

Reprint
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KiwiSaver Act 2006

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Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Inland Revenue Department and the Ministry of Business, Innovation, and Employment.

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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.

Section 2: KiwiSaver Act 2006 (except sections 10–21, 22, 23, 33–39, 40–43, 45, 66, and so much of Schedule 3 as relates to section NE 3(2)–(6) of the Income Tax Act 2004) brought into force, on 1 December 2006, by the KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Section 2: sections 10–21, 22, 23, 33–39, 40–43, 45, 66, and so much of Schedule 3 as relates to section NE 3(2)–(6) of the Income Tax Act 2004 brought into force, on 1 July 2007, by the KiwiSaver Act Commencement Order 2006 (SR 2006/357).

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

administration manager,—

- (a) in relation to a restricted KiwiSaver scheme, means a person to whom the trustees have contracted some or all of the administration of the scheme; and
- (b) in relation to any other KiwiSaver scheme, means a person to whom the manager has contracted some or all of the administration of the scheme

Australian complying superannuation scheme means an entity that is a complying superannuation fund for the purposes of Part 5, Division 2 of the Superannuation Industry (Supervision) Act 1993 (Aust) and that is regulated by the Australian Prudential Regulation Authority

automatic enrolment rules means sections 10 to 21

benefit means a lump sum, allowance, refund, or other payment arising from membership of a KiwiSaver scheme

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 YA 1 of the Income Tax Act 2007

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 MK 1 of the Income Tax Act 2007 that is treated as a Crown contribution for a member under section MK 5 of that Act

CYPFA guardian, of a person, means any other person—

- (a) appointed by an order under section 110(1)(a) to (d) of the Children, Young Persons, and Their Families Act 1989 as the sole guardian, or as a guardian of the person in addition to any other guardians (whether or not guardians by virtue of that Act), of the person; or
- (b) whose sole guardianship of the person arises under section 119 of that Act (about the death of a guardian appointed under section 110(1)(e) of that Act who, on his or her death, was the person's sole guardian)

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 manager 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 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—
 - (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)

FMA means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

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)

guardian has the same meaning as in the Care of Children Act 2004, but excludes a CYPFA guardian

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 restricted 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 manager,—

- (a) in relation to a restricted KiwiSaver scheme, means a person to whom the trustees have contracted the investment of some or all of the funds of the scheme; and
- (b) in relation to any other KiwiSaver scheme, means a person to whom the manager has contracted the investment of some or all of the funds of the scheme

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 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

manager means the person designated or appointed under the trust deed as manager of a KiwiSaver scheme other than a restricted scheme

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

- (ab) an amount that was transferred from an Australian complying superannuation scheme and contributed to a KiwiSaver scheme; 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 resident means a person resident in New Zealand under section YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007

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

nominated person, in relation to trustees, means a person nominated by the trustees and eligible to act as a nominated person under section 116H

nominee, in relation to a nominated person, means a person appointed by the nominated person and eligible to act as a nominee under section 116I

non-deduction notice means a notice described in section 112B

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 means, as applicable, a first payment period as defined in the Income Tax Act 2007, a second payment period as defined in that Act, or a month in which PAYE is withheld in relation to an employee

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

restricted KiwiSaver scheme or **restricted scheme** means a KiwiSaver scheme identified as a restricted scheme on the KiwiSaver schemes register

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 section RD 5(4), (6)(b) to (bd), (6)(c), and (8) and RD 68 of the Income Tax Act 2007; and
 - (ia) a payment under a Voluntary Bonding Scheme that is funded by the Ministry for Primary Industries, the Ministry of Health, or the Ministry of Education; and
 - (ib) *[Repealed]*
 - (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 Accident 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** for the purposes 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, in relation to a KiwiSaver scheme or a registered superannuation scheme,—

- (a) means the trust deed that sets out the trusts governing the scheme, as amended from time to time; and
- (b) includes a participation agreement and any other document that, under the terms of the relevant trust deed, forms part of or determines a term of the trust deed

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 restricted KiwiSaver scheme, means the independent trustee referred to in section 116A and any other trustee who is designated or appointed as trustee of the scheme under the trust deed or the successor of that person; and
- (b) in relation to any other KiwiSaver scheme, means the person who is designated or appointed as trustee of the scheme under the trust deed or the successor of that person; and
- (c) in relation to any other superannuation scheme, has the same meaning as in section 2(1) of the Superannuation Schemes Act 1989

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 as in force immediately before its repeal by section 35 of the KiwiSaver Amendment Act 2011.

- (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) **administration manager**: inserted, on 1 May 2011, by section 4(7) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 4(1) **Australian complying superannuation scheme**: inserted, on 1 July 2013, by section 176(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 4(1) **benefit**: inserted, on 1 May 2011, by section 4(7) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 4(1) **complying superannuation fund**: inserted, on 1 July 2007, by section 221 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 4(1) **complying superannuation fund**: amended, on 1 April 2008, pursuant to section ZA 1(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1) **Crown contribution**: substituted, on 1 July 2007, by section 58 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 4(1) **Crown contribution** paragraph (b): amended (with effect on 1 April 2008), on 6 October 2009, by section 715(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 4(1) **Crown contribution** paragraph (b): amended (with effect on 1 April 2008), on 6 October 2009, by section 715(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 4(1) **CYPFA guardian**: inserted, on 1 July 2014, by section 4(2) of the KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

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) **default KiwiSaver provider**: amended, on 1 May 2011, by section 4(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 on 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) **FMA**: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 4(1) **Government Actuary**: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 4(1) **guardian**: inserted, on 7 September 2010, by section 176(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 4(1) **guardian**: amended, on 1 July 2014, by section 4(1) of the Kiwi-Saver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

Section 4(1) **independent trustee**: amended, on 1 May 2011, by section 4(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 on 1 July 2007), on 19 December 2007, by section 27(8)(d) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4(1) **investment manager**: inserted, on 1 May 2011, by section 4(7) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 4(1) **KiwiSaver scheme**: amended, on 1 May 2011, by section 4(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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) **manager**: inserted, on 1 May 2011, by section 4(7) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

Section 4(1) **member's accumulation** paragraph (ab): inserted, on 1 July 2013, by section 176(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 4(1) **New Zealand resident**: inserted, on 1 May 2011, by section 4(7) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 4(1) **nominated person**: inserted, on 1 May 2011, by section 4(7) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 4(1) **nominee**: inserted, on 1 May 2011, by section 4(7) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

Section 4(1) **non-deduction notice**: inserted (with effect on 1 July 2012), on 2 November 2012, by section 228 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

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 (with effect on 1 April 2009), on 6 October 2009, by section 715(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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

Section 4(1) **restricted KiwiSaver scheme or restricted scheme**: inserted, on 1 May 2011, by section 4(7) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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)(i): amended (with effect on 5 January 2010), on 17 July 2013, by section 147(1) of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

Section 4(1) **salary or wages** paragraph (a)(i): amended (with effect on 1 April 2008), on 29 August 2011, by section 210(a) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section 4(1) **salary or wages** paragraph (a)(ia): inserted, on 17 July 2013, by section 147(2) of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

Section 4(1) **salary or wages** paragraph (a)(ib): repealed (with effect on 1 April 2008), on 29 August 2011, by section 210(b) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section 4(1) **salary or wages** paragraph (a)(v)(B): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

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)(ii): amended (with effect on 1 April 2013), on 17 July 2013, by section 147(3) of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

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(1) **trust deed**: substituted, on 1 May 2011, by section 4(4) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 4(1) **trustees**: substituted, on 1 May 2011, by section 4(5) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 4(1) **umbrella trust**: amended, on 1 May 2011, by section 4(6) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 restricted 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.
- (1A) For the purpose of anything that must or may be done by or to or in relation to a provider of any other KiwiSaver scheme under this Act, **provider**, unless the context otherwise requires, means the manager of the scheme.
- (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, on 1 May 2011, by section 5(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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

Section 5(1A): inserted, on 1 May 2011, by section 5(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 Kiwi-Saver scheme membership are lawful; and
 - (b) is a New Zealand citizen or is entitled, in terms of the Immigration Act 2009, to be in New Zealand indefinitely.

- (2) This Act applies to an employer only if—
- (a) the employer is a New Zealand resident; 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).

Section 6(1)(a): amended, on 21 May 2007, by section 59 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 6(1)(a)(i): added, on 21 May 2007, by section 59 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 6(1)(a)(ii): added, on 21 May 2007, by section 59 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 6(1)(a)(iii): added, on 21 May 2007, by section 59 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 6(1)(b): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 6(2)(a): amended, on 1 May 2011, by section 6 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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

[Repealed]

Section 13: repealed, on 6 October 2009, by section 716 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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):
 - (iib) section RD 5(3B) (which relates to payments to working owners):
 - (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 YD 1(7) of the Income Tax Act 2007 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)(a)(iib): inserted, on 1 April 2011, by section 172 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

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

Section 14(1)(c): amended, on 21 May 2007, by section 60 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 14(1)(d): added, on 21 May 2007, by section 60 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 14(1)(d): amended (with effect on 1 April 2008), on 6 October 2009, by section 717 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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).

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 on 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 on 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 on 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 one 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 employees and employers

Heading: amended, on 7 September 2010, by section 177(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

22 Employees giving 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 Kiwi-Saver 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; or
 - (iii) give his or her employer a non-deduction notice.

- (2) That information must be given as soon as practicable after the person starts the new employment.
- (3) A person who is in temporary employment and who is a member of a KiwiSaver scheme may give their temporary employer a KiwiSaver deduction notice.

Section 22 heading: amended, on 7 September 2010, by section 177(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 22(1)(c)(ii): amended (with effect on 1 July 2012), on 2 November 2012, by section 229 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Section 22(1)(c)(iii): inserted (with effect on 1 July 2012), on 2 November 2012, by section 229 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Section 22(3): added, on 7 September 2010, by section 177(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

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).

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 FMA 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 that is registered on or before 7 October 2009; and
 - (bb) *[Repealed]*
 - (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 super-

- annuation 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 FMA, 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.

Section 25(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 25(1)(b): substituted, on 6 October 2009, by section 718 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 25(1)(b): amended (with effect on 7 October 2009), on 7 September 2010, by section 178(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 25(1)(bb): repealed (with effect on 7 October 2009), on 7 September 2010, by section 178(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 25(2)(b): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 25(3) **permanent employees**: substituted, on 21 May 2007, by section 61 of the 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 %
	<hr/>
	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 1 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 FMA is satisfied that, if all of those schemes were considered as a whole (as if they were 1 scheme), the rules in section 25 would be complied with.

Section 27: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 eligible to be approved as an exempt employer if the FMA is satisfied that the rules in section 25 would be complied with if the FMA 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 FMA decides is relevant to evidencing compliance with the rules in section 25, in respect of the employer's employees.

Section 28: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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

Section 28(c): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

29 How to apply to be exempt employer

- (1) A person may make an application to the FMA for approval of an employer (the **current employer**) as an exempt employer if,—
 - (a) an application (the **old application**) was received by the Government Actuary on or before 19 November 2009; and
 - (b) as a result of the Government Actuary's consideration of that old application under section 30 an employer was approved as an exempt employer; and
 - (c) either that exempt employer is the current employer, or the current employer is a succeeding employer for that exempt employer.
- (2) The application must be accompanied by—

- (a) information that satisfies the FMA 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 FMA may request.
- (3) In this section **succeeding employer** means, for an exempt employer,—
- (a) an employer who succeeds the exempt employer due to a merger or acquisition of the exempt employer; and
 - (b) another employer who succeeds a succeeding employer for the exempt employer due to a merger or acquisition of that succeeding employer.

Section 29(1): substituted (with effect on 7 October 2009), on 7 September 2010, by section 179(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 29(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 29(2)(a): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 29(2)(c): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 29(3): added (with effect on 7 October 2009), on 7 September 2010, by section 179(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

30 How applications to be exempt employer must be dealt with

- (1) The FMA must, within 28 days after receiving an application that may be made under section 29(1) and the documents required under section 29(2) to accompany the application,—
- (a) consider whether the FMA 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 FMA 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).

Section 30(1): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 30(1): amended (with effect on 7 October 2009), on 7 September 2010, by section 180 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 30(1)(a): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 30(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

31 Revocation of exempt employer approval

- (1) The FMA may revoke an approval given under section 30 if—
 - (a) the FMA has given not less than 28 days' notice to the employer that the FMA is considering whether to revoke the approval; and
 - (b) the FMA 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 FMA's initiative.
- (3) The FMA 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.

Section 31(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 31(1)(a): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 31(1)(b): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 31(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 31(3): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

32 FMA must give notice to Commissioner of exempt employers

The FMA 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.

Section 32 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 32: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 Opting in by person 18 years or more

(1) A person who is 18 years or more and 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 heading: substituted, on 7 September 2010, by section 181(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 34(1): amended, on 7 September 2010, by section 181(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

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).

35 Opting in by persons under 18

- (1) A person who is less than 18 years may only opt in in accordance with this section.
- (2) A person who is less than 16 years may opt in if all their guardians contract directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as—
 - (a) contracting directly with the provider; and
 - (b) 18 years for the purposes of the Minors' Contracts Act 1969; and
 - (c) opting in under section 34(1)(a).
- (3) A person who is 16 or 17 years old with a guardian or a CYPFA guardian may opt in if the person and 1 of their guardians or CYPFA guardians jointly contract directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as—

- (a) contracting directly with the provider; and
 - (b) 18 years for the purposes of the Minors' Contracts Act 1969; and
 - (c) opting in under section 34(1)(a).
- (4) A person who is 16 or 17 years old with no guardian may opt in if the person contracts directly with a provider. If the provider accepts the person, then the person is treated as—
- (a) 18 years for the purposes of the Minors' Contracts Act 1969;
 - (b) opting in under section 34(1)(a).
- (5) A person who is less than 16 years with a CYPFA guardian may opt in if the CYPFA guardian (independently from the person, and from all other, if any, CYPFA guardians, guardians, or both, of the person) contracts directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as—
- (a) contracting directly with the provider; and
 - (b) 18 years for the purposes of the Minors' Contracts Act 1969; and
 - (c) opting in under section 34(1)(a).
- (6) If a person who is less than 16 years with a CYPFA guardian is a member of a KiwiSaver scheme (whether opted into before or while the CYPFA guardian's guardianship has effect), the CYPFA guardian has for the purposes of this Act authority (instead of all guardians, if any, of the person, and independently from the person, and from all other, if any, CYPFA guardians of the person) to make decisions (for example, voluntary transfer decisions), or to take other steps, in respect of the person's membership of the scheme.

Section 35(1): substituted, on 7 September 2010, by section 182 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 35(2): substituted, on 7 September 2010, by section 182 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 35(3): added, on 7 September 2010, by section 182 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 35(3): amended, on 1 July 2014, by section 5(1)(a) of the KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

Section 35(3): amended, on 1 July 2014, by section 5(1)(b) of the KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

Section 35(4): added, on 7 September 2010, by section 182 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 35(5): inserted, on 1 July 2014, by section 5(2) of the KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

Section 35(6): inserted, on 1 July 2014, by section 5(2) of the KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

Section 35 compare note: repealed, on 7 September 2010, by section 182 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

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 on 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 on 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).

Section 46(3): substituted, on 21 May 2007, by section 62 of the 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 on 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 on 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 119G (which provides for transfers without consent in certain circumstances).

Section 49(2): amended, on 1 May 2011, by section 7 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 when—
- (a) the Commissioner receives 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) the Commissioner receives notice under section 173(1)(b) that the person must transfer to another scheme on a scheme's winding up and paragraph (bb) does not apply; or
 - (bb) a scheme winds up, if that winding up is after the Commissioner receives notice under section 173(1)(b)

- that the person must transfer to another scheme on the scheme's winding up; or
- (c) the Commissioner receives notice under section 210(2); or
 - (d) the Commissioner receives 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 on 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 on 1 July 2007), on 19 December 2007, by section 43(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 50(4): amended, on 21 December 2010, by section 173(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 50(4)(a): amended, on 21 December 2010, by section 173(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 50(4)(b): substituted, on 21 December 2010, by section 173(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 50(4)(bb): inserted, on 21 December 2010, by section 173(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 50(4)(c): amended, on 21 December 2010, by section 173(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 50(4)(d): amended, on 21 December 2010, by section 173(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

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.
- (1B) Despite subsection (1), subsections (4) and (5) do not apply if section 50(4)(b) or (bb) applies. Instead, the allocation under section 50(3) is treated as completed on the day on which it occurs.
- (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)(a), (c), or (d), 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(1B): inserted, on 21 December 2010, by section 174(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

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

Section 51(4)(b): amended, on 21 December 2010, by section 174(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 51(5): amended (with effect on 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

Subpart 3 heading: amended, on 1 July 2007, by section 222 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

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: substituted, on 1 July 2007, by section 223 of the 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).

Section 55 heading: amended, on 1 July 2007, by section 224(1) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 55(1): amended, on 1 July 2007, by section 224(2) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

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; and
 - (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.
- (5) Despite subsections (3) and (4), in the circumstances described in subsection (6), the provider of the old scheme must not transfer the member's accumulation to the new scheme other than by way of distributing the assets of the old scheme as the scheme is wound up.
- (6) The circumstances are that—
- (a) the trustees (in the case of a restricted KiwiSaver scheme) have, or the manager (in the case of any other KiwiSaver scheme) has, under section 119D, notified members of the old scheme of a proposal to transfer all

of the members of the old scheme to another scheme;
or

- (b) the trustees have, under section 173, lodged a copy of a winding-up order or resolution with the FMA (in the case of a restricted KiwiSaver scheme) or notified the manager of a winding-up order or resolution (in the case of any other KiwiSaver scheme).

Section 56(3)(c)(i): amended, on 1 July 2007, by section 225 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 56(3)(c)(iii): amended, on 1 July 2007, by section 63 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

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

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

Section 56(3)(c)(vi): added, on 1 July 2007, by section 63 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 56(5): added, on 1 May 2011, by section 8 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 56(6): added, on 1 May 2011, by section 8 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 notice under section 173(1)(b) that the person must transfer to another scheme on a scheme's winding up and paragraph (bb) does not apply; or
- (bb) a scheme winds up, if that winding up is after the Commissioner has received notice under section 173(1)(b) that the person must transfer to another scheme on the scheme's winding 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 clauses 4(a) and 5(a) in schedule 28 of the Income Tax Act 2007.
- (2) However, this section does not apply if section 119G 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 Kiwi-Saver 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).

Section 57(1): amended, on 1 July 2007, by section 226(a) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 57(1)(b): substituted, on 21 December 2010, by section 175 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 57(1)(bb): inserted, on 21 December 2010, by section 175 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 57(1)(c): amended, on 1 July 2007, by section 226(b) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 57(1)(d): added, on 1 July 2007, by section 226(c) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 57(1)(d): amended (with effect on 1 April 2008), on 6 October 2009, by section 719 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 57(2): amended, on 1 May 2011, by section 9 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 57(3): amended (with effect on 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, but not if section 57(1)(b) applies; and
- (b) advice as to the effect of this subpart and of section 50.

Section 59(a): amended, on 21 December 2010, by section 176 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

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

Subpart 4: added (with effect on 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 on 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 amount of the member's accumulation, less the amount that was transferred from an Australian complying superannuation scheme for the person to the Commissioner.

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

Section 59B(2)(b)(iii): amended, on 1 July 2013, by section 183 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

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 on 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), when they were received, and (if available) who they were paid by; 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 amount of the member's accumulation, less the amount that was transferred from an Australian complying superannuation scheme, for the person to the Commissioner, if the provider has not already done so; and
 - (c) pay the amount that was transferred from an Australian complying superannuation scheme (the **transferor scheme**) or the amount of the member's accumulation (whichever amount is smaller), for the person to—
 - (i) the transferor scheme; or
 - (ii) an Australian complying superannuation scheme chosen by the person; or
 - (iii) an Australian complying superannuation scheme chosen by the Commissioner, if the person does not choose one and it is not appropriate to pay to the transferor scheme.
- (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;
 - (iv) the amount that was transferred from an Australian complying superannuation scheme;
 - (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 (iv) 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 subsection (3)(a)(i) to (iv).
- (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 Commissioner must pay the money into the Crown Bank account.

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

Section 59D(2)(a)(i): amended, on 1 July 2013, by section 184(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 59D(2)(b): replaced, on 1 July 2013, by section 184(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 59D(2)(c): inserted, on 1 July 2013, by section 184(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 59D(3)(a)(iv): inserted, on 1 July 2013, by section 184(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 59D(3)(c): amended, on 1 July 2013, by section 184(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section 59D(4): amended, on 1 July 2013, by section 184(5) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

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
- (bb) for the period that the employee has a valid non-deduction notice that they have given to their employer under section 112B; 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(bb): inserted (with effect on 1 July 2012), on 2 November 2012, by section 230 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Section 62(c): amended (with effect on 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 on 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) 3% of the employee's gross salary or wages, if—
 - (i) section 60(1)(a), (b) or (c) first applied in respect of the employee on or after 1 April 2009 and the employee has not given his or her employer a notice under subsection (2); or
 - (ii) section 66A applied in respect of the employee immediately before 1 April 2009; or
 - (iii) the employee is on a 2% contribution rate immediately before the first pay period that starts on or after 1 April 2013 because they chose 2% under subsection (2); or
 - (ab) 4% of the employee's gross salary or wages, if section 60(1)(a), (b) or (c) first applied in respect of the employee before 1 April 2009 and the employee has not given his or her employer a notice under paragraph (b); 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) Despite subsection (1), the employee may choose a contribution rate of 3%, 4%, or 8% of their gross salary or wages by giving notice to their employer of the rate they choose.
- (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.

Section 64(1)(a): substituted, on 1 April 2009, by section 43(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 64(1)(a): amended, on 1 April 2013 (applying for payments of salary or wages for pay periods that start on or after that date), by section 231(1) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Section 64(1)(a)(iii): inserted, on 1 April 2013 (applying for payments of salary or wages for pay periods that start on or after that date), by section 231(2) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Section 64(1)(ab): inserted, on 1 April 2009, by section 43(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 64(2): substituted (with effect on 1 April 2009), on 6 October 2009, by section 721 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 64(2): amended, on 1 April 2013 (applying for payments of salary or wages for pay periods that start on or after that date), by section 231(3) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

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 a rate 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 presented to the House of Representatives under section 41 of the Legislation Act 2012 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(1)(a): amended, on 1 April 2009, by section 44 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

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

Section 65(4): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

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.

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

Section 66: amended, on 1 April 2009, by section 45 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

66A Obligation to make deductions: transitional rule

[Repealed]

Section 66A: repealed, on 1 April 2009, by section 46 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

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, RD 10, 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 7 September 2010, by section 185 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

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 employer 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 on 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 on 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 on 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 on 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)(a) 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 2 November 2012, by section 232 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

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 on 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).

81B Residual refunds

If the Commissioner can not process an amount held in the holding account in accordance with this Act, or the amount is in excess of what this Act or a Revenue Act requires to be in

the holding account, then the Commissioner may refund the amount to the person that the Commissioner considers has the best claim to it.

Section 81B: inserted, on 29 August 2011, by section 211 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

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.
- (3) Despite subsection (1), the Commissioner is not liable to pay interest on any amount described in that subsection, if the relevant person has notified the Commissioner in writing of their wish to not be paid interest.

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

Section 84(3): added, on 1 April 2009, by section 56(2) of the Taxation (Kiwi-Saver) 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 (Kiwi-Saver) 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 D, table 2, row 7, column 3 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(1) **lowest tax rate**: amended (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later tax years), by section 186(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

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, within 3 months of when the amount of contribution is on-paid to the provider.

Section 88: amended, on 2 November 2012, by section 233 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

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) *[Repealed]*

(4) *[Repealed]*

Section 89(3): repealed, on 6 October 2009, by section 723 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 89(4): repealed, on 6 October 2009, by section 723 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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 on 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).

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

[Repealed]

Section 94 : repealed, on 1 July 2007, by section 65 of the 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 salary or wage deductions made under the Student Loan Scheme Act 2011; 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)(c): replaced, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

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 re-

mittance 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 one 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 MK 1(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(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 must, if it is still in

his or her possession, refund the employer contribution to the employer.

Section 100: amended (with effect on 1 April 2008), on 6 October 2009, by section 724 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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.

(2B) Despite subsection (1), an employer does not have to pay a compulsory employer contribution as provided in sections 101FB and 101FC.

- (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 (Kiwi-Saver) Act 2007 (2007 No 110).

Section 101A(2B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 725 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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, parties to an employment relationship are free to agree contractual terms and conditions that disregard the purpose of this section described in subsection (1), and, to the extent of such agreement, subsec-

- tions (1) to (3) do not apply, unless, in respect of the employer and employee,—
- (a) section 60(1)(a), (b) or (c) first applies on or after the day of assent for the Taxation (Urgent Measures and Annual Rates) Act 2008; and
 - (b) the contractual terms and conditions do not account for the amount of compulsory contributions the employer is required to pay.
- (4A) In the circumstances described in subsection (4)(a) and (b), despite subsection (4),—
- (a) compulsory contributions must be paid in addition to an employee's gross salary or wages described in section 101D(3), in accordance with the purpose of this section described in subsection (1); and
 - (b) subsections (2) and (3) apply.
- (5) For the avoidance of doubt,—
- (a) 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; and
 - (b) *[Repealed]*
- (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 (Kiwi-Saver) Act 2007 (2007 No 110).

Section 101B(4): substituted, on 15 December 2008, by section 47 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 101B(4A): inserted, on 15 December 2008, by section 47 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 101B(5): substituted, on 10 September 2008, by section 10 of the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008 (2008 No 58).

Section 101B(5)(b): repealed, on 16 December 2008, by section 10 of the Employment Relations Amendment Act 2008 (2008 No 106).

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 (Kiwi-Saver) 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 starts on or before 31 March 2013, excluding a pay period to the extent to which paragraph (a) applies to it;
 - (c) 3%, 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 2013, excluding a pay period that paragraph (b) applies to.

- (d) *[Repealed]*
- (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 or section 119G of this Act, 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; or

- (C) one that has had 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 described in paragraph (b)(i) to (iii); and
 - (iv) the contributions scheme provides that the contributions vest completely in the employee in a period starting on or after the employee first becomes 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 constable:
 - (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 (inclusive of amounts payable under the ESCT rules) 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 (Kiwi-Saver) Act 2007 (2007 No 110).

Section 101D(4)(b): replaced, on 1 April 2013 (applying for payments of salary or wages for pay periods that start on or after that date), by section 234(1) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Section 101D(4)(c): replaced, on 1 April 2013 (applying for payments of salary or wages for pay periods that start on or after that date), by section 234(1) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Section 101D(4)(d): repealed, on 1 April 2009, by section 48 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 101D(5)(b)(i): amended, on 1 May 2011, by section 10 of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

Section 101D(5)(b)(iii)(B): amended (with effect on 1 April 2008), on 6 October 2009, by section 726(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 101D(5)(b)(iii)(C): added (with effect on 1 April 2008), on 6 October 2009, by section 726(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 101D(5)(c)(i): amended, on 1 October 2008, pursuant to section 116(a)(vii) of the Policing Act 2008 (2008 No 72).

Section 101D(8)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 726(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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 Kiwi-Saver 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 (Kiwi-Saver) 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 (Kiwi-Saver) Act 2007 (2007 No 110).

101FB Grace periods: employers

- (1) An employer does not have to pay a compulsory employer contribution for a payment of gross salary or wages to an employee in a grace period described in subsection (2), if, for the whole of the relevant grace period,—
 - (a) 1 or more of the following apply:
 - (i) the automatic enrolment rules apply to the employee;
 - (ii) the employer does not receive a notice under section 34(1) or 39 that the employee has opted in; and
 - (b) the employer does not deduct any amount of contributions required to be deducted from an employee's salary or wages; and
 - (c) the employer does not receive a notice under section 61 that requires the deduction of contributions for the employee.
- (2) The grace periods for the purposes of subsection (1) are—
 - (a) the period starting on the day that the employee starts new employment and finishing on the earlier of the day—
 - (i) that is 1 year after the day that the employee starts new employment;
 - (ii) that the employee ceases employment;

- (b) the period starting on the day that is 1 year after the day that the employee starts new employment and finishing on the earliest of—
 - (i) the day that is before the day on which the employer receives a notice under section 34(1) or 39 that the employee has opted in:
 - (ii) the day that is before the day on which the employer receives a notice under section 61 that requires the deduction of contributions for the employee:
 - (iii) the day that the employee ceases employment.

Section 101FB: inserted (with effect on 1 April 2008), on 6 October 2009, by section 727 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

101FC De minimis: other contributions and hybrid schemes amount

For a payment of gross salary or wages to an employee, an employer does not have to pay a compulsory employer contribution for the employee, if, in respect of the payment of gross salary or wages, one of the following amounts is equal to or more than the relevant **CEC rate** in section 101D(4):

- (a) the amount of **other contributions** that meets the requirements of section 101D(5)(b) divided by the employee's salary or wages (as defined for the relevant registered superannuation scheme):
- (b) the **hybrid schemes amount** that meets the requirements of section 101D(6) to (8) divided by the employee's salary or wages (as defined for the relevant registered superannuation scheme).

Section 101FC: inserted (with effect on 1 April 2008), on 6 October 2009, by section 727 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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 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), 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 member's employer of the date, for the purposes of the employer applying this subpart.
- (4) If a member of a complying superannuation fund will be entitled within 2 months to withdraw an amount from the fund under a rule the same as clause 4(3) of the KiwiSaver scheme rules, the provider must send a notice to the member's employer stating the date on which the member will be entitled to withdraw.

Section 101G: inserted, on 1 April 2008, by section 65 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 101G(3): amended, on 6 October 2009, by section 728(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 101G(3): amended, on 6 October 2009, by section 728(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 101G(4): added, on 6 October 2009, by section 728(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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 compul-

sory employer contribution. The provider must send to the FMA 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 FMA.
- (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 FMA.
- (5) If the employer pays an amount of compulsory employer contribution remedying a failure to pay that was notified to the FMA under subsection (3), the provider must immediately give a notice to the FMA 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).

Section 101H(2): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101H(3): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101H(4)(f): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101H(5): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

101I Failure to pay: FMA's duties

- (1) If the FMA receives a notice under section 101H(3), the FMA must decide the amount of compulsory employer contribution that an employer to which the notice relates has failed to pay for the relevant calendar months.

- (2) The FMA may use any power (with necessary modifications for complying superannuation funds) that the FMA has in respect of KiwiSaver schemes in the performance of the duty to decide imposed by subsection (1).
- (3) As soon as practicable, the FMA must give a notice to the employer showing the information described in subsection (4).
- (4) A notice under subsection (3) must—
 - (a) require the payment of the amount (the liable amount) that the FMA has decided, under subsection (1), that an employer has failed to pay to the provider; and
 - (b) specify the relevant calendar months and related amounts; and
 - (c) specify that the employer must pay the liable amount within 28 days after the notice is given; and
 - (d) specify the employer's name, address and tax file number (if known); and
 - (e) specify the relevant employees to whom the failure to pay relates, their tax file numbers, and addresses; and
 - (f) specify the pay periods and relevant amounts for the employees to whom the failure to pay relates; and
 - (g) inform the employer that failure to comply with the notice will result in the Commissioner receiving notice of the failure to comply; and
 - (h) show other information required by the Commissioner.
- (5) If the employer does not pay the liable amount in the period specified in subsection (4)(c) and the employer has not objected to the FMA's decision under subsection (1) within the time allowed under section 186, the FMA must immediately—
 - (a) give to the Commissioner a notice showing the information described in subsection (6); and
 - (b) send to the provider a copy of the notice.
- (6) A notice under subsection (5) must—
 - (a) state that the employer has failed to comply with notices under section 101H(3) and subsection (3); and
 - (b) show the information described in subsection (4); and
 - (c) specify the extent to which an amount of compulsory employer contributions remains unpaid for the liable amount; and

- (d) specify the relevant employees to whom the unpaid amounts relate, their tax file numbers, and addresses; and
 - (e) specify the pay periods and relevant amounts for the employees to whom the unpaid amounts relate.
- (7) If the FMA makes a decision, upon an employer's objection to the FMA's decision under subsection (1), and the decision is that the employer to which the notice under section 101H(3) relates has failed to pay an amount of compulsory employer contribution for the relevant calendar months, the employer is treated as having not objected, and the FMA must immediately give the Commissioner the notice described in subsection (5).

Section 101I: inserted, on 1 April 2009, by section 66 of the Taxation (Kiwi-Saver) Act 2007 (2007 No 110).

Section 101I heading: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101I(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101I(2): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101I(3): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101I(4)(a): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101I(5): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101I(5): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101I(7): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101I(7): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

101J Failure to pay: Commissioner

- (1) If the Commissioner receives a notice under section 101I(5), the amount of compulsory employer contributions unpaid for the liable amount, specified in that notice, is treated as an amount due and payable by the employer to the Commissioner on the 20th working day after the Commissioner receives the notice under section 101I(5).

- (2) The Commissioner must send the employer a notice of the amount due and payable, and the due date, specified in subsection (1).

Section 101J: inserted, on 1 April 2009, by section 66 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

101K Recovered amounts

An amount of compulsory employer contribution for an employee's complying superannuation fund that is received by the FMA or the Commissioner by virtue of this subpart must be paid by them to the relevant provider. The relevant amount of compulsory employer contributions remaining unpaid for the relevant liable amount is consequentially reduced.

Section 101K: inserted, on 1 April 2009, by section 66 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 101K: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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.

112B Non-deduction notices

- (1) A person who has passed the KiwiSaver end payment date described in Schedule 1, clause 4(2) may give to their employer a notice (a **non-deduction notice**) stating that the employer must stop making deductions of contributions from the person's salary or wages under subpart 1.
- (2) The non-deduction notice is valid, for the purposes of section 62(bb), for the first payment of salary or wages after the non-deduction notice is given to the person's employer. It is valid for subsequent payments of salary or wages, until the person revokes that non-deduction notice by giving to the employer another notice (a **revocation notice**), in accordance with subsection (3), stating that the employer must start making deductions of contributions from the person's salary or wages under subpart 1.
- (3) A person must not give a revocation notice to the employer within 3 months of giving a non-deduction notice to them, unless the employer agrees to receive the revocation notice within those 3 months.

Section 112B: inserted (with effect on 1 July 2012), on 2 November 2012, by section 235 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

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 established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; 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) it has a manager; and
 - (f) it has a trustee.
- (2) *[Repealed]*
- (3) The provisions of the trust deed referred to in subsection (1)(a) may also govern a registered superannuation scheme.
- (4) This section is subject to the requirement for registration under subpart 3.
- (5) This section does not apply to a restricted KiwiSaver scheme.
- Section 116(1)(a): substituted, on 1 May 2011, by section 11(1) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).
- Section 116(1)(e): substituted, on 1 May 2011, by section 11(2) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).
- Section 116(1)(f): substituted, on 1 May 2011, by section 11(2) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).
- Section 116(2): repealed, on 1 May 2011, by section 11(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).
- Section 116(3): amended, on 1 May 2011, by section 11(4) of the KiwiSaver Amendment Act 2011 (2011 No 8).
- Section 116(5): added, on 1 May 2011, by section 11(5) of the KiwiSaver Amendment Act 2011 (2011 No 8).

116A Requirements for restricted KiwiSaver schemes

- (1) A scheme that is identified on the KiwiSaver schemes register as a restricted KiwiSaver scheme must—
- (a) meet the requirements of section 116(1)(a) to (d); and
 - (b) have at least 1 independent trustee; and
 - (c) have—
 - (i) at least 1 trustee who is a New Zealand resident; or
 - (ii) if any of the trustees is a corporate trustee, at least 1 director of the corporate trustee who is a New Zealand resident; and
 - (d) restrict membership of the scheme, in its conditions of entry of members to the scheme and in the way in which those conditions are applied, to 1 or more of the classes of persons described in subsection (2).
- (2) The classes of persons are—
- (a) persons who are employed by a particular employer:

- (b) persons who are employed by a related body corporate (within the meaning of section 5B(2) of the Securities Markets Act 1988) of a particular employer:
 - (c) persons who belong to a particular profession, calling, trade, or occupation:
 - (d) persons who belong to a particular association, society, or other body with a definable community of interest:
 - (e) persons who are immediate family members of, or wholly or partially financially dependent on, a person in 1 or more of the classes of persons described in paragraphs (a) to (d).
- (3) In subsection (2)(e), **immediate family member**, in relation to a person, means the persons's spouse, civil union partner, de facto partner, parent, child, step-parent, or stepchild.
- (4) A restricted scheme must obtain the prior written consent of the FMA before changing the conditions of entry of members to the scheme, or the way in which those conditions are applied, in a way that expands or is likely to expand the classes of persons who may become members of the scheme.
- (5) As soon as practicable after a restricted scheme ceases to comply with subsection (1)(c), the trustees of the scheme must notify the FMA of that fact.

Section 116A: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

116B Requirements for managers of KiwiSaver schemes

- (1) The manager of a KiwiSaver scheme is responsible for performing the following functions:
- (a) offering interests in the scheme for subscription:
 - (b) issuing interests in the scheme:
 - (c) managing scheme investments and property:
 - (d) administering the scheme.
- (2) The manager—
- (a) must be a company within the meaning of the Companies Act 1993; and
 - (b) must have at least 1 director who is a New Zealand resident; and
 - (c) must be designated or appointed as manager of the scheme under the trust deed; and

- (d) must be a party to the trust deed or bound to comply with the relevant provisions of the trust deed as if it were a party to the trust deed.
- (3) The manager has the same liability for its acts and omissions in the performance of its functions and duties, and the exercise of its powers, as it would if it performed those functions or duties, or exercised those powers, as a trustee.
- (4) As soon as practicable after a manager ceases to comply with subsection (2)(b), the manager must notify the FMA of that fact.

Section 116B: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

116C Duty of manager with respect to money received

- (1) This section applies to all money received by the manager, or an agent of the manager, in respect of contributions.
- (2) On receipt by the manager,—
 - (a) the manager must pay the money into a separate bank account; and
 - (b) the money is subject to the trusts governing the scheme that are set out in the trust deed.

Compare: 1960 No 99 ss 14(1), 15

Section 116C: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

116D Requirements for trustees of KiwiSaver schemes other than restricted schemes

- (1) A KiwiSaver scheme other than a restricted scheme must not have more than 1 trustee.
- (2) The trustee must hold a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers interests in the scheme.
- (3) The trustee must supervise the manager's performance of—
 - (a) the functions of the manager as set out in section 116B(1); and
 - (b) any other functions that the manager performs in relation to the scheme under the trust deed or an enactment.
- (4) The trustee must not delegate the function described in subsection (3).

Section 116D: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 116D(2): substituted, on 1 October 2011, by section 62(2) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

116E Removal of trustees of KiwiSaver schemes other than restricted schemes

- (1) The trustee of a KiwiSaver scheme other than a restricted scheme must not resign as trustee of the scheme unless—
 - (a) all functions and duties of the position have been performed; or
 - (ab) another person has been appointed to the position who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers interests in the scheme, and that person has accepted the appointment; or
 - (b) the High Court consents.
- (2) Despite anything to the contrary in the trust deed, a manager must not discharge or remove a trustee unless the manager does so—
 - (a) under section 23 or 38 of the Securities Trustees and Statutory Supervisors Act 2011; or
 - (b) with the approval of the High Court.

Compare: 1960 No 99 s 10

Section 116E: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 116E(1)(ab): inserted, on 1 October 2011, by section 62(3) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 116E(2): substituted, on 1 October 2011, by section 62(4) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

116F Manager and trustee must be independent

- (1) This section applies to a KiwiSaver scheme other than a restricted scheme.
- (2) A person (**A**) must not act as trustee of the scheme, and another person (**B**) must not act as manager of the scheme, if A and B are associated persons (within the meaning of subpart YB of the Income Tax Act 2007).

Section 116F: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

116G Investments and property of KiwiSaver schemes

The investments and property of a KiwiSaver scheme must be vested in—

- (a) the trustees; or
- (b) 1 or more nominated persons of the trustees; or
- (c) 1 or more nominees of a nominated person of the trustees.

Section 116G: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

116H Nomination of person

- (1) If authorised by the trust deed, the trustees of a KiwiSaver scheme may nominate, in writing, 1 or more persons in which are vested any of the investments or property of the scheme.
- (2) The following persons are not eligible to be nominated as, or to act as, a nominated person:
 - (a) the manager of the scheme;
 - (b) a person who is an associated person (within the meaning of subpart YB of the Income Tax Act 2007) of the manager.
- (3) The trustees, in addition to their own obligations as trustees in relation to the scheme, are jointly and severally liable with the nominated person for the due and faithful performance and observance by the nominated person of all the duties and obligations imposed on the nominated person in relation to the scheme either by this Act or by law.

Compare: 1960 No 99 ss 6, 6A

Section 116H: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

116I Appointment of nominee by nominated person

- (1) If authorised in writing by the trustees, a nominated person may appoint 1 or more nominees in which are vested any of the investments or property of the scheme.
- (2) The following persons are not eligible to be appointed as, or to act as, a nominee:
 - (a) the manager of the scheme:

- (b) a person who is an associated person (within the meaning of subpart YB of the Income Tax Act 2007) of the manager.
- (3) The trustee and the nominated person that appointed the nominee, in addition to their own obligations in relation to the scheme, are jointly and severally liable with the nominee for the due and faithful performance and observance by the nominee of all the duties and obligations imposed on the nominee in relation to the scheme by this Act or by law.

Compare: 1960 No 99 ss 6B, 6C

Section 116I: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

116J Trust deed or other instrument must not exempt trustees, managers, or investment managers from liability

- (1) A provision in a trust deed or any other instrument is void to the extent that it would have the effect of exempting or indemnifying a trustee, a manager, or an investment manager from liability for breach of trust in the event of the trustee, manager, or investment manager failing to meet,—
 - (a) in the case of a trustee of a KiwiSaver scheme other than a restricted scheme, the standard of care set out in clause 1A(b) of Schedule 1:
 - (b) in the case of a manager, the standard of care set out in clauses 1B(1)(b) and 1E(2) of Schedule 1:
 - (c) in the case of an investment manager, the standard of care set out in clause 1E(2) of Schedule 1:
 - (d) in the case of a trustee of a restricted KiwiSaver scheme,—
 - (i) the standard of care set out in clause 1E(2) of Schedule 1; or
 - (ii) the standard of care required of a trustee by law:
 - (e) in the case of an independent trustee of a restricted KiwiSaver scheme, the standard of care set out in section 117(2)(a).
- (2) However, the trustees of a restricted KiwiSaver scheme, and the trustee and the manager of any other KiwiSaver scheme,

are otherwise entitled to the same indemnities and relief as any trustee (within the meaning of the Trustee Act 1956).

Compare: 1960 No 99 s 24

Section 116J: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

116K Trustees of KiwiSaver schemes other than restricted schemes may apply to High Court for order relating to scheme

- (1) This section applies if the trustee of a KiwiSaver scheme other than a restricted scheme is satisfied that—
 - (a) there is a significant risk that the interests of members of the scheme will be materially prejudiced; or
 - (b) the provisions of the trust deed are no longer adequate to give proper protection to members.
- (2) The trustee may apply to the High Court for an order under this section.
- (3) The court may direct that the application be served on any person that the court thinks fit.
- (4) On an application, the court, after giving the manager and any other person that the court thinks fit the opportunity to be heard, may make an order that—
 - (a) amends the provisions of the trust deed of the scheme:
 - (b) imposes restrictions on the activities of the trustee or the manager (including, in the case of the manager, restrictions on advertising) that the court thinks are necessary to protect the interests of members:
 - (c) stays any or all civil proceedings before any court by or against the trustee or the manager:
 - (d) restrains the payment under this Act of money by the manager or the trustee to members or a class of members:
 - (e) restrains the transfer under this Act of a member's accumulation from one KiwiSaver scheme to another:
 - (f) removes a person as manager of a scheme and appoints another person as manager of the scheme (with any powers that the court orders):

- (g) gives any other directions that the court considers necessary to protect the interests of members, or the public.
 - (5) The court may vary or cancel an order made under this section.
 - (6) In exercising its powers under this section, the court must have regard to the interests of all creditors in respect of the scheme.
- Section 116K: inserted, on 1 May 2011, by section 12 of the KiwiSaver Amendment Act 2011 (2011 No 8).

117 Additional duty of independent trustees

- (1) This section applies to a trustee of a restricted KiwiSaver scheme if—
 - (a) the trustee is named as an independent trustee in an application or proposal submitted in relation to the KiwiSaver scheme under any of the sections specified in subsection (3) (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 any of the sections specified in subsection (3) 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 any of the sections specified in subsection (3) (or as a substitute for a person subsequently appointed) if the trustees notify the FMA 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 would exercise in managing the affairs of others; and
 - (b) is liable in any civil proceedings for any act or omission as if that standard of care, diligence, and skill applied.
- (3) The sections referred to in subsection (1) are—

- (a) section 131(1) and (4); and
- (b) sections 131(2) and (3), 132, 135, and 148 of this Act as in force immediately before their repeal by section 31, 32, or 35 of the KiwiSaver Amendment Act 2011.

Section 117(1): amended, on 1 May 2011, by section 13(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 117(1)(a): amended, on 1 May 2011, by section 13(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 117(1)(b): amended, on 1 May 2011, by section 13(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 117(1)(c): amended, on 1 May 2011, by section 13(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 117(1)(c): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 117(2)(a): amended, on 1 May 2011, by section 13(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 117(3): added, on 1 May 2011, by section 13(4) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 (Kiwi-Saver) Act 2007 (2007 No 110).

*Application of Superannuation Schemes Act
1989 to KiwiSaver scheme
[Repealed]*

Heading: repealed, on 1 May 2011, by section 14 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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), 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; 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) *[Repealed]*

Section 118(2): amended, on 1 May 2011, by section 15(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 118(2)(a): amended, on 1 May 2011, by section 15(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 118(3): repealed, on 1 May 2011, by section 15(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Trust deeds

Heading: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119 Content of trust deeds

- (1) The trust deed of a KiwiSaver scheme must specify the following matters:
 - (a) the conditions of entry of members to the scheme:
 - (b) the conditions of termination of membership of the scheme:
 - (c) the contributions payable:
 - (d) the conditions under which benefits become payable and the way in which the benefits will be determined:
 - (e) the number of trustees, and provision for their appointment, removal from office, and retirement:
 - (f) the circumstances in which the scheme may be wound up and the way in which the assets of the scheme are to be distributed in the event of a winding-up:
 - (g) in the case of a KiwiSaver scheme other than a restricted scheme, provision for the appointment, removal from office, and retirement of the manager.
- (2) If other provisions of this Act expressly set out requirements in relation to the matters set out in subsection (1) (for example, by terms implied by the KiwiSaver scheme rules or provision for how a scheme must be wound up),—
 - (a) the trust deed is subject to those provisions; and
 - (b) subsection (1) is satisfied by reference to the relevant provisions in this Act in respect of those matters.

Compare: 1989 No 10 s 7

Section 119: substituted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119A Implied provision as to amendments reducing accrued benefits, etc

- (1) There is implied in the trust deed of a KiwiSaver scheme a provision that an amendment requiring consent must not be made unless the trustees (in the case of a restricted KiwiSaver scheme) have, or the manager (in the case of any other

KiwiSaver scheme) has, obtained the written consent of every member who would be adversely affected by the amendment.

- (2) In subsection (1), **amendment requiring consent** means an amendment of the trust deed that would have the effect of—
- (a) reducing, postponing, or otherwise adversely affecting the benefits, whether vested, contingent, or discretionary, that may in due course flow from, or are attributable to, membership of the scheme up to the date the amendment is made; or
 - (b) removing a right of members to participate in the management of the scheme; or
 - (c) increasing the contributions, fees, or charges payable by a member; or
 - (d) providing for the reversion of any assets of the scheme to an employer to a greater extent than already provided for in the trust deed.

Compare: 1989 No 10 s 9

Section 119A: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119B Application of sections 119C to 119I

Sections 119C to 119I apply to transfers or proposed transfers between KiwiSaver schemes, other than transfers to which subpart 3 of Part 2 applies.

Section 119B: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119C Implied provision as to transfer of members, etc

- (1) There is implied in the trust deed of a KiwiSaver scheme a provision that no member of the scheme will be transferred to another KiwiSaver scheme, or to another section of the same scheme, unless the trustees (in the case of a restricted KiwiSaver scheme) have, or the manager (in the case of any other KiwiSaver scheme) has, obtained the written consent of the member concerned.
- (2) This section is subject to section 119G and regulations made under section 230.

Compare: 1989 No 10 s 9B(1), (1A), (5)

Section 119C: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 119C(2): amended, on 14 September 2013, by section 91 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

119D Procedural requirements in case of certain transfers

- (1) This section and sections 119E to 119H apply if it is proposed to transfer (whether at the same time or over an extended period) all or a substantial number of members from a KiwiSaver scheme to another KiwiSaver scheme.
- (2) The manager of each KiwiSaver scheme affected, other than a restricted scheme, must, at least 1 month before the date on which the manager requires members to give their written consent to a proposed transfer,—
 - (a) consult the trustee of the scheme on the proposed transfer; and
 - (b) notify the members described in subsection (4) in writing of—
 - (i) the proposed transfer and its implications for members; and
 - (ii) the date on which the proposed transfer is to occur; and
 - (iii) the date by which the written consent of members to the proposed transfer must be received by the manager; and
 - (iv) any comments concerning the proposed transfer made by the trustee as a result of consultation under paragraph (a); and
 - (v) the fact that a copy of the notice has been forwarded to the FMA; and
 - (c) notify the FMA in writing of the matters described in paragraph (b)(i) to (iv).
- (3) The trustees of each restricted KiwiSaver scheme affected must, at least 1 month before the date on which they require members to give their written consent to a proposed transfer,—
 - (a) notify the members described in subsection (4) in writing of—

- (i) the proposed transfer and its implications for members; and
 - (ii) the date on which the proposed transfer is to occur; and
 - (iii) the date by which the written consent of members to the proposed transfer must be received by the trustees; and
 - (iv) the fact that a copy of the notice has been forwarded to the FMA; and
 - (b) notify the FMA in writing of the matters described in paragraph (a)(i) to (iii).
- (4) The persons who must be notified under subsections (2)(b) and (3)(a) are all members of the scheme other than those members who, in the opinion of the FMA, are not likely to be materially affected by the proposed transfer.
- (5) Giving notice under this section does not derogate from the need to comply with any other provision of this Act.
- (6) For the purposes of this section and section 119E, references to the transfer of members from one scheme to another include references to transfers of members from one section of a scheme to another section of the same scheme.

Compare: 1989 No 10 s 9B(2)–(3), (5)

Section 119D: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119E When requirements of section 119D not met

For the purposes of section 169, and without limiting that section, it is a ground for the FMA to have reasonable cause to believe that a particular scheme to which members are transferred fails to meet the requirements of section 119D if,—

- (a) over any 12-month period, either—
 - (i) 20% or more of the members of another KiwiSaver scheme are transferred to the particular KiwiSaver scheme; or
 - (ii) the number of members of the particular KiwiSaver scheme is increased by 20% or more by reason of a transfer of members from another KiwiSaver scheme; and

- (b) the members of the particular KiwiSaver scheme who are described in section 119D(4) have not been notified of the transfer, or any notification given has not adequately set out the implications of the transfer.

Compare: 1989 No 10 s 9B(4)

Section 119E: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119F Information required in case of transfer under section 119D

In respect of a transfer to which section 119D applies, the provider of the scheme from which a member (A) transfers must give the following information to the provider of the scheme to which A transfers:

- (a) A's name, address, and date of birth:
- (b) A's tax file number:
- (c) the date on which A first became a member of a KiwiSaver scheme:
- (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:
- (e) the name, address, and tax file number of both the provider and the scheme:
- (f) any other information that the Commissioner requires the provider to give to the provider of the scheme to which A transfers.

Section 119F: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119G When FMA may approve section 119D transfers without consent of members

- (1) In respect of a transfer to which section 119D applies, the requirement in section 119C to obtain the written consent of all or any of the members of a scheme does not apply if the FMA approves the transfer under this section.

- (2) The FMA may approve the transfer if the FMA is satisfied that—
- (a) the terms and conditions of the scheme to which the members are to be transferred (the **new scheme**) are no less favourable to members than the terms and conditions of the scheme from which they are being transferred (the **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 119H has been followed.
- (3) The FMA may decline to approve a transfer if the FMA considers that the transfer would adversely affect the interests of all or any of the members of the old scheme in a material way.
- (4) In determining whether subsection (2) or (3) applies, the FMA may—
- (a) have regard to the likely effect of the new scheme on benefits to members as a whole; and
 - (b) have regard to any other matter that the FMA considers relevant.
- (5) For a transfer that the FMA has approved,—
- (a) each relevant member of the old scheme is treated as offering to be a member of the new scheme on the terms and conditions for that new scheme; and
 - (b) the provider of the new scheme is treated as accepting the member's offer.
- (6) The FMA may publish, in any form that the FMA thinks fit, guidance on matters that the FMA considers relevant under this section (including principles that the FMA may use to decide whether to approve a transfer).

Compare: 1989 No 10 s 9BAA

Section 119G: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119H How approval under section 119G may be granted

- (1) An application for approval under section 119G may be made by—

- (a) the trustees (in the case of a restricted KiwiSaver scheme) of the old scheme or the new scheme;
 - (b) the trustee or the manager (in the case of any other Kiwi-Saver scheme) of the old scheme or the new scheme;
 - (c) a relevant employer.
- (2) The FMA may accept an application for approval if it 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 guidelines published by the FMA (if any) for the purposes of this subsection.
- (3) The FMA may require the applicant to give the FMA, with the application or at any later time,—
- (a) a certificate, signed by a person of a class specified by the FMA, that the transfer meets the requirements of section 119G; and
 - (b) any other information about the new scheme, the old scheme, or the transfer.
- (4) The applicant must give notice to every member of the old scheme—
- (a) that the applicant has applied for approval to transfer the members without their written consent; and
 - (b) that the member may make submissions to the FMA about the transfer.
- (5) The FMA must have regard to submissions before deciding whether or not to give approval.
- (6) The FMA may give approval subject to any terms and conditions that the FMA 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.

Compare: 1989 No 10 s 9BAB

Section 119H: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119I FMA may exempt trustees and managers from requirement to obtain written consent of members

The FMA may exempt the trustees of a restricted KiwiSaver scheme or the manager of any other KiwiSaver scheme from the requirement to obtain the written consent of all members of the scheme who are required to give consent under section 119A or 119C if the FMA is satisfied that—

- (a) the trustees have not, or the manager has not, been able to contact all of those members despite having taken all reasonable steps to do so; and
- (b) the proposed action is not unreasonable in relation to the best interests of 1 or more of those members who have not been contacted.

Compare: 1989 No 10 s 9BA

Section 119I: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119J Application and enforcement of implied provisions

- (1) Sections 119A to 119I, 129A, and 129B apply notwithstanding anything to the contrary in the trust deed.
- (2) Every provision implied in a trust deed in accordance with sections 119A to 119I, 129A, and 129B is enforceable by the manager, the trustees, or a member of the scheme.

Compare: 1989 No 10 s 11

Section 119J: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Prospective members' rights to information

Heading: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119K Prospective members' rights to information

- (1) A person who is eligible to become a member of a KiwiSaver scheme has the right, on request,—
 - (a) to look at, at any reasonable time, a copy of the trust deed:
 - (b) to receive, on payment of a reasonable fee, a copy of the trust deed:

- (c) to receive, free of charge, a copy of the annual financial statements and any auditor's report.
- (2) In subsection (1), **trust deed** does not include a participation agreement that would not relate to the person if the person were to become a member of the scheme.
- (3) Nothing in subsection (1) limits any provision in the Securities Act 1978.

Compare: 1989 No 10 s 15A

Section 119K: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Members' rights to information

Heading: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

119L Members' rights to information

- (1) Each member of a KiwiSaver scheme must—
 - (a) be given, within 6 months of the close of each financial year of the scheme, a copy of the annual report prepared under section 123 in respect of that year; and
 - (b) have the right, on request,—
 - (i) to receive an estimate of the member's benefits:
 - (ii) to look at, at any reasonable time, a copy of the trust deed:
 - (iii) to receive, on payment of a reasonable fee, a copy of the trust deed:
 - (iv) to receive, free of charge, a copy of the annual financial statements and any auditor's report.
- (2) Subsection (1)(a) 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.
- (3) The requirement in subsection (1)(a) is treated as met in respect of a member if—
 - (a) the member has consented, in writing, to receive a World Wide Web uniform resource locator for access to an electronic copy of the annual report (the **annual report URL**); and
 - (b) the member is given the annual report URL within 6 months of the close of the relevant financial year.

- (4) In subsection (1), **trust deed** does not include a participation agreement that does not relate to the member.
- (5) Nothing in subsection (1) limits sections 54A, 54B, or any other provision of the Securities Act 1978.

Compare: 1989 No 10 s 17

Section 119L: inserted, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

120 Application of sections 8 to 11 of Superannuation Schemes Act 1989

[Repealed]

Section 120: repealed, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

121 Further modifications to application of sections 8 to 11 of Superannuation Schemes Act 1989

[Repealed]

Section 121: repealed, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

122 Application of other provisions of Superannuation Schemes Act 1989

[Repealed]

Section 122: repealed, on 1 May 2011, by section 16 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Annual reports, returns, and statements

Heading: inserted, on 1 May 2011, by section 17 of the KiwiSaver Amendment Act 2011 (2011 No 8).

123 Requirement for annual report

- (1) The trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must, within 5 months after the end of each financial year, prepare a report on the scheme for that year.
- (2) In the case of a KiwiSaver scheme other than a restricted scheme, the manager must consult the trustee about the annual report.

- (3) The annual report must contain, or have attached to it, the prescribed information, statements, certificates, and documents.
- (4) The trustees or the manager (as the case may be) must, within 28 days after the annual report is completed, send to the FMA a copy of the completed report and, if not already contained in or attached to the report, a copy of the annual financial statements.

Section 123: substituted, on 1 May 2011, by section 18 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must provide an annual return to the FMA 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 or the manager (as the case may be) to provide—
- (a) information about an identifiable individual; or
 - (b) information that is not in the possession or control of the trustees or the manager (as the case may be); or
 - (c) information that is not reasonably ascertainable from information that is in the possession or control of the trustees or the manager (as the case may be).

Section 125(1): amended, on 1 May 2011, by section 19(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 125(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 125(4): amended, on 1 May 2011, by section 19(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 125(4)(b): amended, on 1 May 2011, by section 19(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 125(4)(c): amended, on 1 May 2011, by section 19(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

125A Requirement for annual personalised statement of contributions and accumulations for members

The trustees (in the case of a complying superannuation fund or a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must provide annually to each person who is a member of that fund or scheme during the relevant year a statement showing the following for that person:

- (a) the amount of each type of contribution received by the provider of the fund or scheme (as the case may be) for the year; and
- (b) the member's accumulation at the end of the year; and
- (c) any other prescribed information.

Section 125A: substituted, on 1 May 2011, by section 20 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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, the manager, or any member of the scheme.

(4) *[Repealed]*

(5) *[Repealed]*

Section 126(3)(b): amended, on 1 May 2011, by section 21(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 126(4): repealed, on 1 May 2011, by section 21(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 126(5): repealed, on 1 May 2011, by section 21(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

127 Exercise of functions by FMA relating to clause 2 of KiwiSaver scheme rules

- (1) In exercising any function under this Act that requires the FMA 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 FMA—
 - (a) must have regard to any prescribed matter;
 - (b) may have regard to any other matter that the FMA considers relevant;
 - (c) may make decisions in accordance with any prescribed process.
- (2) The FMA may publish, in any form that the FMA considers fit, guidance as to matters that the FMA considers relevant to considering whether a KiwiSaver scheme complies with clause 2 of the KiwiSaver scheme rules (including principles that the FMA may use to make that assessment).

- (3) The FMA is not limited to considering matters published by the FMA under subsection (2).

Section 127 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 127(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 127(1)(b): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 127(2): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 127(3): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

128 Participation agreements executed before registration

[Repealed]

Section 128: repealed, on 1 May 2011, by section 22 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 MK 1 of the Income Tax Act 2007 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, a manager, or a member of the scheme or fund.

Section 128A: inserted, on 1 July 2007, by section 66 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 128A(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 729 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 128A(1): amended (with effect on 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 on 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 on 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, on 1 May 2011, by section 23 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 128A(2)(b): amended (with effect on 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, a manager, or a member of the scheme.

Section 128B: inserted (with effect on 1 July 2007), on 19 December 2007, by section 74 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 128B(2)(b): amended, on 1 May 2011, by section 24 of the KiwiSaver Amendment Act 2011 (2011 No 8).

128C Terms relating to lump sum payments by complying superannuation funds

- (1) Terms necessary for giving effect to clause 2(c) in schedule 28 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, a manager, or a member of the fund.

Section 128C: inserted, on 1 April 2008, by section 75 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 128C(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 730 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 128C(2)(b): amended, on 1 May 2011, by section 25 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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, a manager, or 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).

Section 128D(2)(b): amended, on 1 May 2011, by section 26 of the KiwiSaver Amendment Act 2011 (2011 No 8).

128E Provisions implied in trust deeds by regulations

A provision implied in a trust deed by regulations made under section 228(1)(bb)—

- (a) does not apply to the extent that it is inconsistent with provisions implied in the trust deed by this Act; but
- (b) applies despite anything else to the contrary in the trust deed; and
- (c) is enforceable by the trustees, the manager, or any member of the scheme, unless the regulations provide otherwise.

Section 128E: inserted, on 1 May 2011, by section 27 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 (in the case of a restricted KiwiSaver scheme) or the trustee or the manager (in the case

- of any other KiwiSaver scheme) propose to amend the trust deed of the scheme in a way that will or may affect—
- (a) the members of the scheme in their capacity as members of the scheme; or
 - (b) the trustees of the scheme in their capacity as trustees of the scheme; or
 - (c) the manager of the scheme in its capacity as manager of the scheme.
- (2) Before an amendment of the type referred to in subsection (1) is made, the trustees of the scheme, or the trustees' solicitor, must give a certificate that the trust deed, when amended as proposed,—
- (a) will comply with section 119; and
 - (b) will not contain a provision that is contrary to those implied in a trust deed by or under this Act (including the KiwiSaver scheme rules).
- (3) Within 14 days after any amendment to the trust deed is made, the trustees must ensure that a copy of that certificate and a copy of the amendment are lodged with the FMA.
- (4) *[Repealed]*
- Section 129(1): substituted, on 1 May 2011, by section 28(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).
- Section 129(2): substituted, on 1 May 2011, by section 28(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).
- Section 129(3): amended, on 1 May 2011, by section 28(2)(a) of the KiwiSaver Amendment Act 2011 (2011 No 8).
- Section 129(3): amended, on 1 May 2011, by section 28(2)(b) of the KiwiSaver Amendment Act 2011 (2011 No 8).
- Section 129(3): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).
- Section 129(4): repealed, on 19 December 2007, by section 77(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

129A Implied provision as to alterations to scheme

- (1) There is implied in the trust deed of a KiwiSaver scheme a provision that an alteration described in subsection (2) must be effected by way of amendment to the trust deed in accordance with section 129(2) and (3).
- (2) Subsection (1) applies to an alteration to the scheme that—

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

Compare: 1989 No 10 s 9A

Section 129A: inserted, on 1 May 2011, by section 29 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Reversion of scheme assets to employer

Heading: inserted, on 1 May 2011, by section 29 of the KiwiSaver Amendment Act 2011 (2011 No 8).

129B Implied provision as to reversion of scheme assets to employer

There is implied in the trust deed of a KiwiSaver scheme that provides for the reversion of any assets of the scheme to an employer, a provision that no part of the assets may revert to an employer without the prior written consent of the FMA.

Compare: 1989 No 10 s 10

Section 129B: inserted, on 1 May 2011, by section 29 of the KiwiSaver Amendment Act 2011 (2011 No 8).

130 Consent to reversion of assets to employer

Where section 129B applies, the FMA 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.

Section 130: amended, on 1 May 2011, by section 30 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 130: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 FMA for registration of the scheme under this Act if it is eligible to be a KiwiSaver scheme under section 116.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) Every application under this section must include a copy of the trust deed and of every amendment to the trust deed.

Section 131(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 131(2): repealed, on 1 May 2011, by section 31 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 131(3): repealed, on 1 May 2011, by section 31 of the KiwiSaver Amendment Act 2011 (2011 No 8).

132 Application for registration of scheme constituted under Act of Parliament

[Repealed]

Section 132: repealed, on 1 May 2011, by section 32 of the KiwiSaver Amendment Act 2011 (2011 No 8).

133 Matters required to be specified in application

Every application for registration under section 131 must specify the matters set out in Part 1 of Schedule 2.

Section 133: amended, on 1 May 2011, by section 33 of the KiwiSaver Amendment Act 2011 (2011 No 8).

134 Registration of scheme

- (1) The FMA must within 28 days after receiving the application for registration under section 131 and the documents required to accompany the application, or within a longer period of time agreed on by the FMA and the trustees,—
 - (a) consider whether the FMA 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 FMA enters the scheme as a KiwiSaver scheme in the KiwiSaver schemes register.

Section 134(1): amended, on 1 May 2011, by section 34 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 134(1): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 134(1)(a): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 134(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

*Conversion of registered superannuation
scheme
[Repealed]*

Heading: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

135 Trustees may submit proposal to convert superannuation scheme
[Repealed]

Section 135: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

136 Form of proposal
[Repealed]

Section 136: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

137 FMA must provisionally register scheme as KiwiSaver scheme if satisfied of certain matters

[Repealed]

Section 137: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

138 Trustees must provide evidence of consents, and information, to Commissioner

[Repealed]

Section 138: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

139 Exceptions to requirements under section 138

[Repealed]

Section 139: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

140 Process for obtaining consents and evidence to be provided to FMA

[Repealed]

Section 140: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

141 FMA must register scheme as KiwiSaver scheme if certain conditions met

[Repealed]

Section 141: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

142 Date of registration and conversion

[Repealed]

Section 142: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

143 Trust deed must be treated as having been amended in accordance with registration proposal

[Repealed]

Section 143: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

144 Effect of conversion of registered superannuation scheme to KiwiSaver scheme*[Repealed]*

Section 144: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

145 Status of contracts and other instruments*[Repealed]*

Section 145: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

146 References to scheme in existing instruments*[Repealed]*

Section 146: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

147 Continuation of legal and other proceedings*[Repealed]*

Section 147: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Establishment of KiwiSaver scheme under umbrella trust that also governs registered superannuation scheme

[Repealed]

Heading: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

148 Trustees may submit proposal to establish KiwiSaver scheme under umbrella trust that also governs registered superannuation scheme*[Repealed]*

Section 148: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

149 Form of proposal*[Repealed]*

Section 149: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

150 FMA must register KiwiSaver scheme if satisfied of certain matters

[Repealed]

Section 150: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

151 Date of registration

[Repealed]

Section 151: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

152 Trust deed must be treated as having been amended in accordance with registration proposal

[Repealed]

Section 152: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

153 Effect of registration of KiwiSaver scheme under section 150

[Repealed]

Section 153: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

154 Advice of right of election must be included in annual report provided under Superannuation Schemes Act 1989

[Repealed]

Section 154: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

155 Right of election of members of registered superannuation scheme

[Repealed]

Section 155: repealed, on 1 May 2011, by section 35 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 FMA thinks fit.

Section 156(2)(b): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

157 Operation of register

The register must be operated at all times unless—

- (a) the FMA suspends the operation of the register, in whole or in part, in accordance with section 162(1); or
- (b) otherwise provided in regulations.

Section 157(a): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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
 - (ia) determine whether a scheme is a restricted scheme; and
 - (ib) know how to contact the manager of a scheme other than a restricted scheme; 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
 - (v) know how to access information about the manager or trustees that is contained in the register of financial service providers established and maintained under section 24 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (including details of the relevant dispute resolution scheme); 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(a)(ia): inserted, on 1 May 2011, by section 36(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 158(a)(ib): inserted, on 1 May 2011, by section 36(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 158(a)(v): added, on 1 May 2011, by section 36(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 158(ab): inserted, on 1 April 2008, by section 79 of the Taxation (Kiwi-Saver) Act 2007 (2007 No 110).

159 FMA is Registrar of register

- (1) The FMA holds the office of Registrar of the register.
- (2) The FMA must ensure that the register is compiled and maintained.

Section 159 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 159(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 159(2): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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
- (ba) whether it is a restricted 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

- (da) in the case of a KiwiSaver scheme other than a restricted scheme, the name of the manager of the scheme and an address for service for the manager; and
- (db) the unique identifiers issued to the trustees and the manager by the Registrar of Financial Service Providers and contained in the register of financial service providers established and maintained under section 24 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; 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.

Section 160(ba): inserted, on 1 May 2011, by section 37(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 160(da): inserted, on 1 May 2011, by section 37(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 160(db): inserted, on 1 May 2011, by section 37(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 FMA 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 FMA may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the FMA considers that it is not practical to provide access to the register.
- (2) The FMA 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 FMA 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 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 162(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 162(2): substituted, on 1 April 2008, by section 81 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 162(2): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 162(2)(b): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

163 Amendments to register

The FMA 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: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 FMA

- (1) The trustees of a restricted KiwiSaver scheme and the manager of any other KiwiSaver scheme must ensure that they give notice to the FMA 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 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 164(1): amended, on 1 May 2011, by section 38 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 164(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 FMA 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.

Section 165(d): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 FMA may cancel the registration of a KiwiSaver scheme and order its winding up—

- (a) upon giving 28 days' notice to the trustee, if satisfied on reasonable grounds that a KiwiSaver scheme other than a restricted scheme is no longer eligible to be a KiwiSaver scheme under section 116; or
- (ab) on giving 28 days' notice to the trustees, if satisfied on reasonable grounds that a restricted scheme no longer meets the requirements set out in section 116A(1)(a) to (c); or
- (b) upon giving 28 days' notice to the trustees, if the FMA 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.

Section 168: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 168(a): amended, on 1 May 2011, by section 39(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 168(a): amended, on 1 May 2011, by section 39(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 168(ab): inserted, on 1 May 2011, by section 39(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 168(b): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

168A Scheme may cease to be restricted scheme

- (1) The FMA may determine that a restricted KiwiSaver scheme should cease to be a restricted scheme—
 - (a) if it is satisfied that the scheme no longer meets the requirements set out in section 116A(1)(d) or (4); or
 - (b) at the request of the trustees of the scheme, if it is satisfied that the members of the scheme have been adequately advised of the consequences of the scheme ceasing to be a restricted scheme.
- (2) If the FMA makes a determination under subsection (1), the FMA must—
 - (a) notify the trustees of the determination; and
 - (b) amend the register so that the scheme is no longer identified as a restricted scheme.
- (3) However, the FMA must not amend the register earlier than 6 months after the date of the determination without the consent of the trustees.
- (4) The trustees must, as soon as practicable after being notified by the FMA under subsection (2)(a), notify the members of the scheme of the determination.

Section 168A: inserted, on 1 May 2011, by section 40 of the KiwiSaver Amendment Act 2011 (2011 No 8).

169 Powers of FMA in event of scheme operating in contravention of this Act, etc

- (1) This section applies if, in respect of any KiwiSaver scheme, the FMA 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 or under this Act, including the KiwiSaver scheme rules.
- (3) *[Repealed]*
- (4) If subsection (1) applies, the FMA may do any or all of the following:
- (a) direct the trustees of a restricted KiwiSaver scheme, or the trustee or manager of any other KiwiSaver scheme, to supply all members of the scheme with information specified by the FMA:
 - (b) upon giving 28 days' notice to the trustees, direct the trustees, the manager, 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 FMA 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 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 169(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 169(2): amended, on 1 May 2011, by section 41(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 169(3): repealed, on 1 April 2008, by section 84 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 169(4): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 169(4)(a): amended, on 1 May 2011, by section 41(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 169(4)(a): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 169(4)(b): amended, on 1 May 2011, by section 41(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 169(5): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

170 FMA must remove scheme from register on cancellation of registration

- (1) On cancelling the registration of a KiwiSaver scheme, the FMA 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 FMA 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.

Section 170 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 170(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 170(3): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

171 Implied terms continue to be implied on cancellation of registration

If the registration of a KiwiSaver scheme is cancelled, the KiwiSaver scheme rules and any other provisions implied in a trust deed by or under this Act must continue to be implied in the trust deed of the scheme until the scheme is wound up.

Section 171: substituted, on 1 May 2011, by section 42 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 a restricted scheme 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

Section 172(3): amended, on 1 May 2011, by section 43 of the KiwiSaver Amendment Act 2011 (2011 No 8).

*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 FMA that the scheme be wound up is made,—
- (a) lodge a copy of any order or resolution with the FMA and the Commissioner; and
 - (b) give notice to the Commissioner of the name, tax file number, and address of each member of the KiwiSaver scheme; and
 - (c) in the case of a KiwiSaver scheme other than a restricted scheme, notify the manager of the scheme of any order or resolution.
- (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.

Section 173(1): amended, on 1 May 2011, by section 44 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 173(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 173(1)(a): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 173(1)(b): amended, on 1 May 2011, by section 44 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 173(1)(b): amended, on 21 December 2010, by section 177 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 173(1)(c): added, on 1 May 2011, by section 44 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 financial statements 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 financial state-

- ments are audited by a licensed auditor or a registered audit firm (within the meaning of section 6 of the Auditor Regulation Act 2011); and
- (c) must, within 28 days after the final financial statements have been audited, ensure that—
- (i) a copy of those financial statements is sent to the FMA and to every person who was a member of the scheme immediately before it was wound up; and
 - (ii) the FMA and the members are advised in writing of the manner in which remaining assets (if any) of the scheme are to be distributed; and
- (d) must inform the FMA of the date on which the distribution of the assets is completed.

Compare: 1989 No 10 s 21(1)

Section 174(a): amended, on 1 May 2011, by section 45(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 174(b): amended, on 1 July 2012, by section 82 of the Auditor Regulation Act 2011 (2011 No 21).

Section 174(b): amended, on 1 May 2011, by section 45(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 174(c): substituted, on 1 May 2011, by section 45(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 174(d): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

174A Registration deemed to be cancelled when assets distributed

The registration of a KiwiSaver scheme that has been wound up is deemed to be cancelled as soon as the distribution of the assets is completed.

Section 174A: inserted, on 1 May 2011, by section 46 of the KiwiSaver Amendment Act 2011 (2011 No 8).

175 Time for doing certain things may be extended

The FMA 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)

Section 175: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 managers 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) *[Repealed]*
- (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.
- (5) In determining whether to appoint a manager as a default KiwiSaver provider under this section, the Minister must seek the advice of the FMA.
- (6) A restricted scheme is not eligible to be a default KiwiSaver scheme.

Section 177(1): amended, on 1 May 2011, by section 47(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 177(2): repealed, on 1 May 2011, by section 47(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 177(5): added, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 177(6): added, on 1 May 2011, by section 47(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 Appointment must be notified to FMA and Commissioner

The Minister must, as soon as practicable after an appointment under section 177 has been made,—

- (a) notify the FMA and the Commissioner that the appointment has been made; and
- (b) provide the FMA and the Commissioner with a copy of the instrument of appointment.

Section 180: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

181 Availability of instrument of appointment

(1) The FMA must—

- (a) make copies of the instrument of appointment provided to it under section 180—
 - (i) available for inspection, during working hours, free of charge at its head office; and
 - (ii) available for purchase at a reasonable price at its head office; and
- (b) publish the copy of that instrument of appointment on an Internet site maintained by or on behalf of the FMA; and
- (c) give notice in the *Gazette*—
 - (i) that the instrument of appointment has been executed and of the date of execution; and
 - (ii) that 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) that copies of the instrument of appointment can be purchased and the place at which they can be purchased; and
 - (iv) that the instrument of appointment is available on the Internet, free of charge, and the Internet site address.

(2) This section also applies to any variation, renewal, or revocation of the instrument of appointment.

Section 181: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

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 the manager 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 restrain the trustee or the manager of the scheme, or both, from engaging in conduct that constitutes, or would constitute, the breach:
 - (b) an order to require the trustee or the manager of the scheme, or both,—
 - (i) to do a particular act or thing:
 - (ii) to comply with the conditions of the instrument of appointment:
 - (c) 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.

Section 183(1): amended, on 1 May 2011, by section 48(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 183(2): substituted, on 1 May 2011, by section 48(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 FMA 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 FMA and the Commissioner as soon as practicable after an instrument of appointment is revoked.

Section 184(2)(a): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 184(4): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 Right of appeal against certain decisions of FMA

- (1) A person affected by a decision of the FMA under any of the following provisions may appeal against the decision to the High Court:
- (a) section 30 (approval of employer as exempt employer):
 - (b) section 31 (revocation of exempt employer approval):
 - (c) section 134 (registration):
 - (d) section 168 (cancellation of registration and order to wind up):
 - (e) section 169 (powers of FMA if scheme operating in contravention of this Act).
- (2) A decision against which an appeal is lodged under this section continues in force unless the High Court orders otherwise.

Section 186: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

187 Power of Government Actuary to delegate*[Repealed]*

Section 187: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

188 Sharing of information and documents with Commissioner for purpose of administering KiwiSaver schemes

- (1) The FMA may provide to the Commissioner any information, or a copy of any document, that the FMA—
 - (a) holds in relation to the performance or exercise of the FMA's functions, powers, or duties under this Act or in connection with 1 or more KiwiSaver schemes under this Act or any other enactment; and
 - (b) considers may assist the Commissioner in the performance or exercise of the Commissioner's functions, powers, or duties under this Act or in connection with 1 or more KiwiSaver schemes under this Act or any other enactment.
- (2) The FMA may use any information, or a copy of any document, provided to it by the Commissioner under any enactment in the FMA's performance or exercise of its functions, powers, or duties under this Act or in connection with 1 or more KiwiSaver schemes under this Act or any other enactment.
- (3) This section applies despite anything to the contrary in any contract, deed, or document.

Section 188: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

189 Conditions that may be imposed on providing information, documents, or evidence to Commissioner

- (1) The FMA may impose any conditions in relation to providing information or documents to the Commissioner (whether in compliance with a request or otherwise).
- (2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) Those conditions may include, without limitation, conditions relating to—

- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
- (b) the storing of, use of, or access to anything provided:
- (c) the copying, returning, or disposing of copies of documents provided.

Section 189: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

189B Duty to give notice to FMA 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 FMA as soon as reasonably practicable after the increase takes effect.

Section 189B: inserted, on 1 April 2008, by section 86 of the Taxation (Kiwi-Saver) Act 2007 (2007 No 110).

Section 189B heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 189B: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 FMA, 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 FMA 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 (Kiwi-Saver) Act 2007 (2007 No 110).

Section 189C(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 189C(4)(b): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

190 Secrecy

[Repealed]

Section 190: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

191 Duty of certain persons to disclose information to FMA

- (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 FMA information that is specified by the FMA 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 FMA information relating to the affairs of the KiwiSaver scheme.

Compare: 1989 No 10 s 18A

Section 191 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 191(2): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 191(4): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 FMA 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 FMA 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 FMA 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

Section 192(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 192(2): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 192(4): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

193 Personal liability

[Repealed]

Section 193: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

194 Annual report by FMA

- (1) The FMA 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

Section 194 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 194(1): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 ensured that reasonable efforts have been made 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.

Section 195(2)(b): amended, on 1 May 2011, by section 49 of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 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 119K and 119L,—
 - (a) requests must be made to the trustees (in the case of a restricted scheme) or the manager (in the case of any other scheme) 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 (in the case of a restricted scheme) or the manager (in the case of any other scheme) 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 (in the case of a restricted scheme) or the manager (in the case of any other scheme) 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.

Section 197(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 197(2): amended, on 1 May 2011, by section 50(a) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 197(2)(a): amended, on 1 May 2011, by section 50(b) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 197(2)(b): amended, on 1 May 2011, by section 50(b) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 197(2)(c): amended, on 1 May 2011, by section 50(b) of the KiwiSaver Amendment Act 2011 (2011 No 8).

198 Other offences under this Part

- (1) Every person commits an offence, and is liable on 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 FMA 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.

Section 198(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 198(1)(a): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 FMA may decline to take action if fees not paid

If any fee is payable in accordance with any regulations made under this Act, the FMA 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

Section 200 heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 200: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

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 trustee or the manager of the scheme purports 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 invest-

ment 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 trustee or the manager (as the case may be) and that relate to the obtaining of consent or compliance with any direction with respect to the investment of trust funds.

Section 202(1)(b): amended, on 1 May 2011, by section 51(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 202(2): amended, on 1 May 2011, by section 51(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 (Kiwi-Saver) Act 2007 (2007 No 110).

206 Factual description of, or transmission of information about, KiwiSaver scheme not financial adviser service

For the avoidance of doubt, the Crown or any other person does not perform a financial adviser service for the purposes of the Financial Advisers Act 2008 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 heading: amended, on 16 August 2010, by section 162(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 206: amended, on 16 August 2010, by section 162(3) of the Financial Advisers Act 2008 (2008 No 91).

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.

Section 209(2): amended, on 1 July 2007, by section 67 of the Taxation (Kiwi-Saver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

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 43D, 43F, 43G, 43I, or 43K of the Securities Act 1978 (which relate to various restrictions on the allotment of securities).
 - (d) *[Repealed]*
- (2) If this section applies,—
 - (a) any resulting duty of the trustees (as issuer in respect of a restricted KiwiSaver scheme), the manager (as issuer in respect of any other KiwiSaver scheme), or any

other person to repay subscriptions or any other amount under section 37(5), 37(6), 37A(6), 37A(7), 43F(2)(b), 43G(3)(b) or (4)(b) of the Securities Act 1978 does not apply; but

- (b) the trustees or the manager (as the case may be) 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(1)(c): substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 210(1)(d): repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 210(2)(a): amended, on 1 May 2011, by section 52(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 210(2)(a): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 210(2)(b): amended, on 1 May 2011, by section 52(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 on 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 on 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 section 215

(1) Section 215 set out penalties that apply, in addition to the provisions of the Tax Administration Act 1994, if there is a failure to provide information under Part 2 or 3.

(2) *[Repealed]*

Section 214 heading: amended, on 1 April 2009, by section 91(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 214(1): amended, on 1 April 2009, by section 91(2)(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 214(1): amended, on 1 April 2009, by section 91(2)(b) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 214(2): repealed, on 1 April 2009, by section 91(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

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 1 penalty per month.

(4) In this section, 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 withhold-

- ings 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 on 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 92(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).
- Section 215(4): amended, on 1 April 2009, by section 92(3) 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

[Repealed]

Section 216: repealed, on 1 April 2009, by section 94 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 on 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).

220B Information sharing

The Commissioner and a provider may, for the purposes of administering this Act or a KiwiSaver scheme, communicate to each other by electronic means a person's name, address, date of birth, and tax file number.

Section 220B: inserted, on 21 December 2010, by section 178 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

*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 on 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 on 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 on 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: kick-start contributions

- (1) The Crown must pay 1 contribution to the first KiwiSaver scheme of which a person (A) is a member before they reach the New Zealand superannuation qualification age.
- (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 Kiwi-Saver 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) If A ceases being a member of the first KiwiSaver scheme of which they are a member because the Commissioner accepts an opt-out notice outside the time limit in section 16 or because A's enrolment is invalid, and the amount of the contribution under this section was never paid, then the next KiwiSaver scheme of which A is a member is treated as their first one, for the purposes of this section and entitlement to the contribution.

Section 226 heading: amended, on 2 November 2012, by section 236 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Section 226(1): substituted (with effect on 1 July 2007), on 19 December 2007, by section 98(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 226(1): amended, on 21 December 2010, by section 179 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section 226(1): amended (with effect on 1 July 2007), on 6 October 2009, by section 731(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 226(1A): inserted (with effect on 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 on 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 on 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).

Section 226(4): substituted (with effect on 1 July 2007), on 6 October 2009, by section 731(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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 respect 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

- (1) 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:
 - (ba) prescribing the information and matters that must be included in the trust deed of a KiwiSaver scheme:
 - (bb) subject to subsection (2), prescribing provisions to be implied in the trust deed of a KiwiSaver scheme:
 - (c) prescribing fees payable to the Commissioner or the FMA 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:
 - (fa) prescribing information, statements, certificates, or documents that must, or must not, be contained in or attached to the annual report prepared under section 123:
 - (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):

- (ga) prescribing information that must be included in annual personalised statements for members under section 125A:
- (gb) prescribing how the information included in an annual personalised statement under section 125A must be presented, calculated, or prepared:
- (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 any regulations made under that Act 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.
- (2) A provision prescribed for the purposes of subsection (1)(bb) may, without limitation, do any of the following:
- (a) specify the duties and powers of the trustee of the scheme:
 - (b) specify the duties of the manager of the scheme:

- (c) provide for the trustee of the scheme to have the power, exercisable with the consent of the manager of the scheme (but without requiring the consent of members), to make amendments to the trust deed that do not adversely affect the interests of members.

Section 228(1)(ba): inserted, on 1 May 2011, by section 53(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 228(1)(bb): inserted, on 1 May 2011, by section 53(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 228(1)(c): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 228(1)(fa): inserted, on 1 May 2011, by section 53(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 228(1)(ga): inserted, on 1 May 2011, by section 53(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 228(1)(gb): inserted, on 1 May 2011, by section 53(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 228(1)(t): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 228(2): added, on 1 May 2011, by section 53(4) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 contributions 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 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:

- (ia) an amount may not be diverted if it was received by the relevant provider before the provider has received from the person a request to divert amounts under the mortgage diversion facility;
 - (j) employer contributions may not be diverted;
 - (jb) an amount that was transferred from an Australian complying superannuation scheme 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
 - (eb) closing the mortgage diversion facility to new participants by specifying a date before which a member of a KiwiSaver scheme or complying superannuation fund must request his or her mortgagee to participate in the facility in respect of the member's 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(3)(eb): inserted, on 1 June 2009, by section 5 of the Taxation (Budget Tax Measures) Act 2009 (2009 No 14).

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).

Section 229(2)(i): amended (with effect on 1 July 2008), on 6 October 2009, by section 732(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 229(2)(ia): inserted (with effect on 1 July 2008), on 6 October 2009, by section 732(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 229(2)(jb): inserted, on 1 July 2013, by section 188 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

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):

- (ba) providing for the following matters in relation to all or any class of default members of a scheme that is subject to a terminating event under section 185:
 - (i) requiring those default members to be reallocated and transferred to a default KiwiSaver scheme and providing the method of determining, terms of, and procedures for the reallocation and the transfer (or providing for the Minister to require or determine any of those matters by direction to the scheme provider or providing for another person or method to determine any of those matters):
 - (ii) requiring the reallocation and transfer to be carried out in accordance with that method, those terms, and those procedures:
- (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, regulations made under paragraph (ba), or the Financial Markets Conduct Act 2013:
 - (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.

- (1A) In this section, **default members** means members that were allocated to a scheme under sections 50 and 51 and are in a default investment product of a 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.

Section 230(1)(ba): inserted, on 14 September 2013, by section 101(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 230(1)(c)(iii): amended, on 14 September 2013, by section 101(6) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 230(1A): inserted, on 14 September 2013, by section 101(7) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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: added, on 1 July 2007, by section 68 of the 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).

235 Protection from non-compliance: Taxation (Urgent Measures and Annual Rates) Act 2008

- (1) If, as a result of amendments provided by the Taxation (Urgent Measures and Annual Rates) Act 2008, there is non-compliance with an Act related to securities before 14 February 2009,

the non-compliance is ignored unless it continues on or after 14 February 2009.

- (2) Every provider of a KiwiSaver scheme or a complying superannuation fund, and every person acting on behalf of a provider is exempted in connection with the KiwiSaver scheme or complying superannuation fund from complying with regulation 7A(4) of the Securities Regulations 1983 in respect of information that must be disclosed in an investment statement because of changes to the scheme, fund, or the securities arising from any provision of the Taxation (Urgent Measures and Annual Rates) Act 2008.
- (3) The exemption in subsection (2) applies only in relation to an investment statement that has been first prepared and dated before 1 January 2009.
- (4) The exemption in subsection (2) applies if all information, statements, and other matters specified under italicised questions set out in Schedule 3D of the Securities Regulations 1983 that are required to be contained in an investment statement in respect of a security are—
 - (a) set out in a consistent style or format; and
 - (b) clearly identified as relating to particular questions.
- (5) Subsections (2) to (4) cease to have effect on and after 30 June 2009.

Section 235: added, on 15 December 2008, by section 49 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

236 Protection from non-compliance: Taxation (Budget Tax Measures) Act 2009

If, as a result of amendments in Part 2 of the Taxation (Budget Tax Measures) Act 2009, there is non-compliance with an enactment related to securities, the non-compliance is ignored, if it starts before 31 July 2009 and does not continue on or after 31 July 2009, or if it relates to—

- (a) a prospectus that is registered under the Securities Act 1978 before 1 June 2009;
- (b) an investment statement under the Securities Act 1978 that is dated before 1 June 2009.

Section 236: added, on 1 June 2009, by section 6 of the Taxation (Budget Tax Measures) Act 2009 (2009 No 14).

237 Protection from non-compliance: Taxation (Annual Rates and Budget Measures) Act 2011

If, as a result of amendments in sections 7 to 14 of the Taxation (Annual Rates and Budget Measures) Act 2011, there is non-compliance with an enactment related to securities, the non-compliance is ignored, if it starts before 31 July 2011 and does not continue on or after 31 July 2011, or if it relates to—

- (a) a prospectus that is registered under the Securities Act 1978 on or before 27 May 2011;
- (b) an investment statement under the Securities Act 1978 that is dated on or before 27 May 2011.

Section 237: added, on 24 May 2011, by section 15 of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

238 Protection from non-compliance: Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012

If an effect of the enactment of sections 166, 231, and 234 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (the **Act**) for an issuer of a security is their non-compliance with an enactment related to securities, that non-compliance is ignored, if it starts before the date (the **end date**) that is 2 months after the day (the **assent day**) on which the Act receives the Royal assent and does not continue on or after the end date, or if it relates to—

- (a) a prospectus that is registered under the Securities Act 1978 on or before assent day;
- (b) an investment statement under the Securities Act 1978 that is dated on or before assent day.

Section 238: inserted, on 2 November 2012, by section 237 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Schedule 1 KiwiSaver scheme rules

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1 Application

- (1) The KiwiSaver scheme rules in clauses 1A to 1D apply to KiwiSaver schemes other than restricted schemes.
- (2) The KiwiSaver scheme rules in clauses 1E to 17 apply to all KiwiSaver schemes.

Schedule 1 clause 1: substituted, on 1 May 2011, by section 54(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Rules applying to KiwiSaver schemes other than restricted schemes

Heading: inserted, on 1 May 2011, by section 54(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

1A Trustee's duties

The trustee, in exercising its powers and performing its duties as the trustee, must—

- (a) act in the best interests of the members of the scheme; and
- (b) exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a trustee would exercise in acting as the trustee of a KiwiSaver scheme other than a restricted scheme.

Schedule 1 clause 1A: inserted, on 1 May 2011, by section 54(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

1B Manager's duties

- (1) The manager, in exercising its powers and performing its duties as the manager, must—

- (a) act in the best interests of the members of the scheme; and
- (b) exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a manager would exercise in managing the affairs of others, unless the manager is exercising a power of investment, in which case clause 1E(2) applies.

- (2) The manager must use the manager's best endeavours and skill to ensure that the affairs of the scheme are conducted in a proper and efficient manner.

Schedule 1 clause 1B: inserted, on 1 May 2011, by section 54(1) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

1C Scheme investments and property

- (1) The trustee must comply with every direction of the manager relating to the acquisition or disposal of scheme investments and property, unless subclause (2) applies.
- (2) The trustee must refuse to act on a direction of the manager relating to the acquisition or disposal of scheme investments or property if the trustee considers that the proposed acquisition or disposal—
- (a) would be in breach of the trust deed or an enactment; or
 - (b) would be manifestly not in the best interests of the members of the scheme.
- (3) If the trustee refuses to act on a direction of the manager, the trustee must notify the manager and the FMA in writing of the trustee's reasons for refusing to do so.

Schedule 1 clause 1C: inserted, on 1 May 2011, by section 54(1) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

1D Manager to provide information to trustee

If requested by the trustee, the manager must—

- (a) make available to the trustee all documents and records relating to the scheme that are held by the manager, an administration manager, or an investment manager of the scheme;
- (b) provide the trustee with any information required by the trustee about—
 - (i) the scheme;
 - (ii) the affairs of the manager;
 - (iii) the property of the manager (whether acquired before or after the date of the manager's appointment).

Schedule 1 clause 1D: inserted, on 1 May 2011, by section 54(1) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

Rules applying to all KiwiSaver schemes

Heading: inserted, on 1 May 2011, by section 54(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

1E Investment of scheme money

- (1) All money belonging to a KiwiSaver scheme and available for investment must be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.
- (2) The trustees (in the case of a restricted scheme), the manager (in the case of any other KiwiSaver scheme), and the investment managers (if any) of a scheme must, in exercising a power of investment, exercise the care, diligence, and skill required of a trustee by section 13B or 13C of the Trustee Act 1956.
- (3) Subclause (2) applies despite anything to the contrary in section 13D(1) of the Trustee Act 1956.

Compare: 1989 No 10 s 8

Schedule 1 clause 1E: inserted, on 1 May 2011, by section 54(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

2 Fees must not be unreasonable

- (1) The following persons must not charge a fee that is unreasonable:
 - (a) the trustees of the scheme:
 - (ab) the manager 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(1)(ab): inserted, on 1 May 2011, by section 54(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 or for the period that the employee has a valid non-deduction notice under section 112B that they have given to their employer.
- (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.

Schedule 1 clause 3(2): amended (with effect on 1 July 2012), on 2 November 2012, by section 238(1) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

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 5 year qualification date; or
 - (c) *[Repealed]*
- (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.
- (6) For the purposes of these rules, **5 year qualification date** means the earliest of—
 - (a) the date that is 5 years after the day on which the member first became a member of a KiwiSaver scheme; or
 - (b) the date that is 5 years after the day, under section 85, on which the Commissioner first received a contribution for a KiwiSaver scheme in relation to the member; or
 - (c) the date that is 5 years after the day on which the member first became a member of a complying superannuation fund, if the member has become a member of the KiwiSaver scheme as a result of a transfer from a complying superannuation fund.

Schedule 1 clause 4(2)(b): replaced (with effect on 1 July 2012), on 2 November 2012, by section 238(2) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Schedule 1 clause 4(2)(c): repealed, on 14 September 2013, by section 105(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 1 clause 4(3): amended, on 19 December 2007, by section 102(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Schedule 1 clause 4(6): inserted (with effect on 1 July 2012), on 2 November 2012, by section 238(3) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Schedule 1 clause 4(6): amended, on 14 September 2013, by section 105(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 1 clause 4(6)(b): amended, on 14 September 2013, by section 105(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 1 clause 4(6)(c): inserted, on 14 September 2013, by section 105(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

4B Amounts from Australian complying superannuation schemes

A member may withdraw the amount that was transferred from an Australian complying superannuation scheme (disregard-

ing any positive or negative returns for the purpose of calculating that amount), if the member is 60 years or more and the member's retirement (as that term is defined in regulation 6.01(7) of the Superannuation Industry (Supervision) Regulations 1994 (Aust), with necessary modification for KiwiSaver scheme trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)) is taken to have occurred.

Schedule 1 clause 4B: inserted, on 1 July 2013, by section 189(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

5 Trustees and managers must pay permitted withdrawal as lump sum

- (1) The trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) 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.

Schedule 1 clause 5 heading: amended, on 1 May 2011, by section 54(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 1 clause 5(1): amended, on 1 May 2011, by section 54(4) of the KiwiSaver Amendment Act 2011 (2011 No 8).

6 Trustees and managers may reasonably require evidence to establish right to make permitted withdrawal

A trustee (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) 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.

Schedule 1 clause 6 heading: amended, on 1 May 2011, by section 54(5) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 1 clause 6: amended, on 1 May 2011, by section 54(6) of the KiwiSaver Amendment Act 2011 (2011 No 8).

7 Release of funds required under other enactments

- (1) The trustees of a restricted KiwiSaver scheme and the manager of any other KiwiSaver scheme 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).

Schedule 1 clause 7(1): amended, on 1 May 2011, by section 54(7) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

8 Withdrawal for purpose of purchase of first home

- (1) This clause applies to a member if 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) and,—
 - (a) 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); or
 - (b) the person has been a member of 1 or more KiwiSaver schemes for a period of 3 years or more.
- (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 Kiwi-Saver 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, at the time of the withdrawal, less the total of the following 2 amounts:
- (a) the amount of the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution);
 - (b) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).
- (5) If a person holds an estate in land in any 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;
 - (ab) the estate in land is a leasehold estate;
 - (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 a practitioner (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006) acting on behalf of the member; and
 - (b) the trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) may require from that practitioner, 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 or the manager (as the case may be) 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 (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) 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(1): substituted, on 6 October 2009, by section 733(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 1 clause 8(4): replaced, on 1 July 2013, by section 189(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Schedule 1 clause 8(5): amended (with effect on 1 July 2010), on 21 December 2010, by section 180(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Schedule 1 clause 8(5)(ab): inserted (with effect on 1 July 2010), on 21 December 2010, by section 180(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Schedule 1 clause 8(6): amended (with effect on 1 July 2010), on 21 December 2010, by section 180(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Schedule 1 clause 8(7)(a): amended, on 14 September 2013, by section 107(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 1 clause 8(7)(b): amended, on 14 September 2013, by section 107(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 1 clause 8(7)(b): amended, on 1 May 2011, by section 54(8) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 1 clause 8(7)(b)(ii): amended, on 1 May 2011, by section 54(9) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 1 clause 8(7)(b)(iii): amended, on 1 May 2011, by section 54(10) of the KiwiSaver Amendment Act 2011 (2011 No 8).

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 on death

If a member dies, the trustees (in the case of a restricted Kiwi-Saver scheme) or the manager (in the case of any other Kiwi-Saver scheme) must,—

- (a) 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; or
- (b) if the requirements of section 65 of the Administration Act 1969 are met, pay to the relevant person any sum authorised by that section, subject to that Act.

Schedule 1 clause 9: substituted (with effect on 1 July 2007), on 6 October 2009, by section 733(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 1 clause 9: amended, on 1 May 2011, by section 54(11) of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

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).

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) Subject to clause 14B, a member may, on application to the trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme), and no earlier than 1 year after the member's permanent emigration from New Zealand, withdraw an amount equal to the member's accumulation, at the time of the withdrawal, less the total of the following 2 amounts:

- (a) the amount of the 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 purpose of calculating the amount of the Crown contribution):
 - (b) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).
- (2) Subject to clause 14B, a member may, on application to the trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme), at any time after the member's permanent emigration from New Zealand, have the trustees or the manager (as the case may be) transfer to a foreign superannuation scheme authorised for that purpose under regulations made under section 228 the member's accumulation, less the total of the following 2 amounts:
 - (a) the amount of the 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 purpose of calculating the amount of the Crown contribution):
 - (b) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).
- (3) An application under subclause (1) or (2) must be in the form required by the trustees or manager (as the case may be) 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 or manager (as the case may be)—
 - (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 or manager (as the case may be) 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.

Schedule 1 clause 14(1): replaced, on 1 July 2013, by section 189(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Schedule 1 clause 14(2): replaced, on 1 July 2013, by section 189(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Schedule 1 clause 14(3): amended, on 1 May 2011, by section 54(12)(b) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 1 clause 14(3)(b): amended, on 1 May 2011, by section 54(12)(b) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 1 clause 14(4): amended, on 1 May 2011, by section 54(12)(b) of the KiwiSaver Amendment Act 2011 (2011 No 8).

14B Exceptions to clause 14 for Australian permanent emigration

- (1) For a KiwiSaver scheme (but not for a complying superannuation fund) a member may not withdraw any amount, or have the trustees or the manager (as the case may be) transfer any amount, after the member's permanent emigration to Australia, except as provided by this clause.
- (2) At any time after the member's permanent emigration to Australia, a member may, on application to the trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme), have the trustees or the manager (as the case may be) transfer the member's accumulation to an Australian complying superannuation scheme.
- (3) As soon as practicable after receiving a satisfactory application, the trustees or the manager (as the case may be) must transfer the whole of the member's accumulation to the relevant Australian complying superannuation scheme and provide that scheme with any necessary information it reasonably requires.

- (4) An application under subclause (2) must be in the form required by the trustees or the manager (as the case may be) and must include—
- (a) a completed statutory declaration in respect of the member to the effect that the member has permanently emigrated to Australia; and
 - (b) proof to the satisfaction of the trustees or the manager (as the case may be)—
 - (i) of the member's departure from New Zealand (*see*, for examples of proof: clause 14(3)(b)(i)); and
 - (ii) that the member has resided at an Australian address at some time following the member's departure from New Zealand.
- (5) The trustees or the manager (as the case may be) may require that any other documents, things, or information produced in an application under subclause (2) be verified by oath, statutory declaration, or otherwise.

Schedule 1 clause 14B: inserted, on 1 July 2013, by section 189(5) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

14C Withdrawal to meet tax liability on foreign superannuation withdrawal

- (1) A member may, on application to the trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme), withdraw an amount for the payment of the member's liability for—
- (a) tax, other than interest or penalties, arising under the Income Tax Act 2007 from the member's withdrawal of an interest in a foreign superannuation scheme and conversion of the interest into an interest in a KiwiSaver scheme;
 - (b) repayment obligations arising under the Student Loan Scheme Act 2011 from the member's withdrawal of an interest in a foreign superannuation scheme and conversion of the interest into an interest in a KiwiSaver scheme.
- (2) The amount withdrawn under—

- (a) subclause (1)(a) may not exceed the lesser of—
 - (i) the member's liability for tax referred to in that paragraph:
 - (ii) the member's liability for terminal tax in the tax year to which the tax relates:
 - (b) subclause (1)(b) may not exceed the member's repayment obligations referred to in that paragraph.
- (3) An amount withdrawn under subclause (1) may not exceed the value at the time of the withdrawal of the member's accumulation less the amount of the Crown contribution.
- (4) An application under subclause (1) must—
- (a) be made within the period of 24 months beginning from the end of the month in which the liability of the member for tax or student loan repayments is assessed; and
 - (b) be in the form required by the trustees or manager (as the case may be); and
 - (c) must include a completed statutory declaration giving the relevant details of the foreign superannuation withdrawal, the reinvestment, and the resulting liability of the member for tax under the Income Tax Act 2007; and
 - (d) must include any documents and other information that may be required by the trustees or manager (as the case may be) in support of the statutory declaration.
- (5) The trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must—
- (a) provide to the Commissioner of Inland Revenue, in a form satisfactory to the Commissioner, the details of any withdrawal made by a member under subclause (1); and
 - (b) if payment to a person other than the member is possible, pay to the Commissioner the amount of the withdrawal.

Schedule 1 clause 14C: inserted, on 1 April 2014, by section 140(1) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

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 14C, the amount of the 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) may not be withdrawn—

- (a) before the member, the personal representative, or the relevant person under section 65 of the Administration Act 1969 (as the case may be) gives the provider a statutory declaration stating, to the best of their knowledge, the periods for which the member has their principal place of residence in New Zealand; and
- (b) to the extent to which the provider has notice that their claim for a tax credit is wrong, because they have got the time for which the member meets the requirements of section MK 2 of the Income Tax Act 2007 wrong.

Schedule 1 clause 17: added, on 1 July 2007, by section 69(3) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Schedule 1 clause 17: amended, on 27 February 2014, by section 140(2) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Schedule 1 clause 17: amended (with effect on 1 April 2008), on 6 October 2009, by section 733(5)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 1 clause 17(a): substituted (with effect on 1 July 2007), on 6 October 2009, by section 733(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 1 clause 17(a): amended, on 1 May 2011, by section 54(13) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 1 clause 17(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 733(5)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 1 clause 17(b): amended, on 1 May 2011, by section 54(14) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 1 clause 17(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 733(5)(c) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 2

ss 133, 134, 136, 137, 140,
149, 150

**Matters to be specified in application for
registration or registration proposal**

Part 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 trustee of the scheme and, where the trustee is a company, the directors of the trustee; and
 - (b) the manager of the scheme and the directors of the manager; and
 - (c) every administration manager, investment manager, and insurer of the scheme (as applicable); and
 - (d) any actuaries, auditors, and solicitors acting for the scheme (or the names of their firms).
- 4 The name and contact address of at least 1 of the directors of the manager who is a New Zealand resident.
- 5 The name and address of the person to whom all correspondence from the FMA 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 financial statements 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 trustee or the trustee's solicitor stating that the trust deed—
 - (a) complies with section 119; and

Part 1—*continued*

- (b) does not contain a provision that is contrary to those implied in the trust deed by or under this Act (including the KiwiSaver scheme rules).

Schedule 2 clause 3(a): substituted, on 1 May 2011, by section 55(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 2 clause 3(b): substituted, on 1 May 2011, by section 55(1) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 2 clause 4: substituted, on 1 May 2011, by section 55(2) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 2 clause 5: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Schedule 2 clause 7: amended, on 1 May 2011, by section 55(3) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 2 clause 11: substituted, on 1 May 2011, by section 55(4) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Part 2

Matters to be specified in proposal to
convert registered superannuation scheme
to KiwiSaver scheme

[Repealed]

Schedule 2 Part 2: repealed, on 1 May 2011, by section 55(5) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Part 3

Matters to be specified in proposal to
establish KiwiSaver scheme under umbrella
scheme

[Repealed]

Schedule 2 Part 3: repealed, on 1 May 2011, by section 55(5) of the KiwiSaver Amendment Act 2011 (2011 No 8).

Schedule 3

s 231

Amendments to other Acts

Accident Compensation Act 1982 (1982 No 181)

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

**Accident Rehabilitation and Compensation Insurance Act 1992
(1992 No 13)**

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

Companies Act 1993 (1993 No 105)

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

Financial Transactions Reporting Act 1996 (1996 No 9)

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

Income Tax Act 2004 (2004 No 35)

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

**Injury Prevention, Rehabilitation, and Compensation Act 2001
(2001 No 49)**

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

Insolvency Act 1967 (1967 No 54)

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

Social Security Act 1964 (1964 No 136)

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

Superannuation Schemes Act 1989 (1989 No 10)

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

Tax Administration Act 1994 (1994 No 166)

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

Schedule 4
**Transitional rates for employers and
employees**

s 66A

[Repealed]

Schedule 4: repealed, on 1 April 2009, by section 50 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

KiwiSaver Amendment Act 2011

Public Act 2011 No 8
Date of assent 18 April 2011
Commencement see section 2

1 Title

This Act is the KiwiSaver Amendment Act 2011.

2 Commencement

This Act comes into force on 1 May 2011.

Transitional provisions

57 Interpretation

In this section and in sections 58 to 71, unless the context otherwise requires,—

commencement date means the date on which this section comes into force

effective date, in relation to a particular KiwiSaver scheme, means the earlier of the dates set out in section 58(2)

existing KiwiSaver scheme means a KiwiSaver scheme registered in the KiwiSaver schemes register immediately before the commencement date

existing member, in relation to a KiwiSaver scheme, means a person who was a member of the scheme immediately before the effective date

register means the KiwiSaver schemes register established under section 156 of the principal Act

relevant enactments means the principal Act and the enactments amended by section 56 of this Act

security means an interest in a KiwiSaver scheme offered to the public for subscription.

58 Transition period for existing schemes

- (1) To the extent that the relevant enactments as amended by this Act would otherwise apply to an existing KiwiSaver scheme, those enactments continue in force during the transition period

described in subsection (2) as if they had not been amended by this Act.

- (2) The transition period for a particular scheme is the period beginning on the commencement date and ending on the close of the day before the earlier of the following dates:
 - (a) the date that the trustees of the scheme elect to comply with the relevant enactments as amended by this Act; or
 - (b) 1 October 2012.
- (3) The relevant enactments as amended by this Act apply to a particular scheme on and from the earlier of the dates set out in subsection (2).
- (4) If the trustees elect an effective date that is earlier than 1 October 2012, the trustees must notify the FMA and the Commissioner of the elected date at least 20 working days before that date.
- (5) A failure to comply with subsection (4) does not limit subsection (3).
- (6) This section is subject to section 59.

59 Certain provisions have effect during transition period

Despite section 58,—

- (a) section 56(5) of the principal Act (as inserted by section 8 of this Act) applies to a KiwiSaver scheme during the scheme's transition period as if the reference in section 56(5) to the circumstances in section 56(6) were a reference to the trustees of the scheme having lodged a copy of a winding-up order or resolution with the FMA under section 173 of the principal Act; and
- (b) section 116A(4) of the principal Act (as inserted by section 12 of this Act) applies to a KiwiSaver scheme listed in section 61 or 62 of this Act during the scheme's transition period.

60 FMA must amend register

- (1) On, or as soon as practicable after, the effective date for a KiwiSaver scheme, the FMA must,—

- (a) in the case of a scheme listed in section 61 or 62, amend the register to identify the scheme as a restricted scheme; and
 - (b) in the case of any other KiwiSaver scheme, amend the register to identify the name of the manager of the scheme.
- (2) The FMA must not amend the register to identify a KiwiSaver scheme as a restricted scheme other than in accordance with subsection (1)(a).

61 Certain employer schemes to be restricted schemes

Each of the following KiwiSaver schemes is eligible, on its effective date, to be identified as a restricted scheme on the KiwiSaver schemes register:

- (a) Allied Farmers KiwiSaver Scheme:
- (b) Douglas Pharmaceuticals KiwiSaver Scheme:
- (c) Ecolab KiwiSaver Scheme:
- (d) Foodstuffs (Wellington) KiwiSaver Scheme:
- (e) Foodstuffs KiwiSaver Scheme:
- (f) Griffins KiwiSaver Scheme:
- (g) Hexion KiwiSaver Scheme:
- (h) Ravensdown KiwiSaver Scheme:
- (i) Stevenson Group KiwiSaver Scheme:
- (j) Tait Electronics Ltd KiwiSaver Scheme.

62 Certain restricted-entry schemes to be restricted schemes

Each of the following KiwiSaver schemes is eligible, on its effective date, to be identified as a restricted scheme on the KiwiSaver schemes register:

- (a) BCF KiwiSaver Scheme:
- (b) Koinonia Fund:
- (c) Medical Assurance Society KiwiSaver Plan:
- (d) New Zealand Harbours KiwiSaver Scheme:
- (e) NZ Maritime Officers KiwiSaver Scheme:
- (f) PSBG KiwiSaver Scheme:
- (g) SRF KiwiSaver Scheme:
- (h) Supereasy KiwiSaver Superannuation Scheme:
- (i) Waterfront Industry KiwiSaver Scheme.

65 Providers must notify existing members of changes

- (1) The provider of a KiwiSaver scheme must, no later than 3 months after the effective date for the scheme,—
 - (a) prepare a document (the **information document**) that identifies—
 - (i) the material amendments to the trust deed of the scheme made under section 63; and
 - (ii) if an existing trust deed has been replaced with a new trust deed under section 64, the material differences between the existing trust deed and the new trust deed; and
 - (iii) the material variations in the terms or conditions of a security that result from amendments to relevant enactments made by this Act; and
 - (b) send, to the address (as defined in section 4(1) of the principal Act) of every existing member of the scheme a written statement that complies with subsection (2).
- (2) The written statement must contain all of the following:
 - (a) the effective date;
 - (b) the names of the trustees;
 - (c) a brief description of the material amendments, differences, and variations described in the information document;
 - (d) in the case of a KiwiSaver scheme other than a restricted scheme, the name of the manager;
 - (e) a statement to the effect that the member is entitled to receive a copy of the information document free of charge;
 - (f) a statement to the effect that a copy of the information document is available, free of charge and at all reasonable times, on an Internet site maintained by, or on behalf of, the provider.
- (3) The provider must, if an existing member of the scheme requests a copy of the information document, ensure that a hard copy of the information document is sent, free of charge, to the member.
- (4) Until 31 December 2013, the provider must ensure that a copy of the information document is available, at all reasonable

times, on an Internet site maintained by or on behalf of the provider.

66 Application of Securities Act 1978: promoter

- (1) This section applies to a person who, in respect of a KiwiSaver scheme other than a restricted scheme,—
- (a) was a trustee of the scheme before the effective date; and
 - (b) is a trustee of the scheme on or after the effective date.
- (2) For the purposes of the Securities Act 1978, the person is not a promoter in relation to interests in the scheme offered to the public for subscription on or after the effective date by reason only that the person was, before the effective date and in the person's capacity as trustee, instrumental in the formulation of a plan or programme pursuant to which interests in the scheme are offered to the public.

67 Application of Securities Act 1978: offer of securities to public

To avoid doubt, none of the following constitutes an offer of a security to the public for the purposes of the Securities Act 1978:

- (a) an amendment to a trust deed under section 63;
- (b) a replacement of an existing trust deed with a new trust deed under section 64;
- (c) if an existing trust deed is replaced with a new trust deed under section 64, a difference between the existing trust deed and the new trust deed;
- (d) the change of issuer in relation to an interest in a Kiwi-Saver scheme other than a restricted scheme from the trustees to the manager (*see* the definition of **issuer** in section 2(1) of the Securities Act 1978 as amended by section 56 of this Act);
- (e) any other variation in the terms or conditions of a security resulting from amendments to relevant enactments made by this Act.

68 Certain participation agreements executed before registration continue to have effect

The repeal of section 128 of the principal Act by section 22 of this Act does not affect the status of a participation agreement as forming part of the trust deed.

69 Certain scheme provider agreements continue in force

- (1) This section applies to a scheme provider agreement that—
 - (a) relates to a KiwiSaver scheme other than a restricted scheme; and
 - (b) was entered into before, and has effect immediately before, the effective date.
- (2) On and from the effective date, the scheme provider agreement is binding on and enforceable by, against, or in favour of the manager as provider of the scheme.

70 References to department in instruments of appointment

Unless the context otherwise requires, a reference (express or implied) to the department in an instrument of appointment made under section 177 of the principal Act before or on the commencement date must be read as a reference to the FMA.

Reprints notes

1 General

This is a reprint of the KiwiSaver Act 2006 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 Amendments incorporated in this reprint

KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42)

Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4): section 140

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): sections 91, 101(3), (6), (7), 105, 107

Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52): section 147

Legislation Act 2012 (2012 No 119): section 77(3)

Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88): sections 228–238

Criminal Procedure Act 2011 (2011 No 81): section 413

Student Loan Scheme Act 2011 (2011 No 62): section 223

Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63): sections 210, 211

Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23): section 15

Auditor Regulation Act 2011 (2011 No 21): section 82

Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10): section 62

KiwiSaver Amendment Act 2011 (2011 No 8)

Financial Markets Authority Act 2011 (2011 No 5): sections 82, 85(1)

Taxation (GST and Remedial Matters) Act 2010 (2010 No 130): sections 172–180

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Taxation (Budget Tax Measures) Act 2009 (2009 No 14): sections 5–6

Employment Relations Amendment Act 2008 (2008 No 106): section 10

Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105): sections 43–46, 48, 50

Financial Advisers Act 2008 (2008 No 91): section 162

Policing Act 2008 (2008 No 72): section 116(a)(vii)

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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 27–62, 63(2), (3), 64–103

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