme that is subject to a proposal under section 135 is converted to a KiwiSaver scheme on the date registration of the scheme takes effect under this section.

143 Trust deed must be treated as having been amended in accordance with registration proposal

(1) If the Government Actuary registers a KiwiSaver scheme under section 141, the trust deed of the scheme must be treated as having been amended in the form submitted in the proposal to the Government Actuary—

(a) as if those amendments were authorised to be made and were made in accordance with the provisions of the trust deed before the amendments were made; and

(b) despite any defect in the form or mode of execution of the amendments.

(2) This section applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment or rule of law or agreement.

(3) Nothing in this section applies to the terms of any agreement between an employer and a provider (for example, terms in a participation agreement) unless the employer agrees that this section will apply so as to amend the terms and conditions of that agreement.

144 Effect of conversion of registered superannuation scheme to KiwiSaver scheme

(1) On the registration of a KiwiSaver scheme under section 141 taking effect,—

(a) the scheme ceases to be a superannuation scheme that is registered under the Superannuation Schemes Act 1989 and is instead a KiwiSaver scheme that is registered under this Act:

(b) despite its change in registration status,—

(i) no assets or liabilities are removed from the existing scheme; and

(ii) no new settlement occurs; and

(iii) the scheme must, subject to the provisions of this Act, be treated as the same scheme:

(c) the persons who were trustees immediately before the scheme's registration as a KiwiSaver scheme continue in their capacity as trustees of the scheme:

(d) all persons who were members of the scheme immediately before the scheme's registration as a KiwiSaver scheme continue to be members of the scheme subject to section 145(3):

(e) the nature of any contractual obligations between employer contributors and the provider of the scheme is governed by section 145.

(2) Subsection (1)(a) is subject to sections 116 to 124.

(3) Amendments to, and terms implied into, a trust deed that relate to registration of a KiwiSaver scheme under section 141 do not give rise to—

(a) a settlement under the definition of **settlement** in section YA 1 of the Income Tax Act 2007:

(b) a disposition of property under the definition of **disposition of property** in section 2 of the Estate and Gift Duties Act 1968.

Section 144(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

145 Status of contracts and other instruments

(1) This section applies to contracts, agreements, guarantees, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether in writing or not), entered into by, made with, given to or by, or addressed to the trustees of the scheme (whether alone or with another person) before the registration of the scheme as a KiwiSaver scheme under section 141 and subsisting immediately before registration under section 141.

(2) The instruments to which this section applies are, on and after the registration of the scheme as a KiwiSaver scheme, binding on, and enforceable by, against, or in favour of, the trustees of the scheme despite the change in the scheme's registration status.

(3) This section is subject to the provisions of this Act and the nature of the interest of members of the scheme is varied at the time of registration of the scheme as a KiwiSaver scheme in accordance with the provisions of this Act and, in particular, the KiwiSaver scheme rules.

146 References to scheme in existing instruments

A reference (express or implied) to the scheme or the trustees of the scheme in an instrument made, given, passed, or executed before the registration of the scheme as a KiwiSaver scheme under section 141 is a reference to the scheme or the trustees of the scheme on and after the registration of the scheme as a KiwiSaver scheme.

147 Continuation of legal and other proceedings

(1) An action, arbitration, a proceeding, or cause of action that was pending or that existed by, against, or in favour of, the trustees of the scheme or to which the trustees were a party before the registration of the scheme as a KiwiSaver scheme under

section 141 may, on and after the registration of the scheme as a KiwiSaver scheme, be continued and enforced by, against, or in favour of, the trustees on and after the registration of the scheme as a KiwiSaver scheme.

(2) It is not necessary to amend an application, notice, or other document to do so.

Establishment of KiwiSaver scheme under umbrella trust that also governs registered superannuation scheme

148 Trustees may submit proposal to establish KiwiSaver scheme under umbrella trust that also governs registered superannuation scheme

(1) The trustees of a registered superannuation scheme may submit to the Government Actuary a proposal to establish a KiwiSaver scheme under an umbrella trust that governs by one trust deed and the same trustees, as separate schemes,—

(a) a superannuation scheme registered under the Superannuation Schemes Act 1989; and

(b) a KiwiSaver scheme registered under this Act.

(2) The proposed KiwiSaver scheme must be eligible to be a KiwiSaver scheme under section 116.

(3) The proposal may propose amendments to any of the provisions of the trust deed that establishes the registered superannuation scheme (including repeals and additions to those provisions) that are necessary or desirable to—

(a) enable the governance of the registered superannuation scheme and the KiwiSaver scheme as separate schemes; and

(b) implement the proposal in accordance with this Act and the Superannuation Schemes Act 1989; and

(c) ensure that the scheme complies with subsection (2).

149 Form of proposal

A proposal that is submitted to the Government Actuary under section 148 must—

(a) include—

(i) a copy of the proposed amendments to the trust deed:
(ii) a copy of any participation agreements that have been ratified by employers of employees in the scheme as applicable to the KiwiSaver scheme:
(iii) a copy of the trust deed and every amendment to the trust deed; and

(b) contain the matters specified in Part 3 of Schedule 2.

150 Government Actuary must register KiwiSaver scheme if satisfied of certain matters

(1) The Government Actuary must, within 28 days of receiving a proposal under section 148, or within a longer period of time agreed on between the trustees and the Government Actuary, enter the proposed scheme as a KiwiSaver scheme in the KiwiSaver schemes register, if the Government Actuary is satisfied—

(a) that the proposal is made in accordance with this Act; and
(b) that the scheme is or will be eligible to be a KiwiSaver scheme under section 116 after section 152 has effect; and
(c) of the matters required to be certified under Part 3 of Schedule 2; and
(d) that fees charged in accordance with any information provided in the proposal will comply with clause 2 of the KiwiSaver scheme rules.

(2) Registration of the scheme as a KiwiSaver scheme does not affect the status of the registered superannuation scheme.

151 Date of registration

The registration of a KiwiSaver scheme under section 150 must be treated as having taken effect on the date on which the Government Actuary enters the scheme as a KiwiSaver scheme in the KiwiSaver schemes register.

152 Trust deed must be treated as having been amended in accordance with registration proposal

(1) If the Government Actuary registers a KiwiSaver scheme under section 150, the trust deed must be treated for all purposes as having been amended in the form submitted in the proposal to the Government Actuary—

(a) as if those amendments were authorised to be made and were made in accordance with the provisions of the trust deed before the amendments were made; and

(b) despite any defect in the form or mode of execution of the amendments.

(2) This section applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment or rule of law or agreement.

(3) Nothing in this section applies to a participation agreement that forms part of the trust deed.

153 Effect of registration of KiwiSaver scheme under section 150

On the registration of a KiwiSaver scheme under section 150 taking effect,—

(a) there is an umbrella trust that governs by one trust deed and the same trustees, as separate schemes,—

(i) the superannuation scheme registered under the Superannuation Schemes Act 1989; and

(ii) the KiwiSaver scheme registered under this Act:

(b) no person who is a member of the registered superannuation scheme becomes a member of the KiwiSaver scheme:

(c) no assets or liabilities are removed from the registered superannuation scheme by reason only that the KiwiSaver scheme has been registered:

(d) the umbrella trust, the registered superannuation scheme, and the KiwiSaver scheme must be treated as the same person for the purposes of provisions of the Income Tax Act 2004, the Income Tax Act 2007, and the Tax Administration Act 1994, other than those related to portfolio investment entities.

Section 153(d): amended, on 1 April 2008, by section 78(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 153(d): amended (with effect from 1 October 2007), on 19 December 2007, by section 78(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

154 Advice of right of election must be included in annual report provided under Superannuation Schemes Act 1989

The trustees of a registered superannuation scheme and a KiwiSaver scheme that has been registered under section 150 must, when providing the first copy of the annual report to members of the registered superannuation scheme under section 17(1) of the Superannuation Schemes Act 1989 after the registration of the KiwiSaver scheme, include with that report notice to each member about his or her right of election under section 155.

155 Right of election of members of registered superannuation scheme

(1) Registration of a KiwiSaver scheme under section 150 confers a right on any person who is a member of the registered superannuation scheme established under the umbrella trust to—

(a) elect, by notice in writing to the trustees within 28 days after the date the trustees give the notice referred to in section 154, or at any other time accepted by the trustees, to transfer a specified part of the member's interest in the registered superannuation scheme to the KiwiSaver scheme (**partial transfer**); or

(b) elect, by notice in writing to the trustees within 28 days after the date on which the trustees give the notice referred to in section 154, or at any other time accepted by the trustees, to transfer all of the member's interest in the registered superannuation scheme to the KiwiSaver scheme (**full transfer**); or

(c) elect, by failure to make an election in accordance with paragraph (a) or (b), not to transfer any of the member's interest in the registered superannuation scheme to the KiwiSaver scheme.

(2) A member of the registered superannuation scheme who makes an election under subsection (1)(a) or (b) must provide the information set out in subsection (10) to the trustees.

(3) However, subsection (1) does not apply to a member of a registered superannuation scheme under a participation agreement entered into by that person's employer unless the terms of the trust deed (including the participation agreement) enable the member to make an election under this section.

(4) The trustees of the scheme must carry out any transfers in accordance with an election made in accordance with this section as soon as practicable after the automatic enrolment rules come into force (but not before).

(5) However, the trustees of the scheme may transfer any part of the member's interest that consists of unvested employer contributions only to the extent that the relevant employer consents to the transfer of that amount.

(6) In the case in which a person has elected to make a partial transfer, a person continues to be a member of the registered superannuation scheme and also a member of the KiwiSaver scheme.

(7) In the case in which a person has elected to make a full transfer, a person is no longer a member of the registered superannuation scheme but is a member of the KiwiSaver scheme.

(8) In the case in which a person has not made an election, the person continues to be a member of the registered superannuation scheme but is not a member of the KiwiSaver scheme.

(9) Nothing in this section prevents a person becoming a member of a KiwiSaver scheme at a subsequent time or prevents subsequent transfers of any or all of a member's interest from the registered superannuation scheme to the KiwiSaver scheme.

(10) If a member (**A**) makes a partial or full transfer, the trustees must provide to the Commissioner, in respect of A,—

(a) A's name, address, and date of birth; and

(b) A's tax file number; and

(c) the date of the transfer of the part or whole of the member's interest to the KiwiSaver scheme; and

(d) if A is an employee,—

(i) the name and address of each of A's employers; and

(ii) the rate at which A intends each of those employers to make deductions of contributions from his or her salary or wages; and

(e) the name and address and tax file number of both the provider and the scheme; and

(f) any other information that the Commissioner requires.

Subpart 4—KiwiSaver schemes register

156 Register of KiwiSaver schemes

(1) A register called the KiwiSaver schemes register is established.

(2) The register may be—

(a) an electronic register; or

(b) kept in any other manner that the Government Actuary thinks fit.

157 Operation of register

The register must be operated at all times unless—

(a) the Government Actuary suspends the operation of the register, in whole or in part, in accordance with section 162(1); or

(b) otherwise provided in regulations.

158 Purpose of register

The purpose of the register is—

(a) to enable a member of the public to—

(i) determine whether a scheme is registered as a KiwiSaver scheme under this Act; and

(ii) know how to contact the trustees of the scheme; and

(iii) know whether a scheme is authorised to be a default KiwiSaver scheme; and

(iv) know whether an employer is an exempt employer; and

(ab) to enable a member of the public to—

(i) determine whether a fund is approved as a complying superannuation fund under the Superannuation Schemes Act 1989; and

(ii) know how to contact the trustees of the fund; and

(b) to assist any person—

(i) in the exercise of the person's powers under this Act or any other enactment; or

(ii) in the performance of the person's functions under this Act or any other enactment.

Section 158(ab): inserted, on 1 April 2008, by section 79 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

159 Government Actuary is Registrar of register

(1) The Government Actuary holds the office of Registrar of the register.

(2) The Government Actuary must ensure that the register is compiled and maintained.

160 Contents of register in relation to KiwiSaver schemes

The register must contain the following information and documents for each KiwiSaver scheme:

(a) the name of the scheme; and

(b) whether it is a default KiwiSaver scheme; and

(c) the commencement date of the scheme as a KiwiSaver scheme; and

(d) the names of the trustees of the scheme and an address for service for the trustees; and

(e) the date upon which the financial year of the scheme ends; and

(f) each notice of change sent or delivered under section 164.

161 Additional contents of register

(1) The register must contain the names of employers who are exempt employers.

(1B) The register must contain the following information and documents for each complying superannuation fund:

(a) the name of the fund; and

(b) the date on which approval of the fund under section 35 of the Superannuation Schemes Act 1989 became effective; and

(c) the names of the trustees of the fund and an address for service for the trustees; and

(d) the date upon which the financial year of the fund ends; and

(e) each notice of change sent or delivered under section 37 of the Superannuation Schemes Act 1989.

(2) The register must contain any other prescribed information or documents.

(2B) The information contained on the register under this section must be kept in separate subparts of the register.

(3) This section is subject to section 162.

Section 161(1B): inserted, on 1 April 2008, by section 80(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 161(2B): inserted, on 1 April 2008, by section 80(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

162 Government Actuary may refuse access to or suspend operation of register, or omit or remove, or restrict public access to, information and documents in register

(1) The Government Actuary may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Government Actuary considers that it is not practical to provide access to the register.

(2) The Government Actuary may omit or remove from the register any of the information or documents that relate to a KiwiSaver scheme or complying superannuation fund if—

(a) the scheme or fund is removed from the register; or

(b) the Government Actuary considers, in the public interest, that the information or documents should not form part of the register.

(3) This section does not limit the Official Information Act 1982 or the Privacy Act 1993.

Section 162(2): substituted, on 1 April 2008, by section 81 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

163 Amendments to register

The Government Actuary may, at any time, make any amendments to the register that are necessary—

(a) to keep the register accurate and up-to-date; or

(b) *[Repealed]*

(c) for the purposes of section 162; or

(d) to comply with any order or decision made under section 186(8).

Section 163(a): substituted, on 1 April 2008, by section 82 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 163(b): repealed, on 1 April 2008, by section 82 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

164 Duty to notify changes to Government Actuary

(1) The trustees of a KiwiSaver scheme must ensure that they give notice to the Government Actuary of any changes to—

(a) any of the information referred to in section 160(a) to (e); or

(b) any information required to be contained in the register under section 161.

(2) This section does not apply if the change has been notified in an annual report sent or delivered under section 123 before the notice is required to be given under section 165(d).

Section 164(2): substituted, on 19 December 2007, by section 83 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

165 Form of notice under section 164

A notice under section 164 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 KiwiSaver scheme first becoming aware of the change.

Subpart 5—Cancellation of registration and winding up

Cancellation of registration and winding up of KiwiSaver schemes

166 This subpart overrides provisions to contrary in trust deed

(1) The provisions of this subpart override contrary provisions in the trust deed of a KiwiSaver scheme.

(2) This section is subject to section 169(5).

167 Meaning of winding up in relation to KiwiSaver scheme established under umbrella trust

In this subpart, **winding up**, in relation to a KiwiSaver scheme that is established as a KiwiSaver scheme under an umbrella trust,—

(a) means the winding up of the KiwiSaver scheme; and

(b) does not relate to the registered superannuation scheme.

168 Cancellation of registration and order to wind up KiwiSaver scheme

The Government Actuary may cancel the registration of a KiwiSaver scheme and order its winding up—

(a) upon giving 28 days' notice to the trustees, if satisfied on reasonable grounds that a KiwiSaver scheme is no longer eligible to be a KiwiSaver scheme under section 116; or

(b) upon giving 28 days' notice to the trustees, if the Government Actuary has reasonable cause to believe that any KiwiSaver scheme has no members; or

(c) upon receipt of an application by the trustees, if satisfied that the members of the scheme have been advised of the consequences of the scheme ceasing to be registered; or

(d) in accordance with section 169.

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

(1) This section applies if, in respect of any KiwiSaver scheme, the Government Actuary has reasonable cause to believe that—

(a) the scheme is not operating in accordance with this Act or any regulations made under this Act, or meeting the requirements of this Act or regulations made under this Act; or

(b) the financial position of the scheme or the security of benefits or the management of the scheme is inadequate; or

(c) prescribed circumstances apply.

(2) A failure to operate in accordance with this Act or meet the requirements of this Act referred to in subsection (1)(a) includes a failure to operate in accordance with any terms implied in the trust deed of the scheme, or to meet the requirements of any terms implied in the trust deed of the scheme, that are implied by section 120 or 126 and the KiwiSaver scheme rules.

(3) *[Repealed]*

(4) If subsection (1) applies, the Government Actuary may do any or all of the following:

(a) direct the trustees to supply all members of the scheme with information specified by the Government Actuary:

(b) upon giving 28 days' notice to the trustees, direct the trustees or the administration manager or the investment manager, as the case may be, to operate the scheme in a specified manner:

(c) upon giving 28 days' notice to the trustees, cancel the registration of the KiwiSaver scheme and order that it be wound up.

(5) The Government Actuary must not give a direction under subsection (4)(b) if the operation of the scheme in accordance with the direction would be contrary to the provisions of the trust deed.

Compare: 1989 No 10 s 20

Section 169(3): repealed, on 1 April 2008, by section 84 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

170 Government Actuary must remove scheme from register on cancellation of registration

(1) On cancelling the registration of a KiwiSaver scheme, the Government Actuary must remove it from the KiwiSaver schemes register.

(2) The cancellation of registration must be treated as taking effect on the date on which the scheme is removed from the register.

(3) The Government Actuary must give notice of the cancellation of registration, as soon as practicable after the registration of the scheme is cancelled, to—

(a) the trustees of the scheme; and

(b) the Commissioner.

171 Implied terms continue to be implied on cancellation of registration

If the registration of a KiwiSaver scheme is cancelled, the following provisions must continue to be implied in the trust deed of the scheme until the scheme is wound up:

(a) sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by section 120); and

(b) the KiwiSaver scheme rules.

172 Receiver or liquidator to designate or appoint independent trustee if required

(1) This section applies if a receiver has been appointed in respect of any 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 KiwiSaver scheme; or

(b) before the appointment of the receiver or liquidator, the employer had the power to appoint a trustee of a relevant KiwiSaver scheme.

(2) The receiver or liquidator must be satisfied that, at all times, at least 1 of the trustees of the relevant KiwiSaver 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.

(3) For the purposes of this section, a **relevant KiwiSaver scheme** is one in relation to which the employer is an employer contributor.

(4) 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, other than as a trustee of the scheme; and

(b) is not associated with, or employed by, the employer, the receiver, or the liquidator.

(5) Any independent person designated or appointed under this section as a trustee of the scheme—

(a) holds office as if he or she were 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: 1989 No 10 s 20A

Winding up

173 Initial steps in winding up of KiwiSaver scheme

(1) If a KiwiSaver scheme is to be wound up, the trustees must, within 14 days after a winding-up resolution or an order by the Government Actuary that the scheme be wound up is made,—

(a) lodge a copy of any order or resolution with the Government Actuary and the Commissioner; and

(b) give notice to the Commissioner of the name and address of each member of the KiwiSaver scheme.

(2) Sections 50 to 52 set out the effect of notice to the Commissioner in relation to members of the KiwiSaver scheme and subpart 3 of Part 2 relates to the transfer of members' interests to another KiwiSaver scheme.

174 Winding up report

The persons who were trustees of the relevant KiwiSaver scheme immediately before the scheme was wound up—

(a) must, within 4 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; and

(b) must, within 4 months of the date on which the winding up takes effect, ensure that those final accounts are audited; and

(c) must, within 28 days after the final accounts have been audited,—

(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 remaining assets (if any) of the scheme are to be distributed; and

(d) must inform the Government Actuary of the date on which the distribution of the assets is completed.

Compare: 1989 No 10 s 21(1)

175 Time for doing certain things may be extended

The Government Actuary may, by giving notice to the relevant person, extend the time period within which a person must comply with any of the requirements set out in sections 173 and 174.

Compare: 1989 No 10 s 21(1A)

176 Member's right to information

(1) Each person who was a member of a KiwiSaver scheme immediately before its winding up continues to have the right, upon request,—

(a) to look at, at any reasonable time, a copy of the trust deed:

(b) to receive, upon payment of the relevant fee, a copy of the trust deed.

(2) The relevant fee is the amount prescribed in respect of documents to which regulation 2(d) of the Securities (Fees) Regulations 1998 applies.

Compare: 1989 No 10 s 21(2)

Subpart 6—Default KiwiSaver schemes

177 Appointment of default providers

(1) The Minister may appoint 1 or more eligible KiwiSaver providers for a specified term to provide—

(a) a default KiwiSaver scheme that is specified in the instrument of appointment; and

(b) a default investment product of that default KiwiSaver scheme that is specified in the instrument of appointment.

(2) An eligible KiwiSaver provider is one that has at least 1 trustee of the scheme that is proposed to be provided under the instrument of appointment that is a trustee corporation.

(3) The appointment may be made subject to such terms and conditions as the Minister considers fit.

(4) The instrument of appointment must—

(a) identify the default KiwiSaver scheme and the default investment product of the scheme:

(b) state any terms and conditions of the appointment:

(c) state any prescribed information.

178 Provisions of instrument of appointment to prevail over provisions of trust deed

(1) The trustees of a default KiwiSaver scheme must amend the trust deed to ensure that its terms are consistent with the instrument of appointment.

(2) The provisions of the instrument of appointment prevail over the terms of the trust deed establishing the KiwiSaver scheme that relate to the KiwiSaver scheme.

(3) An investment statement relating to a KiwiSaver scheme to which an instrument of appointment under section 177 relates must draw attention to the implications of this section.

(4) Amendments made in accordance with this section—

(a) must be treated as if they were authorised to be made and were made in accordance with the provisions of the trust deed before the amendments were made; and

(b) apply despite any defect in the form or mode of execution of the amendments.

(5) Subsection (4) applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment or rule of law or agreement.

179 Effect of appointment under section 177

If a person is appointed as a provider of a default KiwiSaver scheme under an instrument of appointment under section 177,—

(a) the default KiwiSaver scheme must be shown as a default KiwiSaver scheme on the KiwiSaver schemes register for the purposes of section 160; and

(b) the Commissioner may nominate the default investment product of the scheme as a default investment product to which persons may be allocated for the purposes of sections 50 to 52.

180 Availability of instrument of appointment

(1) The Minister must—

(a) make the instrument of appointment referred to in section 177 available for inspection, during working hours, free of charge at the head office of the Department; and

(b) make copies of the instrument of appointment available for purchase at a reasonable price at the head office of the Department; and

(c) make copies of the instrument of appointment available free of charge, at all reasonable times, on an Internet website maintained by, or on behalf of, the Department; and

(d) give notice in the *Gazette* that—

(i) the instrument of appointment has been executed and the date on which the instrument of appointment was executed; and

(ii) the instrument of appointment is available for inspection during working hours, free of charge, and the place at which it can be inspected; and

(iii) copies of the instrument of appointment can be purchased and the place at which they can be purchased; and

(iv) the instrument of appointment is available on the Internet, free of charge, and the website address.

(2) This section also applies to any variation or renewal or revocation of the instrument of appointment.

181 Appointment must be notified to Government Actuary and Commissioner

The Minister must, as soon as practicable after an appointment under section 177 has been made,—

(a) notify the Government Actuary and the Commissioner that the appointment has been made; and

(b) provide the Government Actuary and the Commissioner with a copy of the instrument of appointment.

182 Minister not required to appoint maximum number of persons

Nothing in section 177 or regulations made under section 228(h) requires the Minister to appoint the maximum number of persons prescribed by regulations made under section 228(h).

183 Power of High Court to act in respect of terms and conditions of appointment as default KiwiSaver scheme and regulations relating to default KiwiSaver schemes

(1) This section applies if, on the application of the Crown, it appears to the High Court that a provider of a default KiwiSaver scheme appointed under section 177 intends to engage, or is engaging, or has engaged, in conduct that constitutes, or would constitute,—

(a) a breach of the terms and conditions of the instrument of appointment referred to in section 177; or

(b) a breach of regulations made under section 230.

(2) If this section applies, the High Court may make any orders on any terms and conditions that it thinks appropriate, including, without limitation,—

(a) an order to—

(i) restrain the trustees of the default KiwiSaver scheme, or the provider of the scheme who has been appointed under section 177 (if different

from the trustees), or both, from engaging in conduct that constitutes, or would constitute, the breach:

(ii) require the trustees of the default KiwiSaver scheme, or the provider of the scheme who has been appointed under section 177 (if different from the trustees), or both, to do a particular act or thing:

(iii) require the trustees of the default KiwiSaver scheme, or the provider of the scheme who has been appointed under section 177 (if different from the trustees), or both, to comply with the conditions of the instrument of appointment:

(b) an interim order.

(3) In any proceeding under this section, the Crown, on the order of the High Court, may obtain discovery and administer interrogatories.

(4) The High Court may at any time rescind or vary an order made under this section.

184 Revocations, etc, of instruments of appointment

(1) An instrument of appointment may provide for its renewal or variation or expiry or revocation by the Minister or the provider.

(2) Despite any matter provided for in an instrument of appointment as to its expiry or revocation, the Minister may, by notice in writing to a provider, revoke an instrument of appointment if—

(a) the Government Actuary cancels the registration of the scheme as a KiwiSaver scheme under section 168 or 169; or

(b) the Minister is satisfied that—

(i) the provider is not operating in accordance with the terms and conditions of the instrument of appointment; and

(ii) the failure to operate in accordance with the terms and conditions of the instrument of appointment is a significant breach as prescribed in regulations made under section 230.

(3) The appointment of the provider under section 177 ceases on revocation of the instrument of appointment.

(4) The Minister must notify the Government Actuary and the Commissioner as soon as practicable after an instrument of appointment is revoked.

185 Duration of obligations as default provider after terminating event

(1) In this section,—

reporting obligations, in relation to a provider and the provider's scheme,—

(a) means any requirement for the provider to report to persons specified in an instrument of appointment; and

(b) any requirement for the provider to produce to any persons specified in an instrument of appointment, any papers, documents, records, or things in respect of the scheme (and the power of any person to require production of those papers, document, records, or things)

terminating event means—

(a) the revocation of an instrument of appointment by the provider or the Minister under the terms and conditions of the instrument of appointment; or

(b) the revocation of an instrument of appointment in accordance with section 184(2); or

(c) the expiry of the term of appointment (as specified in the instrument of appointment and in accordance with any renewal of the term of appointment).

(2) Despite any terminating event,—

(a) any terms and conditions of the instrument of appointment that relate to a provider's reporting obligations in respect of the provider's scheme continue to apply until the date when the term of appointment would have expired but for the terminating event; and

(b) regulations made under section 230 continue to apply in relation to the provider until the provider has completed every act or thing that the regulations require the provider to do following any terminating event.

Subpart 7—Miscellaneous

186 Objections and appeals against decisions of Government Actuary

(1) Any person who is dissatisfied with an order or decision made by the Government Actuary in the exercise of the Government Actuary's powers, functions, and discretions under this Act may object to that order or decision by notice to the Government Actuary.

(2) Every objection under subsection (1) must be made within 28 days after notice of the order or decision is given, or within any extended time as the Government Actuary may allow on application made either before or after the 28-day period has elapsed.

(3) The Government Actuary must, if the person objecting so requests, allow that person an opportunity of being heard by him or her within 28 days after receiving that request.

(4) The Government Actuary must, within 28 days after receiving the objection or holding any hearing requested under subsection (3), give notice 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, unless the objection related to a decision under section 101I.

(6) Every appeal under subsection (5) must be made by notice of appeal, and must be lodged with the Registrar of the High Court in Wellington, 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 any further time as the High Court may allow on application made either before or after the 28-day period has elapsed.

(7) Every appeal under subsection (5) must be by way of rehearing of the matter in respect of which the Government Actuary made the decision.

(8) In its determination of any appeal, the High Court may confirm, modify, or reverse the order or decision appealed against.

(9) Subject to the provisions of this section, the procedure in respect of any appeal under subsection (5) must be in accordance with the rules of the High Court.

Compare: 1989 No 10 s 23

Section 186(5): amended, on 1 April 2008, by section 85 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

187 Power of Government Actuary to delegate

(1) The Government Actuary may delegate to any person (whether an employee of the State services or not), either generally or particularly, any of the Government Actuary's functions, duties, and powers except the power of delegation.

(2) A delegation—

(a) must be in writing; and

(b) may be made subject to any restrictions and conditions that the Government Actuary thinks fit; and

(c) is revocable at any time, in writing; and

(d) does not affect or prevent the performance or exercise of a function, duty, or power by the Government Actuary.

(3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) A person who purports to perform or exercise a function, duty, or power under a delegation by the Government Actuary—

(a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and

(b) must produce evidence of his or her authority to do so, if reasonably requested to do so.

188 Government Actuary may carry out investigation as to whether KiwiSaver scheme is operating in accordance with Act

(1) The Government Actuary may, on his or her own motion, or as a result of any information that comes into the possession of the Government Actuary, carry out an investigation as to whether a KiwiSaver scheme is operating in accordance with

or meeting the requirements of this Act or regulations made under this Act.

(2) The Government Actuary may, for the purposes of any such investigation, request the Commissioner to provide, as soon as reasonably practicable, any information, papers, documents, records, or things in respect of the scheme that are held by the Commissioner that, in the Government Actuary's opinion, are necessary or desirable for the Government Actuary to carry out that investigation.

(3) This section is subject to the provisions of the Tax Administration Act 1994.

189 Power of Government Actuary to require information

(1) This section applies in relation to a KiwiSaver scheme and a scheme that has ceased to be registered as a KiwiSaver scheme under this Act.

(2) For the purpose of performing or exercising any of his or her functions, duties, or powers under this Act, the Government Actuary may require the trustees or administration manager of the scheme to supply specified information in respect of the scheme.

(3) For the purpose of investigating whether a scheme is operating in accordance with or meeting the requirements of this Act, or regulations made under this Act, the Government Actuary may, in the circumstances set out in subsection (4), require any person, by notice in writing, to produce any papers, documents, records, or things in respect of the scheme.

(4) The circumstances are—

(a) the Government Actuary believes, on reasonable grounds, that the exercise of the powers under subsection (3) is necessary to enable the Government Actuary to carry out his or her investigation; and

(b) the person to whom the notice under subsection (3) is given has failed to comply with a previous request to produce to the Government Actuary, within a reasonable time, the information, papers, documents, records, or things required by the notice; and

(c) the Government Actuary believes, on reasonable grounds, that—

(i) it is not reasonably practicable to obtain the information required by the Government Actuary from another source; or

(ii) for the purposes of the investigation, it is necessary to obtain the information, papers, documents, records, or things to verify or refute information obtained from another source.

(5) Nothing in this section requires a person to—

(a) provide any information or produce any document that would be privileged in a court of law; or

(b) produce to the Government Actuary any information, papers, records, documents, or things if compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on the person by an enactment (other than the Official Information Act 1982 or the Privacy Act 1993).

189B 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 must give notice of the increase to the Government Actuary as soon as reasonably practicable after the increase takes effect.

Section 189B: inserted, on 1 April 2008, by section 86 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

189C 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 clause 2 of the KiwiSaver scheme rules have charged a fee 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; and

(b) may, to the extent it thinks fit, have regard to any guidelines published by the Government Actuary under section 127; and

(c) may have regard to any other matter it thinks fit.

Section 189C: inserted, on 1 April 2008, by section 86 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

190 Secrecy

The Government Actuary, or any person who has information, papers, documents, records, or things as a result of a delegation by the Government Actuary of any of his or her functions, duties, and powers under this Act, is not required to produce in any court or tribunal any information, paper, document, record, or thing, 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—

(a) any provision of this Act or any regulations made under this Act; or

(b) any provision of the Inland Revenue Acts or regulations made under the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994) that is relevant to carrying into effect the provisions of this Act.

Compare: 1989 No 10 s 26

191 Duty of certain persons to disclose information to Government Actuary

(1) This section applies if a person who holds office as an administration manager, investment manager, or auditor of a KiwiSaver scheme 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 KiwiSaver scheme.

(2) If this section applies, the person must disclose to the Government Actuary information that is specified by the Government

Actuary relating to the affairs of the KiwiSaver scheme obtained in the course of holding that office.

(3) For the purposes of this section, a **serious problem** means—

(a) the KiwiSaver 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 regulations; or

(b) the financial position of the KiwiSaver scheme or the security of benefits or the management of the KiwiSaver scheme is inadequate.

(4) For the avoidance of doubt, this section does not require any person who holds office as an administration manager, investment manager, or auditor of a KiwiSaver 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 KiwiSaver scheme.

Compare: 1989 No 10 s 18A

192 Protection of administration managers, investment managers, and auditors

(1) No civil, criminal, or disciplinary proceedings lie against any administration manager, investment manager, or auditor arising from the disclosure in good faith of information to the Government Actuary under section 191.

(2) No person may remove from office, or terminate the contract of appointment of, any administration manager, investment manager, or auditor by reason of the disclosure in good faith of information to the Government Actuary under section 191.

(3) No tribunal, body, or authority having jurisdiction in respect of the professional conduct of any administration manager, investment manager, or auditor may make any order against, or do any act in relation to, that person in respect of the fact of that disclosure.

(4) No information received by the Government Actuary under section 191 is admissible as evidence in any proceedings against the administration manager, investment manager, or auditor concerned.

(5) Nothing in subsection (4) limits the admissibility of any information obtained in any other way.

Compare: 1989 No 10 s 18B

193 Personal liability

Neither the Government Actuary, nor any person acting as a delegate of the Government Actuary, is personally liable for any act done or omitted to be done by the Government Actuary or any such person in good faith in the exercise or intended exercise of the functions, duties, or powers of the Government Actuary under this Act.

Compare: 1989 No 10 s 27

194 Annual report by Government Actuary

(1) The Government Actuary must, within 3 months after the end of every financial year, report to the 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.

Compare: 1989 No 10 s 28

195 Unclaimed money held by trustees of KiwiSaver scheme

(1) Section 77 of the Trustee Act 1956 applies subject to this section in relation to a member's interest in a KiwiSaver scheme held by, or in the control of, the trustees of that scheme.

(2) Section 77 of the Trustee Act 1956 applies to the member's interest only if, at the time that section is applied,—

(a) the member of the scheme in respect of which the trust exists is able to be identified, according to the information held by or available to the trustees, as being at least 5 years older than the date on which a withdrawal is permitted under clause 4 of the KiwiSaver scheme rules; and

(b) the trustees have made reasonable efforts to locate the member but the member is unable to be found; and

(c) there has been no contribution made to the member's account in the preceding 5 years, excluding any fee subsidy or Crown contribution.

196 Member's interest in KiwiSaver scheme not assignable

(1) Except as expressly provided in this Act, a member's interest or any future benefits that will or may become payable to a member under the KiwiSaver scheme must not be assigned or charged or passed to any other person whether by way of security, operation of law, or any other means.

(2) However, nothing in subsection (1) prevents a member's interest or any future benefits that will or may become payable to a member under the KiwiSaver scheme from being released, assigned, or charged, or from passing to any other person if it is required by the provisions of any enactment, including a requirement by order of the Court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

197 Offence to fail to provide information under this Part

(1) Every person commits an offence against this Part, and is liable on summary conviction to a fine not exceeding the amount set out in section 199, who fails without reasonable excuse, as and when required by this Part or any regulations made under section 228,—

- (a) to deliver any paper, document, record, report, copy, thing, or certificate; or
- (b) to allow a person to look at a paper, document, record, report, copy, or thing; or
- (c) to supply any return or to give any certificate or information.

(2) For the purposes of sections 15A, 16, and 17 of the Superannuation Schemes Act 1989, as applied by section 122 of this Act,—

- (a) requests must be made to the trustees of the KiwiSaver 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 KiwiSaver 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 KiwiSaver 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 KiwiSaver scheme to which the information relates have a duty to ensure that the information is supplied to the person.

198 Other offences under this Part

(1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding the amount set out in section 199, who knowingly or recklessly—

(a) fails to carry out any direction or order of the Government Actuary made under section 169(4)(a) or (b); or

(b) fails to designate or appoint an independent trustee, if required to do so under section 172; or

(c) as and when required by this Part or any regulations made under section 228, fails to deliver any paper, document, record, report, copy, thing, or certificate; or

(d) as and when required by this Part or any regulations made under section 228, fails to allow a person to look at a paper, document, record, report, copy, or thing; or

(e) as and when required by this Part or any regulations made under section 228, fails to supply any return or to give any certificate or information; or

(f) makes any statement or supplies any paper, document, record, report, copy, thing or certificate required by this Act knowing that it is false or misleading; or

(g) advertises or otherwise promotes, or describes in a written form, a KiwiSaver scheme as a unit trust.

(2) If 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.

199 Criminal penalties for offences under this Part

(1) A person who is convicted of an offence under section 197(1)(a), (b), or (c) is liable,—

(a) the first time the person is convicted in relation to a particular type of offence, to a fine not exceeding $4,000:
(b) the second time the person is convicted of the same type of offence, to a fine not exceeding $8,000:
(c) on every other occasion the person is convicted of the same type of offence, to a fine not exceeding $12,000.

(2) A person who is convicted of an offence under section 198(1)(a), (b), (c), (d), or (e) is liable,—
(a) the first time the person is convicted in relation to a particular type of offence, to a fine not exceeding $25,000; and
(b) on every other occasion the person is convicted for the same type of offence, to a fine not exceeding $50,000.

(3) A person who is convicted of an offence under section 198(1)(f) or (g) is liable to a fine not exceeding $300,000.

200 Government Actuary may decline to take action if fees not paid

If 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.

Compare: 1989 No 10 s 29

201 Trustees not in breach of obligations, etc

Nothing effected or authorised by the trustees of a registered superannuation scheme or KiwiSaver scheme in accordance with the requirements of this Act—
(a) places the trustees in their capacity as trustees of that scheme, or any other person, in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or otherwise makes any of them guilty of a civil wrong; or
(b) gives rise to a cause of action against the trustees in their capacity as trustees; or
(c) gives rise to a right for a person to—
(i) terminate, cancel, or modify a contract or an agreement; or

(ii) enforce or accelerate the performance of an obligation; or

(iii) require the performance of an obligation not otherwise arising for performance; or

(d) places the trustees in their capacity as a trustee of that scheme, or any other person, in breach of any enactment, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment, transfer, or issue of property or the disclosure of information; or

(e) releases a surety wholly or in part from an obligation; or

(f) invalidates or discharges a contract or security.

202 Application of section 13G of Trustee Act 1956 if power of investment exercised in relation to member allocated to scheme under sections 50 to 52

(1) This section applies if—

(a) a member has been allocated to a default KiwiSaver scheme under sections 50 to 52; and

(b) the trustees of the scheme purport to exercise a power of investment under the trust deed of that KiwiSaver scheme; and

(c) the power of investment is exercised in accordance with the express terms relating to the default investment product specified in an instrument of appointment made under section 177.

(2) If this section applies, the exercise of the power must be treated, for the purposes of section 13G of the Trustee Act 1956, as consistent with any requirements of the trust deed or statute that are binding on the trustees and that relate to the obtaining of consent or compliance with any direction with respect to the investment of trust funds.

203 General application of Financial Transactions Reporting Act 1996

(1) For the avoidance of doubt, an offer to become a member of a KiwiSaver scheme is, subject to section 204, a request to a financial institution for the person to become a facility holder

within the meaning of the Financial Transactions Reporting Act 1996.

(2) A provider must, for the purposes of section 6 of the Financial Transactions Reporting Act 1996, unless the provider has already verified the person's identity, treat a request by a member to make a permitted withdrawal as if it was a request to a financial institution for the person to become a facility holder within the meaning of that Act.

204 Application of Financial Transactions Reporting Act 1996 to default allocation of members to KiwiSaver schemes

(1) This section applies in respect of any allocation of a person (**A**) to, or any offer by a person (**A**) to become a member of, a KiwiSaver scheme under sections 50 to 52.

(2) For the purposes of section 6 of the Financial Transactions Reporting Act 1996, an offer or allocation to which this section applies is not a request to a financial institution for the person to become a facility holder as defined in section 2(1) of that Act.

(3) Despite subsection (2),—

(a) a provider of a KiwiSaver scheme must make reasonable efforts to verify A's identity at the time that A becomes a member of a KiwiSaver scheme; and

(b) if A makes a voluntary payment into the KiwiSaver scheme, the payment must, for the purposes of section 6 of the Financial Transactions Reporting Act 1996, unless the provider has already verified A's identity, be treated as a request to a financial institution for the person to become a facility holder within the meaning of that Act.

(4) In this section, **voluntary payment** means,—

(a) in relation to a member of a KiwiSaver scheme who has become a member of that scheme under section 48 or 52, a payment made by or for the benefit of that person into the KiwiSaver scheme that is not a deduction from salary or wages made under subpart 1 of Part 3; and

(b) in relation to a member of a KiwiSaver scheme to whom paragraph (a) does not apply, a payment made by or for the benefit of that person into the KiwiSaver scheme

that is in excess of the amount the member is contractually bound to pay into the scheme within a defined period.

Part 5
General provisions

205 No Crown guarantee of KiwiSaver schemes or products

(1) There is no Crown guarantee in respect of any KiwiSaver scheme or investment product of a KiwiSaver scheme.

(2) Every investment statement relating to a KiwiSaver scheme must contain a statement to that effect.

205A Investment statements must contain responsible investment statement

(1) Every investment statement relating to a KiwiSaver scheme or a complying superannuation fund must contain a statement in the following form if it is a scheme that takes responsible investment, including environmental, social, and governance considerations, into account in the investment policies and procedures of the scheme:

"Responsible investment, including environmental, social, and governance considerations, is taken into account in the investment policies and procedures of the scheme as at the date of this investment statement. You can obtain an explanation of the extent to which responsible investment is taken into account in those policies and procedures—"

"*[if the issuer has a website*] on the issuer's website on the Internet at [*specify website address*], which is publicly accessible at all reasonable times; and"

"from the issuer, free of charge, upon request."

(2) Every investment statement relating to a KiwiSaver scheme or a complying superannuation fund must contain a statement in the following form if it is a scheme that does not take responsible investment, including environmental, social, and governance considerations, into account in the investment policies and procedures of the scheme:

"Responsible investment, including environmental, social, and governance considerations, is not taken into account in

the investment policies and procedures of the scheme as at the date of this investment statement."

(3) The statements required by this section must be included at the end of the "Who is involved in providing it for me?" section of the investment statement.

(4) For the purposes of the Securities Act 1978, a failure to comply with this section is also treated as if it were a failure to comply with the Securities Regulations 1983.

Section 205A: inserted, on 1 April 2008, by section 87 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

206 Factual description of, or transmission of information about, KiwiSaver scheme not investment advice

For the avoidance of doubt, the Crown or any other person does not give investment advice and is not an investment broker or a broker, for the purposes of the Investment Advisers (Disclosure) Act 1996 if the Crown or that person—

(a) supplies an information pack as required or authorised by this Act; or

(b) gives a factual description to another person of the features of a KiwiSaver scheme or of KiwiSaver schemes, (for example, information about admission as a member or termination of membership); or

(c) gives information of the type referred to in paragraph (b) in the course of promoting the benefits of retirement savings in general; or

(d) acts only as an intermediary who transmits information about a KiwiSaver scheme; or

(e) otherwise exercises or carries out a function, duty, or power under this Act.

Section 206: amended, on 19 December 2007, by section 88 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

207 Unique identifiers

(1) In this section, **specified functions, duties, or powers** means functions, duties, or powers that—

(a) a provider is required to exercise or carry out for the purposes of this Act; or

(b) are reasonably necessary for the effective administration of the overall KiwiSaver scheme.

(2) Despite Information Privacy Principle 12(2) or (4) of the Privacy Act 1993, a provider of a KiwiSaver scheme may—

(a) require an individual to disclose any unique identifier that has been assigned to that person by the Commissioner for the purposes of carrying out specified functions, duties, or powers; and

(b) assign to a proposed member, or member, of the KiwiSaver scheme any unique identifier assigned to that person by the Commissioner.

(3) This section does not authorise a provider of a KiwiSaver scheme to use a unique identifier assigned by the Commissioner, except for the purpose of carrying out the specified functions, duties, or powers.

208 Information held by Commissioner in respect of person who has opted out or who should not have been allocated to overall KiwiSaver scheme

(1) This section applies—

(a) if an employee has given an opt-out notice to the Commissioner or to an employer under section 17 and the relevant date referred to in subsection (2) has expired; or

(b) a person is allocated to a KiwiSaver scheme in circumstances in which this Act does not require the person to be allocated to a KiwiSaver scheme and the person does not opt into any KiwiSaver scheme or choose to remain in the KiwiSaver scheme to which the person is allocated.

(2) For the purposes of subsection (1)(a), the relevant date is,—

(a) in a case in which the opt-out notice is given to the Commissioner and it does not result in a requirement under this Act for contributions that are in the possession of the Commissioner to be repaid, the date the opt-out notice is accepted by the Commissioner; or

(b) in a case in which the opt-out notice is received by an employer and it does not result in a requirement under this Act for contributions that are in the possession of

the Commissioner to be repaid, the date the Commissioner receives a copy of the notice from the employer under section 17(5); or

(c) in a case in which the opt-out notice results in a requirement under this Act for contributions that are in the possession of the Commissioner to be repaid, the date of the final refund of those contributions.

(3) The Commissioner must not use personal information collected in respect of a person to whom subsection (1) applies for purposes other than the administration of the KiwiSaver scheme if the personal information—

(a) was provided to the Commissioner in respect of a member as required by this Act or for the purposes of this Act; and

(b) has not been used by the Commissioner for purposes related to any of the other Inland Revenue Acts.

Interface with securities law

209 Application of Securities Act 1978

(1) A person is not a promoter or issuer in relation to an interest in a KiwiSaver scheme for the purposes of the Securities Act 1978 by reason only that, acting as an employer, that person—

(a) complies with the person's responsibilities as an employer under this Act; or

(b) chooses a KiwiSaver scheme as the employer's chosen KiwiSaver scheme under section 47.

(2) No act or omission by the Crown, or any officer or employee of the Crown, that occurs during the exercise or performance, or intended exercise or performance, of any functions, duties, or powers in respect of KiwiSaver schemes and complying superannuation funds,—

(a) has the effect that the Crown or those officers or employees are promoters or issuers for the purposes of the Securities Act 1978; or

(b) gives rise to any civil or criminal liability of the Crown or those officers or employees under the Securities Act 1978.

Subsection (2) was amended, as from 1 July 2007, by section 67 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19) by substi-

tuting "in respect of KiwiSaver schemes and complying superannuation funds" for "under this Act".

210 Certain sections of Securities Act 1978 modified in relation to KiwiSaver scheme

(1) This section applies if an interest in a KiwiSaver scheme is allotted in contravention of—

(a) section 37 of the Securities Act 1978 (which relates to void irregular allotments of securities); or

(b) section 37A of the Securities Act 1978 (which relates to voidable irregular allotments of securities); or

(c) section 38F(9)(b) of the Securities Act 1978 (which relates to the distribution of an investment statement); or

(d) section 44(6)(b) of the Securities Act 1978 (which relates to the cancellation of the registration of a registered prospectus).

(2) If this section applies,—

(a) any resulting duty of the trustees (as issuer) or any other person to repay subscriptions or any other amount under section 37(5), 37(6), 37A(6), 37A(7), 38F(9)(b), 38F(13), 44(6)(b), or 44(7) of the Securities Act 1978 does not apply; but

(b) the trustees must instead provide the Commissioner with a notice of—

(i) the application of the relevant section or sections of the Securities Act 1978 in respect of the allotment of securities to that member; and

(ii) if all or part of the consideration for the allotment of securities to that member was the transfer of the member's accumulation from another KiwiSaver scheme, the name of that scheme from which the member's accumulation was transferred; and

(iii) the name, address, and tax file number of the member.

(3) If subsection (2) applies, a process for a person to be allocated to a new scheme (see sections 50 to 52, and section 211) and a process for a person to be transferred to a new scheme (*see* section 57) both apply.

Section 210(2)(b)(ii): amended, on 19 December 2007, by section 89 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

211 Duty of Commissioner under section 50 modified in certain cases in which section 210 applies

(1) This section applies if—

(a) the Commissioner receives a notice under section 210(2); and

(b) the notice states the name of that scheme from which the member's accumulation was transferred (the **member's previous KiwiSaver scheme**).

(2) If this section applies, the Commissioner must apply section 50 as if a reference to a default investment product of a default KiwiSaver scheme were instead a reference to the investment product or products of the member's previous KiwiSaver scheme to which the member's accumulation was applied.

(3) Subsection (2) does not apply if, in the opinion of the Commissioner, the application of section 50 in accordance with that subsection is not practicable.

Section 211(1)(b): amended (with effect from 1 July 2007), on 19 December 2007, by section 90(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 211(2): amended (with effect from 1 July 2007), on 19 December 2007, by section 90(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Disputes under Parts 2 and 3

212 Persons may request reconsideration of certain decisions of Commissioner

(1) This section applies to any matter that under Parts 2 and 3 is left to the discretion, judgment, opinion, approval, consent, or determination of the Commissioner.

(2) A person affected by the Commissioner's decision on the matter has 20 working days from the date on which notice of the decision was given to the person (or any longer period allowed by the Commissioner) to—

(a) request the Commissioner to reconsider the decision; and

(b) give the Commissioner any information in support of that request.

(3) The Commissioner may require a person to make that request by notice.

(4) On receiving a request, the Commissioner may—

(a) accept the person's request; or

(b) seek further information from the person; or

(c) decline the person's request; or

(d) accept or decline the person's request in part and decline or accept the other part.

213 Reconsideration of other decisions

Part 8A of the Tax Administration Act 1994 applies to every notice of a disputable decision given by the Commissioner under this Act.

Penalties

214 Application of sections 215 and 216

(1) Sections 215 and 216 set out penalties that apply, in addition to the provisions of the Tax Administration Act 1994, if there is a failure to provide information or withhold contributions under Part 2 or 3.

(2) However, if sections 215 and 216 apply, the following provisions of the Tax Administration Act 1994 do not apply:

(a) Part 7 (interest):

(b) section 139B (late payment penalty):

(c) sections 141 to 141L (tax shortfalls).

215 Penalty for employer to fail to provide information

(1) Every employer is liable for the penalty in subsection (2) who fails to give information as required by Part 2 or 3.

(2) The penalty is—

(a) nil if the Commissioner has not given notice to the employer, within the preceding 12 months, that—

(i) a penalty may be imposed on the employer if the employer does not provide information as required by Part 2 or 3:

(ii) the employer has been liable under subsection (1) in the preceding 12 months; and

(b) in any other case,—

(i) $50 if the employer is a small employer; and
(ii) $250 if the employer is not a small employer.

(3) However, an employer is not liable for more than one penalty per month.

(4) In this section and section 216, a person is a **small employer** —

(a) if the person was an employer in the preceding tax year in respect of whom gross tax deductions or withholdings payable and ESCT payable in that preceding tax year were, in total, less than $100,000; or

(b) if the person was not an employer in the preceding year, until the time when gross tax deductions payable and ESCT payable in the current tax year, in total, exceed $100,000.

(5) The penalty is due and payable on the day on which the next tax deduction required to be made by the employer under the PAYE rules is due to be paid to the Commissioner after the end of the PAYE period in which the failure occurred.

Section 215(2)(a): substituted (with effect from 1 July 2007), on 19 December 2007, by section 92(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 215(3): amended, on 19 December 2007, by section section 92(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 215(4)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 215(4)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

216 Penalty for employer to fail or incorrectly make deductions, or to short pay compulsory employer contributions

(1) Every employer is liable for the penalty in subsection (2) who—

(a) fails to deduct a contribution from a payment of salary or wages as required by this Act; or

(b) deducts an amount of contribution from a payment of salary or wages that is not the correct amount required by this Act; or

(c) has an amount (a **short paid amount**) of short payment under subpart 3 of Part 3 that relates to a compulsory employer contribution.

(2) The penalty is—

(a) nil if the Commissioner has not given notice to the employer, within the preceding 12 months, that a penalty may be imposed on the employer if the employer does not correctly make deductions in accordance with this Act or if they have short paid amounts; and

(b) in any other case,—

(i) $50 if the employer is a small employer; and

(ii) $250 if the employer is not a small employer.

(3) However, an employer is not liable for more than one penalty per month.

(4) The penalty is due and payable on the day on which the next tax deduction required to be made by the employer under the PAYE rules is due to be paid to the Commissioner after the end of the PAYE period in which the failure to deduct, incorrect deduction, or short paid amount occurred..

Section 216 heading: amended, on 1 April 2008, by section 93(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 216(1)(b): amended, on 1 April 2008, by section 93(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 216(1)(c): inserted, on 1 April 2008, by section 93(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 216(2)(a): amended, on 1 April 2008, by section 93(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 216(3): amended, on 19 December 2007, by section 93(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 216(4): amended, on 1 April 2008, by section 93(5) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Giving of notices

217 Giving of notices by and to Commissioner

(1) Section 14 of the Tax Administration Act 1994 applies when this Act requires the Commissioner to give a notice to a person.

(2) Section 14B of the Tax Administration Act 1994 applies when this Act requires a person to give a notice to the Commissioner.

218 Giving of notices to other persons

(1) This section applies when this Act requires a person to give a notice to a person other than the Commissioner.

(2) The person must give the notice in writing.

(3) The person may use the methods set out in subsections (4) to (7) to give the notice, subject to any conditions described in those subsections.

(4) The person may give the notice by personal delivery to an addressee who is not a corporate body.

(5) The person may give the notice by personal delivery to an addressee that is a corporate body, if the personal delivery is made to the addressee's office during working hours.

(6) The person may give the notice by an electronic means of communication to the addressee, if the person complies with the Electronic Transactions Act 2002.

(7) The person may give the notice by posting it—

(a) to the street address of the addressee's usual or last known place of residence; or

(b) to the street address of any of the addressee's usual or last known places of business; or

(c) to any other address, if the addressee has notified the person that he or she accepts notices at the address.

(8) A notice given by post is treated as having been given at the time it would have been delivered in the ordinary course of post.

Compare: 1994 No 166 s 14C

219 Consent to electronic transactions

(1) A person who gives his or her electronic address to any other person under this Act is treated as having consented to use, provide, or accept information in an electronic form for all of the purposes of this Act and the Electronic Transactions Act 2002.

(2) This section does not apply to the Commissioner of Inland Revenue or any employee or officer of the Inland Revenue Department.

Compare: 2002 No 35 s 16

Section 219(2): added (with effect from 1 July 2007), on 19 December 2007, by section 95 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

220 Special rules about giving of investment statements

(1) Sections 217 to 219 apply to the giving of an investment statement under this Act as if it were the giving of a notice except that, if the person has given the Commissioner or the employer, as the case may be, a street address or post office box number, the investment statement must be sent in hard copy to that address in preference to its being sent electronically to any email address given by the person.

(2) Subsection (3) applies if a person does not receive an investment statement—

(a) from an employer under section 43(a); or

(b) from the Commissioner under section 50(3)(c).

(3) The investment statement must be treated for the purposes of the Securities Act 1978 as if it had been received by the person immediately before the person is treated as having subscribed for securities in the scheme under section 48(2)(b) or 52(1).

Miscellaneous provisions

221 Refunds made by direct credit to bank account

(1) A refund by the Commissioner of contribution must be made by direct credit to a bank account nominated by the person entitled to the refund.

(2) When a person claims the refund, the person must provide to the Commissioner the particulars of a bank account in New Zealand to which a direct credit of the amount of the refund is to be made.

(3) However, if the Commissioner is satisfied that the application of subsections (1) and (2) would result in undue hardship to a person, or is not practicable, the refund of contribution may be made by other means acceptable to the Commissioner.

(4) In this section, **bank account** means an account with a bank that is a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989 or a private savings bank or a credit union or a building society or the PSIS Limited.

Compare: 1994 No 166 s 184A

Section 221(1): amended (with effect from 1 July 2007), on 19 December 2007, by section 96(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 221(2): amended (with effect from 1 July 2007), on 19 December 2007, by section 96(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 221(3): amended (with effect from 1 July 2007), on 19 December 2007, by section 96(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

222 Role of Commissioner under this Act

(1) The Commissioner has the function of ensuring oversight of those provisions of this Act that are administered in the Inland Revenue Department under section 224.

(2) Without limitation, this includes the functions and powers of—

(a) requiring persons affected by this Act to verify certain matters with the Commissioner as requested by the Commissioner; and

(b) requiring persons to give notice to the Commissioner to ensure that this Act is complied with.

223 Use of information by Commissioner obtained under this Act and other Inland Revenue Acts

Despite anything in any other Act, nothing prevents the Commissioner or any officer of the Inland Revenue Department from—

(a) using information obtained under this Act for the purposes of carrying into effect any of the Inland Revenue Acts; or

(b) using information obtained under any of the Inland Revenue Acts for the purposes of carrying into effect the provisions of this Act.

224 Administration of Act

(1) Parts 1 to 3 and Schedule 3 are administered in the Inland Revenue Department.

(2) Part 4 and Schedules 1 and 2 are administered in the department of State that, with the authority of the Prime Minister, is responsible for the administration of those provisions.

(3) This Part is administered in the department of State that, with the authority of the Prime Minister, is responsible for the administration of those provisions, and different departments of State may be authorised to administer different provisions of this Part.

225 Fee subsidies

(1) The chief executive of the Department must pay any fee subsidy that is required to be paid under prescribed requirements in respect of a member of a KiwiSaver scheme in accordance with those prescribed requirements.

(2) The chief executive may delegate the administration of all or any part of the administration of this section to 1 or more persons.

(3) The delegation must be in writing.

(4) Section 41 of the State Sector Act 1988 applies if the delegation is to a chief executive or to an employee (as those terms are defined in that Act).

(5) If the delegation is to another person,—

(a) the delegation may not include the power to delegate under this section; and

(b) subject to any general or special directions given or conditions imposed by the chief executive, the person to whom the delegation is made may administer this section in the same manner and with the same effect as if this Act and any regulations made under this Act (and not the delegation) so provided; and

(c) every person purporting to act under the delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

Section 225(2): amended, on 19 December 2007, by section 97 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

226 Crown contribution

(1) The Crown must pay a contribution to the first KiwiSaver scheme of which a person (**A**) is a member.

(1A) The contribution must be paid as soon as practicable after the date provided by subsection (1B) or (1C).

(1B) Unless subsection (1C) applies, the date for the purposes of subsection (1A) is the last day of the 3-month period that starts on the earliest of the following dates:

(a) the date on which the Commissioner receives the first contribution in respect of a person, if the person is one to whom subpart 1 of Part 3 applies:

(b) the date that the Commissioner is given notice or otherwise knows that the person is a member of the KiwiSaver scheme:

(1C) If A has transferred to their first KiwiSaver scheme from a complying superannuation fund, and A was a member of the complying superannuation fund for more than 3 months before transferring, the date for the purposes of subsection (1A) is the day on which the Commissioner is given notice that the person has transferred.

(2) The provider must use the contribution allocation for A to credit the contribution across the investment products of the KiwiSaver scheme to which A has subscribed or been allocated.

(2B) The contribution must vest in A immediately after it is paid to the provider, despite any provision to the contrary.

(3) The amount of the contribution that must be paid by the Crown is $1,000 or such other amount as may be prescribed by the Governor-General by Order in Council.

(4) A person who ceases being a member of any KiwiSaver scheme and subsequently becomes a member of a KiwiSaver scheme is not entitled to be paid a contribution under this section again.

Section 226(1): substituted (with effect from 1 July 2007), on 19 December 2007, by section 98(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 226(1A): inserted (with effect from 1 July 2007), on 19 December 2007, by section 98(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 226(1B): inserted (with effect from 1 July 2007), on 19 December 2007, by section 98(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 226(1C): inserted, on 19 December 2007, by section 98(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 226(2): amended (with effect from 1 July 2007), on 19 December 2007, by section 98(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 226(2B): inserted, on 19 December 2007, by section 98(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

227 Status of Crown contribution and fee subsidy for tax purposes

A Crown contribution paid in respect of a member of a KiwiSaver scheme under section 226 or a fee subsidy paid in re-

spect of a member of a KiwiSaver scheme under regulations made under section 228(n) is not—

(a) income for the purposes of the Income Tax Act 2007; or

(b) a gift for the purposes of the Estate and Gift Duties Act 1968.

Section 227(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

228 Regulations

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

(a) prescribing forms for the purpose of this Act, and prescribing—

(i) specified information or documents to be included or attached to forms:

(ii) forms to be signed by specified persons:

(b) prescribing requirements with which documents that are sent, given, or delivered must comply (including documents sent, given, or delivered for registration) and prescribing information that must be included in any notice given under this Act that is in addition to the information specified in this Act:

(c) prescribing fees payable to the Commissioner or the Government Actuary in respect of any matter under this Act or the manner in which fees may be calculated:

(d) prescribing procedures, requirements, and other matters for the KiwiSaver schemes register, including matters relating to—

(i) the operation of that register:

(ii) access to that register:

(iii) the location of, and hours of access to, that register:

(e) recognising specific foreign superannuation schemes or classes of specific foreign superannuation schemes that are based in named countries as schemes to which funds can be transferred on permanent emigration under the provision implied by clause 14 of the KiwiSaver scheme rules:

(f) prescribing circumstances for the purposes of clause 8(3)(a) of the KiwiSaver scheme rules or prescribing who is a qualifying person for the purpose of clause 8(3)(c)(ii) of the KiwiSaver scheme rules:

(g) prescribing requirements in relation to annual returns for the purposes of section 125, including the date by which the return must be provided and the 12-month period to which it must relate (by reference to annual dates):

(h) prescribing the maximum number of persons that the Minister may appoint under section 177:

(i) specifying information that must be contained in the instrument of appointment referred to in section 177:

(j) prescribing the information or matters that must be included in the information packs referred to in Part 2:

(k) providing for operational matters and electronic compatibility between the Commissioner and all or any class of providers, including—

(i) requiring the Commissioner and all or any class of providers to sign scheme provider agreements before registration of a scheme as a KiwiSaver scheme; and

(ii) providing for the updating of those agreements after registration; and

(iii) specifying the matters that may be required to be covered in all or any of those agreements:

(l) prescribing circumstances for the purposes of section 169(1)(c):

(m) providing for fees or charges that must be treated as fees for the purposes of this Act:

(n) providing for the payment of fee subsidies in respect of members, or classes of members, of KiwiSaver schemes, and the setting of those fee subsidies or the manner in which those fee subsidies may be calculated (which may include mechanisms for capping fee subsidies):

(o) providing for when fee subsidies referred to in paragraph (n) may or will be paid, and terms and conditions relating to payment and to the application of those con-

tributions and subsidies, and how those terms and conditions may be enforced:

(p) prescribing matters that are relevant to a determination or consideration as to whether a fee is unreasonable for the purposes of clause 2 of the KiwiSaver scheme rules or section 127:

(q) prescribing circumstances in which the purchase of an estate in land enables a withdrawal under clause 8 of the KiwiSaver scheme rules:

(r) prescribing matters that may be regarded as matters from which significant financial difficulties have arisen for the purposes of clause 11 of the KiwiSaver scheme rules:

(s) prescribing what must be treated as reasonable efforts for the purposes of section 204:

(t) exempting any person or class of persons or any transaction or class of transactions from compliance with any or all of the provisions of the Securities Act 1978 or the Securities Regulations 1983 in connection with any or all KiwiSaver schemes:

(u) varying any requirements of regulations made under the Securities Act 1978 in relation to investment statements of KiwiSaver schemes or providing for additional requirements to those contained in regulations made under the Securities Act 1978 in relation to investment statements of KiwiSaver schemes:

(v) providing for any matters that are necessary for the administration of regulations made under paragraph (h) or (i) by the Department:

(w) providing for any transitional or savings matters concerning the coming into force of this Act:

(x) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

229 Regulations relating to mortgage diversion facility

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Finance, make regulations providing for mortgage diversion facilities that allow contri-

butions in respect of a person to be withdrawn from the person's KiwiSaver scheme and complying superannuation funds to pay amounts secured by certain mortgages relating to that person.

(2) The Minister of Finance may make a recommendation under subsection (1) only if the Minister is satisfied that any mortgage diversion facility provided for in regulations will be consistent with the following principles:

(a) there is no compulsion on providers to provide a mortgage diversion facility:

(b) there is no compulsion on mortgagees to allow amounts secured by mortgages to be paid via KiwiSaver and complying superannuation fund contributions:

(c) the mortgage diversion facility is available in relation to a person at any time after 12 months have expired since the earlier of—

(i) the date that the Commissioner received the first contribution in respect of the person; or

(ii) the date that the relevant KiwiSaver scheme provider or complying superannuation fund provider received the first contribution in respect of that person's membership to the relevant scheme or fund:

(d) the mortgage diversion is available only in relation to a mortgage over the person's principal residence (for example, the family home):

(e) the mortgage diversion may apply for the remainder of the term of the mortgage after the diversion is made available, but only to the extent to which the mortgage continues to be over the person's principal residence:

(f) after the total amount secured by the mortgage is paid, ongoing contributions are not diverted from the person's KiwiSaver scheme and complying superannuation funds:

(g) if the person chooses to cease the mortgage diversion facility before the amounts secured by the mortgage are fully paid, the contributions are redirected towards retirement savings:

(h) the provider, and not the Commissioner, is responsible for paying the amount diverted under the mortgage diversion facility:

(i) the amount diverted from a person's KiwiSaver scheme and complying superannuation funds is a fixed dollar amount, and is capped at not more than the total of—

(i) half of the total contributions deducted for or contributed by the person, received by their KiwiSaver scheme provider; and

(ii) half of the person's contributions to their complying superannuation funds, but limited to 4% of their annual gross base salary or wages for each complying superannuation fund:

(j) employer contributions may not be diverted:

(k) the facility is available for new mortgages and existing mortgages.

(3) The regulations may specify all or any of the terms and conditions that apply to the mortgage diversion facility, including—

(a) which types of mortgages qualify for participation in the diversion facility; and

(b) what a scheme must do to participate in the mortgage diversion facility (for example, in relation to notification); and

(c) how the regulations affect the trust deed (for example, whether all or any of the terms and conditions in the regulations are implied terms of the trust deed); and

(d) what happens if the scheme decides to terminate participation in the mortgage diversion facility; and

(e) whether payment via the mortgage diversion facility counts as payment by the mortgagor for the purpose of the terms of the mortgage; and

(f) any other matters.

(4) If a provider chooses to participate in the mortgage diversion facility, any withdrawal made in accordance with those regulations must be treated as if it were a withdrawal that is permitted under the KiwiSaver scheme rules.

Section 229(1): amended, on 19 December 2007, by section 99(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 229(2): amended, on 19 December 2007, by section 99(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 229(2)(b): amended, on 19 December 2007, by section 99(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 229(2)(c)(ii): substituted, on 19 December 2007, by section 99(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 229(2)(e): amended, on 19 December 2007, by section 99(5) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 229(2)(f): amended, on 19 December 2007, by section 99(6) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 229(2)(i): substituted, on 19 December 2007, by section 99(7) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

230 Regulations relating to default KiwiSaver providers

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the following purposes:

(a) providing for matters that may be treated by the Minister as a significant breach of an instrument of appointment for the purposes of section 184(2):

(b) providing for procedures for the purpose of—

(i) the Minister notifying a default KiwiSaver provider that the Minister considers the provider is in breach of a term or condition of the instrument of appointment and the possible consequences:

(ii) facilitating resolution of any dispute between the Minister and a default KiwiSaver provider about whether the KiwiSaver provider is in breach of the instrument of appointment or the consequences that should apply:

(iii) setting out any procedures that will apply before revocation of an instrument of appointment by the Minister under section 184(2):

(c) requiring the provider of a scheme that is or was a scheme provided under an instrument of appointment to do any act or thing following any terminating event under section 185 including, without limitation,—

(i) requiring the members of the scheme to be notified of the terminating event or of any other matter and specifying time frames for notification to occur:

(ii) prescribing any advice, information, or documents that must accompany any notification given under subparagraph (i):

(iii) requiring the provider to do any act or thing or carry out any prescribed procedures to facilitate or enable the transfer of members to another KiwiSaver scheme in accordance with this Act:

(iv) requiring the provider to report to any specified person or persons, or to produce to any specified person or persons, any papers, documents, records, or things in respect of the scheme, at specified times or contingent on any specified events:

(d) requiring the provider of any new scheme to which members are or are to be transferred from a scheme that is subject to a terminating event under section 185 to do any act or thing or to carry out any prescribed procedures to facilitate or enable the transfer of members to the provider's KiwiSaver scheme.

(2) However, regulations made under subsection (1)(c)(iii) may not require a provider to report to any person or produce any papers, documents, or records, after the provider's scheme no longer has any members who became members of the scheme under section 52.

230A Regulations relating to compulsory employer contributions

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Finance, make regulations prescribing a class of employees, for the purposes of the calculation of compulsory employer contributions, under section 101D(5)(c)(ii).

(2) The Minister of Finance may make a recommendation under subsection (1) only if the Minister is satisfied that an employer may not prevent compulsory employer contributions increasing their employer contributions in relation to the class of employees because terms relating to their employer contributions are imposed independently of the employer and the class of employees.

Section 230A: inserted, on 19 December 2007, by section 100 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

231 Amendments to other Acts

The enactments specified in Schedule 3 are amended in the manner shown in that schedule.

232 Transitional provision requiring all KiwiSaver contributions to be paid to Commissioner in first 3 months

(1) Every person who wishes to pay an amount of contribution in the first 3 months must pay it to the Commissioner.

(2) No provider may accept payment of any amount of contribution in the first 3 months.

(3) Subparts 2 and 3 of Part 3 apply to the amount of contribution.

(4) **First 3 months** means the 3 months starting on the date of commencement of the automatic enrolment rules.

233 Transitional provision: pre-1 July 2007 securities law documentation

(1) This section applies to the following documents:

(a) a prospectus that is registered under the Securities Act 1978 before 1 July 2007:

(b) an investment statement under the Securities Act 1978 that is dated before 1 July 2007.

(2) A document to which this section applies is as valid and effectual as it would have been if the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 had not been enacted and as if the relevant KiwiSaver scheme or complying superannuation fund had not changed as a result.

Section 233 was inserted, as from 1 July 2007, by section 68 Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

234 Protection from non-compliance: Taxation (KiwiSaver) Act 2007

If, as a result of amendments provided by the Taxation (KiwiSaver) Act 2007, there is non-compliance with an Act before 1 February 2008, the non-compliance is ignored unless it continues on or after 1 February 2008.

Section 234: added, on 19 December 2007, by section 101 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Schedule 1

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KiwiSaver scheme rules

1 Enforceability

The KiwiSaver scheme rules are enforceable by the trustees or any member of the scheme.

2 Fees must not be unreasonable

(1) The following persons must not charge a fee that is unreasonable:

- (a) the trustees of the scheme:
- (b) the administration manager of the scheme:
- (c) the investment manager of the scheme:
- (d) the promoter of the scheme:
- (e) any other person who charges a fee for services in relation to the provision of a KiwiSaver scheme.

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

(5) *[Repealed]*

Schedule 1 clause 2(2): repealed, on 19 December 2007, by section 102(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Schedule 1 clause 2(3): repealed, on 19 December 2007, by section 102(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Schedule 1 clause 2(4): repealed, on 19 December 2007, by section 102(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Schedule 1 clause 2(5): repealed, on 19 December 2007, by section 102(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

3 Minimum contribution for employee member

(1) For each pay period, an employee member must contribute to the KiwiSaver scheme at least the minimum contribution rate of that employee's salary or wages in accordance with sections 64 to 68.

(2) Subclause (1) does not apply if the employee is taking a contributions holiday.

(3) For the purposes of this clause, a member does not contribute to the KiwiSaver scheme, if the contributions are made for a purpose other than—

(a) to enable the payment of future benefits to the member under the KiwiSaver scheme; or

(b) to enable the payment of fees in respect of the KiwiSaver scheme.

4 Lock-in of funds to KiwiSaver end payment date

(1) Subject to other permitted withdrawals, a member may not make a withdrawal from the KiwiSaver scheme until the KiwiSaver end payment date or a date after that date.

(2) For the purposes of subclause (1), the KiwiSaver end payment date is the later of—

(a) the date on which the member reaches the New Zealand superannuation qualification age; or

(b) the date on which the member has been a member of a KiwiSaver scheme for 5 years; or

(c) the date on which the member has been a member of a complying superannuation fund (or of a complying superannuation fund and a KiwiSaver scheme) for 5 years.

(3) A member is entitled to withdraw an amount not more than the member's accumulation on the later date referred to in subclause (2).

(4) Nothing in this clause requires a member to withdraw from the KiwiSaver scheme on the date specified in subclause (2).

(5) A person ceases, at the option of the provider of the KiwiSaver scheme, to be a member of the KiwiSaver scheme if—

(a) the balance in all of the member's accounts reaches zero; and

(b) the provider gives notice to the member that the person's membership is terminated.

Subclause (2)(b) was amended, as from 1 July 2007, by section 227(a) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting "years; or" for "years."

Subclause (2)(c) was inserted, as from 1 July 2007, by section 227(b) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Schedule 1 clause 4(3): amended, on 19 December 2007, by section 102(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

5 Trustees must pay permitted withdrawal as lump sum

(1) The trustees must, at the member's request, pay a permitted withdrawal as a lump sum.

(2) Nothing in subclause (1) prevents a member purchasing annuities or a pension from all or part of the member's accumulation or member's interest that is withdrawn by that member.

6 Trustees may reasonably require evidence to establish right to make permitted withdrawal

A trustee may reasonably require a member who applies to make a permitted withdrawal to provide evidence of the facts necessary to establish the member's right to make the withdrawal.

7 Release of funds required under other enactments

(1) The trustees must comply with the provisions of any enactment that requires them to release funds from the KiwiSaver scheme in accordance with that enactment.

(2) A requirement to release funds from the KiwiSaver scheme under any enactment includes a requirement by order of any court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

8 Withdrawal for purpose of purchase of first home

(1) This clause applies to a member if,—

(a) in the case of a member in respect of whom the Commissioner has received contributions, at least 3 years have expired after the Commissioner received the first contribution in respect of the person (whether or not a contribution in relation to the scheme of which the member is currently a member); and

(b) in the case of any other member, the person has been a member of 1 or more KiwiSaver schemes for a period of 3 years or more; and

(c) in the case of any member, the member has not made a withdrawal under this clause before (whether or not from the member's current KiwiSaver scheme or from a KiwiSaver scheme to which the person previously belonged).

(2) Every amount of contribution that is deducted from salary or wages under this Act is treated, for the purpose of subclause (1)(a), as received by the Commissioner on the 15th day of the month in which the deduction is made.

(3) A member to whom this clause applies may make a withdrawal from the KiwiSaver scheme of which the member is currently a member for the purchase of an estate in land (whether alone or as a joint tenant or tenant in common) if—

(a) the purchase is made in the prescribed circumstances; or

(b) both of the following apply:

(i) the land is, or is intended to be, the principal place of residence for the member or for the member and members of the member's family; and

(ii) the member has not, at any time before applying to make a withdrawal under this clause (whether before or after becoming a member of the KiwiSaver scheme) held an estate in land (whether alone or as a joint tenant or tenant in common); or

(c) both of the following apply:

(i) the land is, or is intended to be, the principal place of residence for the member or for the member and members of the member's family; and

(ii) the member is a qualifying person under the regulations.

(4) A member may not make a withdrawal under this clause of more than an amount equal to the member's accumulation less the amount of the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution) at the time of the withdrawal.

(5) If a person holds an estate in land in either of the following circumstances, that estate must be disregarded for the purposes of subclause (3)(b)(ii):

(a) the person holds the estate in land as a bare trustee:

(b) the person holds the estate in land as a trustee who—

(i) is a discretionary, contingent, or vested beneficiary under the relevant trust; but

(ii) has no reasonable expectation of being entitled to occupy the land as the principal place of residence for the person or the person's family until the death of the person who currently occupies the land (the **occupier**) or the death of the occupier's survivor.

(6) In this clause, **estate** means a fee simple estate, a leasehold estate, or a stratum estate.

(7) It is a condition of subclause (3) that—

(a) any withdrawal made under that provision must be paid to the member's solicitor; and

(b) the trustees may require from the member's solicitor, before payment of the withdrawal,—

(i) a copy of an agreement for the sale and purchase of the estate in land showing the member as purchaser; and

(ii) an undertaking that the agreement is unconditional at the time the trustees make the request; and

(iii) an undertaking that the funds will be paid to the vendor as part of the purchase price or, if the settlement is not completed by the due date or any extended date, repaid to the trustees on account of the member.

(8) This clause is subject to the terms of any participation agreement that restricts or prevents the withdrawal of employer vested contributions that are not compulsory employer contributions in relation to the member.

Schedule 1 clause 8(8): amended, on 1 April 2008, by section 102(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

9 Withdrawal by member's personal representative

If a member dies, the trustees must, on application by the member's personal representative, pay to that person an amount that is equal to the value of the member's accumulation at the date on which the application is accepted as part of the member's estate.

10 Withdrawal in cases of significant financial hardship

(1) If the trustees are reasonably satisfied that a member is suffering or is likely to suffer from significant financial hardship, the member may, on application to the trustees in accordance with clause 13, make a significant financial hardship withdrawal in accordance with this clause.

(2) The amount of that significant financial hardship withdrawal may, subject to the trustees' approval under subclause (3), be up to the value of the member's accumulation less the amount of the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution) on the date of withdrawal.

(3) The trustees—

(a) must be reasonably satisfied that reasonable alternative sources of funding have been explored and have been exhausted; and

(b) may direct that the amount withdrawn be limited to a specified amount that, in the trustees' opinion, is required to alleviate the particular hardship.

11 Meaning of significant financial hardship

(1) For the purposes of these rules, **significant financial hardship** includes significant financial difficulties that arise because of—

(a) a member's inability to meet minimum living expenses; or

(b) a member's inability to meet mortgage repayments on his or her principal family residence resulting in the mortgagee seeking to enforce the mortgage on the residence; or

(c) the cost of modifying a residence to meet special needs arising from a disability of a member or a member's dependant; or

(d) the cost of medical treatment for an illness or injury of a member or a member's dependant; or

(e) the cost of palliative care for a member or a member's dependant; or

(f) the cost of a funeral for a member's dependant; or

(g) the member suffering from a serious illness.

(2) In this section, **serious illness** has the meaning given to it by clause 12(3).

12 Withdrawal in cases of serious illness

(1) In addition to a withdrawal on the grounds of serious illness under clause 11(1)(g), if the trustees are reasonably satisfied that a member is suffering from serious illness, the member may, on application to the trustees in accordance with clause 13, make a serious illness withdrawal in accordance with this clause.

(2) The amount of that serious illness withdrawal may be up to the value of the member's accumulation.

(3) In this clause, **serious illness** means an injury, illness, or disability—

(a) that results in the member being totally and permanently unable to engage in work for which he or she is suited by reason of experience, education, or training, or any combination of those things; or

(b) that poses a serious and imminent risk of death.

Schedule 1 clause 12(2): amended, on 19 December 2007, by section 102(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Subclause (2) was amended, as from 1 July 2007, by section 69(1) Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19) by substituting "calculating the amount of the Crown contribution, and disregarding any part of that contribution arising from a tax credit under section KJ 1 of the Income Tax Act 2004" for "calculating the amount of the Crown contribution".

Schedule 1 clause 12(3)(a): amended, on 19 December 2007, by section 102(5) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

13 Application for withdrawal for significant financial hardship or serious illness

(1) The application for a withdrawal under clause 10 or 12 must be in the form required by the trustees.

(1B) The application for a withdrawal under clause 10 must include a completed statutory declaration in respect of the member's assets and liabilities.

(2) The trustees—

(a) may require that any medical matter asserted in support of the application for withdrawal be verified by medical evidence:

(b) may require that any other documents, things, or information produced in support of the application be verified by oath, statutory declaration, or otherwise.

Schedule 1 clause 13(1): amended, on 19 December 2007, by section 102(6) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Schedule 1 clause 13(1B): inserted, on 19 December 2007, by section 102(7) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

14 Withdrawal or transfer to foreign scheme in cases of permanent emigration

(1) A member may, on application to the trustees, and no earlier than 1 year after the member's permanent emigration from New Zealand, withdraw an amount equal to the value of the member's accumulation less the amount of the Crown contribution arising from a tax credit under section KJ 1 of the Income Tax Act 2004 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution) on the date of withdrawal.

(2) A member may, on application to the trustees, at any time after the member's permanent emigration from New Zealand, have the trustees transfer the member's accumulation less the amount of Crown contribution arising from a tax credit under section MK 1 of the Income Tax Act 2007 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution) to a foreign superannuation scheme authorised for that purpose under regulations made under section 228.

(3) An application under subclause (1) or (2) must be in the form required by the trustees and must include—

(a) a completed statutory declaration in respect of the member to the effect that the member has permanently emigrated from New Zealand; and

(b) proof to the satisfaction of the trustees—

(i) of the member's departure from New Zealand (for example, evidence of confirmed travel arrangements, passport evidence, and evidence of any necessary visas); and

(ii) that the member has resided at an overseas address at some time during the year following the member's departure from New Zealand.

(4) The trustees may require that any other documents, things, or information produced in an application under subclause (1) or (2) be verified by oath, statutory declaration, or otherwise.

Subclause (1) was amended, as from 1 July 2007, by section 69(2) Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19) by substituting "accumulation less the amount of the Crown contribution arising from a tax credit under section KJ 1 of the Income Tax Act 2004 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution)" for "accumulation".

Schedule 1 clause 14(2): amended, on 1 April 2008, by section 102(9) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Schedule 1 clause 14(2): amended (with effect from 1 July 2007), on 19 December 2007, by section 102(8) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

15 Contributions holiday

A employee member may, at any time, take a contributions holiday in accordance with subpart 4 of Part 3.

16 Transfer of members

(1) A member may, at any time during that person's membership of a KiwiSaver scheme, on application to the trustees, apply to have the trustees transfer the member's accumulation to another KiwiSaver scheme.

(2) On application by a member, the trustees must, if the other KiwiSaver scheme indicates it will accept that person as a member, transfer the member's accumulation to the other KiwiSaver scheme in accordance with subpart 3 of Part 2.

(3) A member may, at any time during that person's membership of a KiwiSaver scheme, be transferred to another KiwiSaver scheme in the circumstances provided for in, and in accordance with, this Act.

17 Crown contributions: tax credits

Despite rules 4 to 14, the amount of the Crown contribution arising from a tax credit under section KJ 1 of the Income Tax Act 2004 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution) may not be withdrawn—

(a) before the member gives the **fund provider** (as that term is defined in the Income Tax Act 2004) a statutory declaration stating the periods for which the person has their principal place of residence in New Zealand; and

(b) to the extent to which the **fund provider** has notice that their claim for a tax credit is wrong, because the number of **included days** under section KJ 3 of the Income Tax Act 2004 is wrong.

Clause 17 was inserted, as from 1 July 2007, by section 69(3) Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Schedule 2

ss 133, 134, 136, 137, 140, 149, 150

Matters to be specified in application for registration or registration proposal

1
Matters to be specified in application for registration of KiwiSaver scheme

1 The name of the proposed KiwiSaver scheme (the **scheme**).

2 The proposed commencement date of the scheme.

3 The names of—

(a) the trustees of the scheme and, where a trustee is a company, the directors of that company; and

(b) 1 or more independent trustees; and

(c) every administration manager, investment manager, and insurer of the scheme (as applicable); and

1—*continued*

(d) any actuaries, auditors, and solicitors acting for the scheme (or the names of their firms).

4 The name and address for all of the trustees of the scheme who are New Zealand residents and, in a case in which any of the trustees is a corporate trustee, the name and contact address of at least 1 of the directors of that trustee who is a New Zealand resident.

5 The name and address of the person to whom all correspondence from the Government Actuary should be sent.

6 The date upon which the financial year of the scheme ends.

7 A copy of the most recent annual report on, or accounts of, the scheme (if any).

8 A copy of the explanatory material that has been, or is intended to be, issued to members or potential members.

9 A statement of the fees that will be charged in the period prior to the next annual report or the basis on which those fees will be calculated.

10 A certificate signed by the Commissioner that the provider has entered into a scheme provider agreement with the Commissioner that deals with any matters specified in regulations made under section 228(k) to the satisfaction of the Commissioner.

11 A certificate by the trustees or the trustees' solicitor stating that the trust deed—

(a) complies with section 7 of the Superannuation Schemes Act 1989 (as applied by section 119); and

(b) does not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by sections 120 and 121); and

(c) does not contain any provision that is contrary to the KiwiSaver scheme rules (as implied by section 126 and Schedule 1).

2
Matters to be specified in proposal to convert registered superannuation scheme to KiwiSaver scheme

1 The name of the proposed KiwiSaver scheme (the **scheme**).

2 The proposed commencement date of the scheme as a KiwiSaver scheme.

3 Confirmation of the status quo as previously advised to the Government Actuary or advice as to any changes in—

(a) the names of the trustees of the scheme and, if a trustee is a corporate trustee, the directors of that corporate trustee:

(b) the names of every administration manager, investment manager, and insurer of the scheme:

(c) the names of any actuaries, auditors, and solicitors acting for the scheme (or the names of their firms):

(d) the name and address for service of all of the trustees who are New Zealand residents and, in a case in which any of the trustees is a corporate trustee, the name and contact address of at least 1 of the directors of that 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 statement of the fees that will be charged in the period prior to the next annual report or the basis on which those fees will be calculated.

4 The name of 1 or more independent trustees except in cases in which section 116(2) applies.

5 A certificate signed by the Commissioner that the provider has entered into a scheme provider agreement with the Commissioner that deals with any matters specified in regulations made under section 228(k) to the satisfaction of the Commissioner.

6 A certificate by the trustees or the trustees' solicitor stating that the trust deed in its proposed amended form complies with the matters in clause 7.

2—*continued*

7 The matters to be certified under clause 6 are that the trust deed in its proposed amended form—

(a) complies with section 7 of the Superannuation Schemes Act 1989 (as applied by section 119); and

(b) does not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by sections 120 and 121); and

(c) does not contain any provision that is contrary to the KiwiSaver scheme rules (as implied by section 126 and Schedule 1).

3
Matters to be specified in proposal to establish KiwiSaver scheme under umbrella scheme

1 The name of the proposed KiwiSaver scheme and whether it is proposed to change the name of the existing registered superannuation scheme.

2 The proposed commencement date of the KiwiSaver scheme.

3 Confirmation of the status quo as previously advised to the Government Actuary or advice as to any changes in—

(a) the names of the trustees of the scheme and, if a trustee is a company, the directors of that company:

(b) the names of every administration manager, investment manager, and insurer of the scheme:

(c) the names of any actuaries, auditors, and solicitors acting for the scheme (or the names of their firms):

(d) the name and address for service of all of the trustees who are New Zealand residents and, in a case in which any of the trustees is a corporate trustee, the name and contact address of at least 1 of the directors of that 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:

3—*continued*

(g) a statement of the fees that will be charged in the period prior to the next annual report or the basis on which those fees will be calculated.

4 The name of 1 or more independent trustees except in cases in which section 116(2) applies.

5 A certificate signed by the Commissioner that the provider has entered into a scheme provider agreement with the Commissioner that deals with any matters specified in regulations made under section 228(k) to the satisfaction of the Commissioner.

6 A certificate by the trustees, the administration manager, or a solicitor stating that the trust deed in its proposed amended form, in so far as it relates to the proposed KiwiSaver scheme,—

(a) complies with section 7 of the Superannuation Schemes Act 1989 (as applied by section 119); and

(b) does not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by sections 120 and 121); and

(c) does not contain any provision that is contrary to the KiwiSaver scheme rules (as implied by section 126 and Schedule 1).

7 A certificate by the trustees, the administration manager, or a solicitor stating that—

(a) the proposed amendments to the trust deed are not in breach of the provision implied by section 9 of the Superannuation Schemes Act 1989; and

(b) the trust deed in its proposed amended form, in so far as it relates to the existing registered superannuation scheme,—

(i) will comply with section 7 of the Superannuation Schemes Act 1989; and

(ii) will not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 in so far

3—*continued*

as the provisions of the trust deed relate to the registered superannuation scheme.

Schedule 3

s 231

Amendments to other Acts

Accident Compensation Act 1982 (1982 No 181)

Section 89(5) (as continued in effect by Part 8 of the Accident Rehabilitation and Compensation Insurance Act 1992): add:

"(g) subpart 1 of Part 3 of the KiwiSaver Act 2006."

Accident Rehabilitation and Compensation Insurance Act 1992 (1992 No 13)

Section 86(2): insert after paragraph (ga):

"(gb) subpart 1 of Part 3 of the KiwiSaver Act 2006; or".

Companies Act 1993 (1993 No 105)

Clause 2 of Schedule 7: insert after paragraph (e):

"(ea) all amounts payable to the Commissioner of Inland Revenue in accordance with section 167(2) of the Tax Administration Act 1994 as applied by section 67 of the KiwiSaver Act 2006:".

Financial Transactions Reporting Act 1996 (1996 No 9)

New section 55A: insert after section 55:

"**55A This Act subject to section 203 of KiwiSaver Act 2006**

This Act is subject to section 203 of the KiwiSaver Act 2006."

Income Tax Act 2004 (2004 No 35)

Section CS 2: insert after subsection (4):

"*Withdrawals from KiwiSaver schemes for purpose of purchase of first home*

"(4B) Section CS 1 does not apply to a withdrawal from a KiwiSaver scheme under clause 8 of the KiwiSaver scheme rules in the KiwiSaver Act 2006."

New section CW 49B: insert after section CW 49:

"**CW 49B Interest paid under KiwiSaver Act 2006**

Interest paid by the Commissioner under section 84 of the KiwiSaver Act 2006 is exempt income."

Section DV 4: insert after subsection (1):

"(1A) For the avoidance of doubt, section 144 of the KiwiSaver Act 2006 applies to a registered superannuation scheme that converts to a KiwiSaver scheme for the purpose of determining if subsection (1)(c) applies."

Section NE 2(2)(a): insert "or, in the case of a contribution paid to the Commissioner under the KiwiSaver Act 2006, received by the Commissioner for payment to the superannuation fund" after "superannuation fund".

Section NE 3: add:

"(2) Subsection (1), and whichever is applicable of sections NE 2(1), NE 2AA(2), NE 2AB, and NE 2A(2), do not apply to the specified superannuation contribution (the **current specified superannuation contribution**) to the extent to which it is—

"(a) a contribution to the employee's KiwiSaver scheme; and

"(b) not more than the lesser of—

"(i) an amount calculated under subsection (3):

"(ii) an amount calculated under subsection (4).

"(3) In subsection (2)(b)(i) the amount is calculated using the formula

0.04 × total salary or wages − previous exempt contributions.

"(4) In subsection (2)(b)(ii) the amount is calculated using the formula—

total KiwiSaver contributions − previous exempt contributions.

"(5) In the formulas,—

"(a) **total salary or wages** means the total salary or wages paid to the employee in the KiwiSaver calculation period, but excluding salary or wages for which there are no KiwiSaver contributions:

"(b) **previous exempt contributions** means the total specified superannuation contributions for the employee, to the extent to which—

"(i) those contributions are made in the KiwiSaver calculation period, but excluding the current specified superannuation contribution; and

"(ii) subsection (2) applied to those contributions (excluding the current one):

"(c) **total KiwiSaver contributions** means the total KiwiSaver contributions deducted from the salary or wages paid to the employee in the KiwiSaver calculation period.

"(6) In this section,—

"**KiwiSaver calculation period** means, for the current specified superannuation contribution, a period—

"(a) beginning with the later of—

"(i) 1 year before when the employer makes the current specified superannuation contribution:

"(ii) when the employer is first required to deduct KiwiSaver contributions from the employee's salary or wages; and

"(b) ending with when the employer makes the current specified superannuation contribution

"**KiwiSaver contributions** means contributions required to be deducted under Part 3, subpart 1 of the KiwiSaver Act 2006

"**KiwiSaver scheme** means a KiwiSaver scheme, as defined in section 4 of the KiwiSaver Act 2006

"**salary or wages** means salary or wages, as defined in section 4 of the KiwiSaver Act 2006."

Definition of **employer monthly schedule** in section OB 1: insert after paragraph (f):

"(fb) for each employee in the month to which the schedule relates, if applicable, the amount of total KiwiSaver contribution de-

ductions made under subpart 1 of Part 3 of the KiwiSaver Act 2006; and

"(fc) for each employee in the month to which the schedule relates, if applicable, the amount of employer contributions made under the KiwiSaver Act 2006 (net of any specified superannuation contribution withholding tax payable under the SSCWT rules); and".

Paragraph (f) of the definition of **exempt interest** in section OB 1: add "; or".

Definition of **exempt interest** in section OB 1: add:

"(g) payable by the Commissioner under section 84 of the KiwiSaver Act 2006".

New definitions: insert, after the definition of **joint venture agreement** in section OB 1 the following definitions:

"**KiwiSaver calculation period** is defined in section NE 3(6) (Specified superannuation contribution withholding tax to be deducted) for the purposes of that section

"**KiwiSaver contributions** is defined in section NE 3(6) (Specified superannuation contribution withholding tax to be deducted) for the purposes of that section

"**KiwiSaver scheme** is defined in section NE 3(6) (Specified superannuation contribution withholding tax to be deducted) for the purposes of that section"

Definition of **remittance certificate** in section OB 1: insert after paragraph (f):

"(fb) the total KiwiSaver contribution deductions made under subpart 1 of Part 3 of the KiwiSaver Act 2006; and

"(fc) the amount of specified superannuation contribution paid under the KiwiSaver Act 2006 and the amount of specified superannuation contribution withholding tax deducted; and".

Paragraph (g) of the definition of **remittance certificate** in section OB 1: insert "(other than that shown in paragraph (fc))" after "tax deducted".

Add to the definition of **salary or wages** in section OB 1 as paragraph (d):

"(d) is defined in section NE 3(6) (Specified superannuation contribution withholding tax to be deducted) for the purposes of that section"

Paragraph (c) of the definition of **specified superannuation contribution** in section OB 1: add "or, in the case of a contribution under the KiwiSaver Act 2006, is paid to the Commissioner for payment to the superannuation fund".

Paragraph (a) of the definition of **superannuation fund** in section OB 1: insert "or a KiwiSaver scheme that is registered under the KiwiSaver Act 2006" after "Superannuation Schemes Act 1989".

Paragraph (a) of the definition of **superannuation scheme** in section OB 1: insert after paragraph (a)(i):

"(ib) a KiwiSaver scheme that is registered under the KiwiSaver Act 2006; or".

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

Section 123(2): insert after paragraph (i):

"(ia) subpart 1 of Part 3 of the KiwiSaver Act 2006; or".

Insolvency Act 1967 (1967 No 54)

Section 104(1)(d): insert after subparagraph (vi):

"(via) all amounts payable to the Commissioner of Inland Revenue in accordance with section 167(2) of the Tax Administration Act 1994 as applied by section 67 of the KiwiSaver Act 2006:".

Social Security Act 1964 (1964 No 136)

Paragraph (a) of the definition of **cash assets** in section 61E: insert after subparagraph (ii):

"(iia) money withdrawn from a KiwiSaver scheme registered under the KiwiSaver Act 2006:".

Definition of **cash assets** in section 61E: insert after paragraph (a):

"(ab) does not include any contributions to, or any member's interest in, any KiwiSaver scheme that is registered under the KiwiSaver Act 2006; and".

Definition of **exempt assets** in clause 4 of Part 2 of Schedule 27: insert after paragraph (e):

"(ea) any contributions to, or any member's interest in, any KiwiSaver scheme that is registered under the KiwiSaver Act 2006, except the following:

"(i) money withdrawn from such a scheme:

"(ii) money that the member is entitled to withdraw from the scheme under clause 4(3) of the KiwiSaver scheme rules under that Act:

"(iii) money that the member has applied to withdraw and that would be a permitted withdrawal under those rules:".

Superannuation Schemes Act 1989 (1989 No 10)

Definition of **superannuation scheme** or **scheme** in section 2(1): repeal and substitute:

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

Section 2(1): insert in its appropriate alphabetical order:

"**KiwiSaver scheme** has the meaning given to it in the KiwiSaver Act 2006".

Insert after section 2:

"**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 KiwiSaver 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 KiwiSaver 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 9B: insert after subsection (1):

"(1A) This section is subject to section 9BAA."

Insert after section 9B:

"**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 the members and beneficiaries of a scheme does not apply if the Government Actuary approves the transfer under this section.

"(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.

"(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).

"**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."

Insert after section 14(3):

"(4) This section is subject to section 124 of the KiwiSaver Act 2006."

Tax Administration Act 1994 (1994 No 166)

Definition of **civil penalty** in section 3: repeal paragraph (d) and substitute:

"(d) a non-electronic filing penalty; or

"(e) a civil penalty under section 215 or 216 of the KiwiSaver Act 2006:".

Paragraph (a)(iii) of the definition of **tax** in section 3: insert "after subsubparagraph (C)":

"(CB) an amount required to be deducted under subpart 1 of Part 3 of the KiwiSaver Act 2006:".

Paragraph (c) of the definition of **tax** in section 3: add "and any contributions administered by the Commissioner under the KiwiSaver Act 2006".

Section 4A(2): insert after paragraph (b):

"(bb) a contribution deduction under the KiwiSaver Act 2006 is deemed to be made when payment is made of the net amount of any source deduction payment:".

Section 4A(2)(c) and (d): insert "or paragraph (bb)" after "or paragraph (b)".

Insert in section 4A(3), after paragraph (b):

"(bb) deductions under the KiwiSaver Act 2006; or".

Section 81(4): add:

"(r) communicating to any person, being the Government Actuary or any person to whom the Government Actuary has delegated

any of his or her functions, duties, or powers under this Act, any information, being information—

"(i) that the person is authorised by the Government Actuary to receive; and

"(ii) that the Commissioner considers is not undesirable to disclose and is reasonably necessary to enable the Government Actuary to perform any duty or function, or exercise any power, lawfully conferred by the KiwiSaver Act 2006."

Insert, after section 85G:

"**85GB Government Actuary to provide information to Commissioner for purpose of administration of KiwiSaver Act 2006**

"(1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the Government Actuary for the purpose of administration of the KiwiSaver Act 2006.

"(2) For the purposes of this section, the Government Actuary or any person to whom the functions, duties, or powers of the Government Actuary are delegated, must, as soon as reasonably practicable after a request by the Commissioner, provide the Commissioner with the information that is requested by the Commissioner that the Government Actuary considers is not undesirable to disclose and is reasonably necessary to enable the Commissioner to exercise or perform any function, duty, or power lawfully conferred by the KiwiSaver Act 2006.

"(3) The information referred to in subsection (2) must be provided to the best of the knowledge and belief of the person who provides the information, if the person does not have certain knowledge of the relevant matters.

"**85GC Use of information supplied under section 85GA**

"(1) If information is supplied to the Commissioner under section 85GB, the Commissioner may use the information in connection with the exercise or performance of any of the Commissioner's duties, functions, or powers under the KiwiSaver Act 2006.

"(2) Section 85GB and this section apply despite any other provision of this Act."

Section 138E(1)(e): insert after subparagraph (iv):
"(ivb) any of Parts 1 to 3 of the KiwiSaver Act 2006; or".

Section 138L(2): insert after paragraph (a):
"(ab) a civil penalty imposed under section 215 or 216 of the KiwiSaver Act 2006; or".

Section 143A(5): add:
"(f) a deduction of contribution that was payable under subpart 1 of Part 3 of the KiwiSaver Act 2006."

Definition of **income tax** in section 157(10): add:
"(g) an amount of unpaid contribution that was payable under subpart 1 of Part 3 of the KiwiSaver Act 2006:"

Section 183A(1): add:
"(h) a civil penalty imposed under section 215 or 216 of the KiwiSaver Act 2006."

Section 183ABA: insert, after subsection (3):
"(3A) If this section applies and a civil penalty has been imposed under section 215 or 216 of the KiwiSaver Act 2006, the affected person may request the Commissioner to remit the penalty imposed.
"(3B) The Commissioner may remit the penalty referred to in subsection (3A) if the Commissioner is satisfied that—
"(a) the effect on the person of the occurrence of the qualifying event makes it equitable that the penalty be remitted; and
"(b) the person applied for the remission as soon as practicable."

Section 183D(1): insert after paragraph (bb):
"(bc) a civil penalty imposed under section 215 or 216 of the KiwiSaver Act 2006; and".

Section 183D(2): repeal and substitute:
"(2) In the application of this section, the Commissioner must have regard to the importance of the penalty, and interest under Part 7, in promoting compliance, especially voluntary compliance,

by all taxpayers and other persons with the Inland Revenue Acts."

Schedule: add the item "KiwiSaver Act 2006".

Schedule 4

s 66A

Transitional rates for employers and employees

Schedule 4: added, on 1 April 2008, by section 103 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Years in which pay period for payment of the employee's gross salary or wages falls	Rate for employer (%)	Rate for employee (%)
2 years starting on 1 April 2008	2	2
1 year starting on 1 April 2010	3	3
1 year starting on 1 April 2011	4	4

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Notes

1 General

This is an eprint of the KiwiSaver Act 2006. It incorporates all the amendments to the KiwiSaver Act 2006 as at 29 May 2008. 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 are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

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

Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36): section 58(2)

Taxation (KiwiSaver) Act 2007 (2007 No 110): sections 27 to 103

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