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Taxation (KiwiSaver) Act 2007

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Note

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

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

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (KiwiSaver) Act 2007.

2 Commencement

(1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.

(2) Section 108(1) is treated as coming into force on 1 April 2007.

(3) Sections 119, 120, and 121 are treated as coming into force on 17 May 2007.

(4) Sections 4, 6 to 9, 12(2)(b), (4), and (7), 18(1) and (2), 27(4), (8)(d), (11), and (13)(a), 28, 34(1), 35, 36(1), 37, 38(1), 40, 42, 43, 44, 46, 47, 48, 49, 51, 52, 53, 54, 59, 63(1), 73, 74, 90, 92(1), 95, 96, 98(1) and (3), 102(8), and 109 are treated as coming into force on 1 July 2007.

(5) Section 78 is treated as coming into force on 1 October 2007.

(6) Section 137 is treated as coming into force on 1 November 2007.

(7) Sections 5, 10, 11, 12(2)(a), (c) to (f), (3), (5), (6), (8), and (9), 14, 16, 18(3), 17, 19, 22, 27(1), (2), (3), (5), (6), (7), (9), (10), (12), (13)(b), and (14), 29, 30, 33, 34(2), 36(2), 38(2), 50, 57, 60, 61, 62, 63(2) and (3), 65, 69, 71(1), 75, 76, 78(2), 79 to 82, 84, 85, 86, 87, 93(1), (2), (3), and (5), 102(3) and (9), 103, 110(2), and 122 to 136 come into force on 1 April 2008.

(8) Sections 15, 20, 21, 23 to 25, 56(2), 66, 91, 92(3), 94, and 111(2) come into force on 1 April 2009.

Section 2(7): amended (with effect from 19 December 2007), on 29 May 2008, by section 59(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

KiwiSaver-related amendments to Income Tax Act 2004

3 Income Tax Act 2004

Sections 4 to 12 amend the Income Tax Act 2004.

4 New section CS 10B inserted

After section CS 10, the following is inserted:

CS 10B Exclusion of permitted withdrawals from KiwiSaver schemes and complying superannuation funds

Section CS 1 does not apply to a permitted withdrawal from a KiwiSaver scheme or a complying superannuation fund.

Defined in this Act: complying superannuation fund, KiwiSaver scheme, permitted withdrawal

5 Contributions to employees' superannuation schemes

After section DC 6(1)

Exclusion

(1B) The employer is denied a deduction for a contribution, to the extent of the amount of the tax credit under section KJ 6 (Tax credits relating to employers

contributing to KiwiSaver schemes and complying superannuation funds) for the PAYE period to which the contribution relates.

6 Person's requirements

(1) Section KJ 2(a) is replaced by the following:

(a) has creditable membership of a complying superannuation fund or a KiwiSaver scheme; and

(2) In the list of defined terms in section KJ 2, "creditable membership" is inserted.

7 Section KJ 3 replaced

Section KJ 3 is replaced by the following:

KJ 3 Tax credit amount

Tax credit amount

(1) The amount of the tax credit for the member credit year is—

(a) equal to the total amount of a person's member credit contributions for all of the person's complying superannuation funds and KiwiSaver schemes for the member credit year, if the first formula in subsection (2) calculates an amount that is less than $1042.86 / 365:

(b) equal to the amount calculated using the second formula in subsection (3), if the first formula in subsection (2) calculates an amount that is equal to or greater than $1042.86 / 365.

First formula

(2) For the purposes of subsection (1), an amount is calculated using the following formula:

$$\frac{\text{member credit contributions}}{\text{included days.}}$$

Second formula

(3) For the purposes of subsection (1)(b), the amount of the tax credit for the member credit year is calculated using the following formula:

$$\$1042.86 \times \frac{\text{included days}}{365.}$$

Definition of items in formulas

(4) In the formulas,—

(a) **member credit contributions** is the total amount of a person's member credit contributions for all of the person's complying superannuation funds and KiwiSaver schemes for the member credit year:

(b) **included days** are the number of days in the member credit year on which the person meets the requirements in section KJ 2.

Defined in this Act: amount, complying superannuation fund, KiwiSaver scheme, member credit contributions, member credit year, salary or wages

8 Payment

(1) The heading to section KJ 4(1) is replaced by "*Payment to fund provider by direct credit without deduction or set-off*".

(2) In section KJ 4(1), "The Commissioner" is replaced by "Unless subsection (3) applies, the Commissioner".

(3) Section KJ 4(2) is replaced by the following:

Timing

(2) The Commissioner must pay the amount of tax credit to the fund provider within 30 working days of the provider furnishing a member credit claim form under section 68C(3) or (4) of the Tax Administration Act 1994.

(4) After section KJ 4(2), the following is added:

Exception: payment to the person or another provider

(3) Despite subsection (1), the Commissioner may pay the amount of tax credit under section KJ 1 to—

(a) the person, if it would be impracticable to pay it to the person's fund provider because the person has no fund provider or because of the person's death or **serious illness** as that term is defined in schedule 1, clause 12(3) of the KiwiSaver Act 2006; or

(b) a fund provider (**provider B**) who is not described in subsection (1), if the fund provider described in subsection (1) requests the payment to provider B because the person is transferring or has transferred to provider B.

9 Rules

(1) In section KJ 5(3), "The fund provider must credit the amount of the tax credit on a pro rata basis" is replaced by "The fund provider must use the contribution allocation for a member to credit the amount of tax credit".

(2) In section KJ 5(6)(a)(i), "person" is replaced by "person and are held by the fund provider".

10 New sections KJ 6 to KJ 12 added

In subpart KJ, the following is added:

KJ 6 Tax credits relating to employers contributing to KiwiSaver schemes and complying superannuation funds

Tax credit

(1) An employer who meets the requirements in section KJ 7 for a PAYE period has an amount of tax credit for the PAYE period.

Amount of tax credit

(2) The amount of the tax credit is calculated under section KJ 8.

Rules

(3) Section KJ 9 provides some rules for using the tax credit. Section KJ 10 provides a special rule for certain shortpaid and unpaid amounts of compulsory employer contribution. Section KJ 11 provides a special rule for when employees opt out of a KiwiSaver scheme. Section KJ 12 provides a special rule to treat a group of persons as 1 employer.

Treatment of private domestic workers

(4) For the purposes of this section and sections KJ 7 to KJ 12, a private domestic worker who is an employer under paragraph (c) of the definition of **employer** in section 4 of the KiwiSaver Act 2006 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, for the purposes of this section and sections KJ 7 to KJ 12.

Defined in this Act: amount, complying superannuation fund, compulsory employer contribution, employee, employer, KiwiSaver scheme, PAYE period, private domestic worker

KJ 7 Employer requirements

For the purposes of section KJ 6(1), the requirements are that the employer—

(a) pays an amount of employer contribution, and the employee is—

(i) aged 18 or over; and

(ii) is not entitled to withdraw an amount from a fund or scheme under schedule 1, clause 4(3) (which relates to lock-in of funds) of the KiwiSaver scheme rules in the KiwiSaver Act 2006 or a rule the same as that clause; and

(b) claims the amount of their entitlement to a tax credit under this subpart for an employee, in an employer monthly schedule or remittance certificate they furnish, unless they meet a requirement in paragraph (c); and

(c) if paragraph (b) does not apply,—

(i) has an amount of compulsory employer contribution unpaid, specified in a notice under section 101I(5) of the KiwiSaver Act 2006; or

(ii) has an amount of short payment under Part 3, subpart 3 of that Act.

(d) meets 1 of the requirements in section 6(2) of that Act.

Defined in this Act: amount, compulsory employer contribution, employee, employer, employer contribution, employer monthly schedule, remittance certificate

KJ 8 Tax credit amount

Tax credit amount

(1) For the PAYE period, the amount of the tax credit is equal to the lesser of—

(a) the employer contributions for the employee, to the extent to which the employee meets the requirements of section KJ 7(a) for the period; and

(b) the amount calculated using the following formula:

$20 × weeks in PAYE period.

Definition of item in formula

(2) In the formula, **weeks in PAYE period** is the number of weeks (with fractions of a week expressed as a decimal) in the PAYE period that the employee meets the requirements of section KJ 7(a), including weeks in the PAYE period that the employer does not pay an amount of employer contribution.

Defined in this Act: amount, employee, employer, employer contribution, PAYE period

KJ 9 Using the tax credit

Timing

(1) The tax credit arises—

(a) on the last day for the payment of tax deductions prescribed in section NC 15 for the PAYE period, if section KJ 7(b) applies to the employer and the employer is not a private domestic worker:

(b) on the last day for the payment of tax prescribed in section NC 16 for the PAYE period, if section KJ 7(b) applies to the employer and the employer is a private domestic worker:

(c) if section KJ 7(c) applies to the employer, on the day the Commissioner—

(i) receives the notice under section 101I(5) of the KiwiSaver Act 2006; or

(ii) decides that the employer has an amount of short payment under Part 3, subpart 3 of that Act.

Use

(2) The tax credit is used in the following order:

(a) first, either—

(i) used by the Commissioner to pay the amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution for the PAYE period; or

(ii) paid by the Commissioner to the fund provider of the complying superannuation fund to meet the amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of that Act:

(b) second, used by the Commissioner to pay employer contributions:

(c) third, used by the Commissioner to pay an amount that is payable by the employer to the Commissioner under an Inland Revenue Act for the PAYE period:

(d) fourth, used by the Commissioner to pay an amount that is payable by the employer to the Commissioner under an Inland Revenue Act:

(e) fifth, treated as tax paid in excess and refundable under section MD 1.

Treatment of tax credit used

(3) An amount of tax credit used or paid under subsection (2)(a) is treated as an amount of compulsory employer contribution—

(a) received by the Commissioner for the PAYE period, for the purposes of calculating an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006:

(b) consequentially reducing a relevant amount of compulsory employer contributions remaining unpaid, for the purposes of section 101K of that Act:

(c) received by the Commissioner, for the purposes of section 74 of that Act.

Defined in this Act: amount, Commissioner, compulsory employer contribution, employer, PAYE period, tax deduction

KJ 10 Treatment when short payment and unpaid amount of compulsory employer contributions found after tax credit used

When this section applies

(1) This section applies, for an employer, if—

(a) the Commissioner has used an amount of tax credit, under 1 or both of section KJ 9(2)(c) and (d), to pay an amount payable that is described in those paragraphs; and

(b) after the amount of tax credit has been used by the Commissioner under those paragraphs, there is, for the PAYE period to which the amount of tax credit relates,—

(i) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006:

(ii) compulsory employer contributions unpaid, specified in a notice under section 101I(5) of that Act.

Liability to pay for credits already used

(2) The employer is liable to pay an amount equal to the lesser of—

(a) the amount of tax credit used that relates to the PAYE period; and

(b) the amounts described in subsections (1)(b)(i) and (ii) for that PAYE period.

Treatment of liability

(3) The employer's liability under subsection (2) is treated as a liability to pay a tax deduction for the PAYE period in which the relevant amounts in subsections (1)(b)(i) and (ii) are notified to the employer.

New tax credit granted

(4) An amount equal to the employer's liability under this section is treated as a tax credit to be used under section KJ 9(2)(a).

Defined in this Act: amount, Commissioner, compulsory employer contribution, employer, PAYE period, tax deduction

KJ 11 Employees who opt out

When this section applies

(1) This section applies when an employee opts out under the KiwiSaver Act 2006.

Treatment of tax credits

(2) The amount of tax credit for an employer contribution for the employee's salary or wages is treated as an amount of tax credit paid in excess of that properly payable under this subpart.

Defined in this Act: employee, salary or wages

KJ 12 Group of persons 1 employer

For the purposes of sections KJ 6 to KJ 11, a group of persons described in 1 of the following paragraphs is treated as 1 employer:

(a) 2 or more companies, if those companies are a group of companies; and

(b) all partners in a partnership; and

(c) all persons in whom property has become vested or to whom the control of property has passed in the case of each estate of a deceased person or each trust or each company in liquidation or each assigned estate or each other case where property is vested or controlled in a fiduciary capacity.

Defined in this Act: company, employer, group of companies

11 Calculation amounts in relation to current specified superannuation contribution for complying superannuation fund

In section NE 3(6), the definition of **salary or wages** is omitted.

12 Definitions

(1) This section amends section OB 1.

(2) In the definition of **complying fund rules**,—

(a) in paragraph (a), "2," is inserted after "schedule 1, clauses":

(b) in paragraph (b), "described in" is replaced by "described in regulations made under section 229(1) of the KiwiSaver Act 2006 and":

(c) after paragraph (cb), the following is inserted:

(cc) require the trustees, at the member's request, to pay any withdrawal that is allowed under the rules in paragraphs (a) to (c) as a lump sum, as if the withdrawal were a permitted withdrawal to which schedule 1, clause 5 of the KiwiSaver Act 2006 applied (with necessary modifications); and

(d) paragraphs (i) and (j) are replaced by the following:

(i) require, as a minimum, the same contributions to be deducted for an employee as those provided by section 66 or 66A of the KiwiSaver Act 2006 ignoring the 8% contribution rate; and

(j) prevent a person over the New Zealand superannuation qualification age from joining; and

(e) paragraph (k) is repealed:

(f) in paragraph (l), "section 196" is replaced by "sections 101G and 196".

(3) After the definition of **complying superannuation fund**, the following is inserted:

compulsory employer contribution has the same meaning as in the KiwiSaver Act 2006.

(4) After the definition of **credit transfer notice** the following is inserted:

creditable membership—

(a) means, for a person, membership in a KiwiSaver scheme or a complying superannuation fund; and

(b) includes, for a person,—

(i) the period—

(A) beginning on the earlier of the first day of the month in which contributions are first received by the Commissioner for the person or the first day of the month in which KiwiSaver contributions are first deducted for the person; and

(B) ending on the day on which securities are first allotted by the KiwiSaver scheme for the person:

(ii) the days in the month in which securities are first allotted by the KiwiSaver scheme or complying superannuation fund in relation to the person:

(iii) for the period beginning on 1 July 2007 and ending on the day on which securities are first allotted by the KiwiSaver scheme for the person, the days in the month that the KiwiSaver scheme receives a valid application for membership from the person and any remaining days in that

period, if the person makes contributions in relation to the KiwiSaver scheme before 1 November 2007

(5) In the definition of **employee's superannuation accumulation**, paragraph (a) is replaced by the following:

(a) employer contributions:

(6) After the definition of **employer**, the following is inserted:

employer contribution has the same meaning as in the KiwiSaver Act 2006.

(7) The definition of **member credit contributions** is replaced by the following:

member credit contributions means, for a person and a member credit year, the total of the following

(a) superannuation contributions to the person's complying superannuation funds and KiwiSaver scheme to the extent to which the contributions are subject to KiwiSaver scheme rules or complying fund rules, but excluding the following:

(i) specified superannuation contributions for the person:

(ii) contributions withdrawn under a mortgage diversion facility provided for in regulations made under section 229 of the KiwiSaver Act 2006:

(iii) any amounts that are accounted for under paragraph (b):

(b) amounts that have been received and held in respect of the person by the Commissioner and to which section 73, 74, or 75 of the KiwiSaver Act 2006 apply, but excluding specified superannuation contributions for the person and amounts that are never paid by the Commissioner to the provider of the person's KiwiSaver scheme, unless the amounts are never paid to the provider because of—

(i) the person's death:

(ii) a refund under section 113 of the KiwiSaver Act 2006

(8) The definition of **PAYE period** is replaced by the following:

PAYE period,—

(a) for the purposes of subpart KJ (KiwiSaver scheme and complying superannuation fund tax credits) means the first PAYE period, the second PAYE period, or the month in which a deduction of PAYE is made or to which a payment of tax under section NC 16 relates, as the case may be:

(b) is defined in section NC 15(8) (Payment of tax deductions to Commissioner) for the purposes of that section

(9) In the definition of **salary or wages**, paragraph (d) is replaced by the following:

(d) for the purposes of sections NE 3 and NE 3B (which relate to SSCWT) means **salary or wages**, as defined in section 4 of the KiwiSaver Act 2006

(10) In the definition of **superannuation scheme**, paragraph (a)(ib) is repealed.

KiwiSaver-related amendments to Tax Administration Act 1994

13 Tax Administration Act 1994

Sections 14 to 25 amend the Tax Administration Act 1994.

14 Interpretation

In section 3(1), in the definition of **tax**—

(a) the following is inserted after paragraph (a)(iii)(CB):

(CC) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution:

(CD) an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of the KiwiSaver Act 2006:

(b) the following is inserted after paragraph (a)(vii):

(viii) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that does not relate to a compulsory employer contribution:

(c) the following is inserted after paragraph (d)(iii)(C):

(CB) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution:

(CC) an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of the KiwiSaver Act 2006:

(d) the following is inserted after paragraph (d)(viii):

(viiib) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that does not relate to a compulsory employer contribution:

15 Interpretation

In section 3(1), in the definition of **civil penalty**, in paragraph (e), "or 216" is omitted.

16 Construction of certain provisions

After section 4A(3)(bb), the following is inserted:

(bc) amounts of compulsory employer contributions that must be paid under Part 3, subpart 3A of the KiwiSaver Act 2006 to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of that Act; or

17 Keeping of business records

In section 22(2)(1), "and the occasion of making it", is replaced by ", the occasion of making it, and any related tax credit under section MK 1(2) of the Income Tax Act 2007."

18 Tax credit relating to KiwiSaver and complying superannuation fund members: member credit form

(1) In section 68C(3)(a), "and tax file number" is replaced by "and (if known) tax file number".

(2) Section 68C(4) is replaced by the following:

(4) The fund provider may claim an amount of a tax credit under section KJ 1 of the Income Tax Act 2004 for the person if the provider meets the requirements of subsections (2)(b) and (c), and is satisfied that the amount of tax credit has not previously been claimed. A claim under this subsection may be supplementary to or included in a claim under subsection (3), and must be in the form prescribed under subsection (3).

(3) In section 68C(4), as inserted by subsection (2), "section KJ 1 of the Income Tax Act 2004" is replaced by "section MK 1(1) of the Income Tax Act 2007".

19 Persons excluded

After section 120B(b), the following is inserted:

(bb) an employer in relation to amounts of compulsory employer contributions that must be paid under Part 3, subpart 3A of the KiwiSaver Act 2006 to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of that Act:

20 Challenging civil penalties

In section 138L(2)(ab), "or 216" is omitted.

21 Knowledge offences

In section 143A(5)(g), "tax." is replaced by "tax:", and the following is added:

(h) amounts of compulsory employer contributions that must be paid under Part 3, subpart 3A of the KiwiSaver Act 2006 to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of that Act.

22 Deduction of tax from payments due to defaulters

In section 157(10), in the definition of **income tax**, after paragraph (g), the following is added:

(h) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution:

(i) an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of the KiwiSaver Act 2006.

23 Remission for reasonable cause

In section 183A(1)(h), "or 216" is omitted.

24 Remission in circumstances of qualifying event

In section 183ABA(3A), "or 216" is omitted.

25 Remission consistent with collection of highest net revenue over time

In section 183D(1)(bc), "or 216" is omitted.

Amendments to KiwiSaver Act 2006

26 KiwiSaver Act 2006

Sections 27 to 103 amend the KiwiSaver Act 2006.

27 Interpretation

(1) Subsections (2) to (13) amend section 4(1).

(2) The definition of **deduction rate** is replaced by the following:

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

(3) After the definition of **default KiwiSaver scheme**, the following is inserted:

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 employ-

er 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)

(4) The definition of **employer** is replaced by the following:

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 NC 16 of the Income Tax Act 2004, 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 NC 16 of the Income Tax Act 2004, the private domestic worker, not person B, if the worker chooses to be the employer by applying subpart 3A of Part 3

(5) In the definition of **employer**, as inserted by subsection (4),—

(a) in paragraph (b), "section NC 16 of the Income Tax Act 2004" is replaced by "section RA 8, RA 10, or RD 4(2) of the Income Tax Act 2007":

(b) in paragraph (c), "section NC 16 of the Income Tax Act 2004" is replaced by "section RA 8, RA 10, or RD 4(2) of the Income Tax Act 2007".

(6) After the definition of **employer**, the following is inserted:

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

(7) After the definition of **employer's chosen KiwiSaver scheme**, the following is inserted:

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

(8) In the definition of **independent trustee**,—

(a) in paragraph (a)(i), ", administration manager, or investment manager" is omitted:

(b) paragraph (a)(ii) and (iii) is replaced by the following:

(ii) is not a related company of a corporate trustee that is an investment manager, promoter, or another trustee of the scheme; and

(c) in paragraph (a)(viii), "does not have a director to whom any of subparagraphs (i) to (vii) would apply" is replaced by "has no director that would fail to meet any of the requirements described in subparagraphs (i) to (vii)"

(d) in paragraph (b), "does not have a director to whom any of paragraph (a)(i) to (vii) would apply" is replaced by "has a director that would meet any of the requirements described in paragraph (a)(i) to (vii)".

(9) In the definition of **KiwiSaver scheme**, "section 137" is replaced by "section 137 or a scheme that is included in the register only under section 161".

(10) The definition of **PAYE period** is replaced by the following:

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

(11) After the definition of **personal representative**, the following is inserted:

private domestic worker has the same meaning as in section OB 1 of the Income Tax Act 2004

(12) The definition of **private domestic worker**, as inserted by subsection (11), is replaced by the following:

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

(13) In the definition of **salary or wages**,—

(a) paragraph (a) is replaced by the following:

(a) it excludes—

(i) salary or wages described in subparagraphs (iv), (v), (ix), or (xi) of paragraph (b) of that definition in that Act; and

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

(b) paragraph (a), as amended, and paragraph (b) are both replaced by the following:

(a) it excludes—

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

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

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

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

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

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

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

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

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

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

(14) Section 4(2) is replaced by the following:

(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).

28 Meaning of provider

In section 5(1), "provider of a scheme" is replaced by "provider of a KiwiSaver scheme or a complying superannuation fund".

29 Application

(1) In section 6(1)(a), "personally present" is replaced by "living".

(2) In section 6(2)(b), "2007)." is replaced by "2007); or", and the following is added:

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

30 Outline

After section 8(5), the following is added:

(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.

31 Who automatic enrolment rules apply to

In section 10, in the words before the paragraphs, "who" is replaced by "who is not a secondee and".

32 Meaning of new employment

(1) In the heading to section 11, "**new employment**" is replaced by "**new employment and secondee**".

(2) In section 11(1)(c), "employment." is replaced by "employment; and", and the following is inserted:

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

(3) After section 11(2), the following is inserted:

(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.

33 Temporary employment

(1) In section 12(1)(b), "or less." is replaced by "or less; or", and the following is added:

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

(2) Section 12(2)(b) is replaced by the following:

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

34 How to opt out

(1) The following is added to section 17:

(6) For the purposes of sections 17 to 20, a PAYE intermediary (within the meaning of section OB 1 of the Income Tax Act 2004) acting under subpart NBA of that Act is treated as an employer.

(2) Section 17(6), as inserted by subsection (1), is replaced by the following:

(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.

35 Extension of opt-out period

(1) In section 18(1)(b)(iv), "accepted." is replaced by "accepted; or", and the following is added:

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

(2) In section 18(2), "opt-out notice" is replaced by "opt-out notice, if it is received by the Commissioner or the employer".

36 New section 23A inserted

(1) After section 23, the following is inserted:

23A PAYE intermediaries

For the purposes of sections 22 and 23, a PAYE intermediary (within the meaning of section OB 1 of the Income Tax Act 2004) acting under subpart NBA of that Act is treated as an employer.

(2) Section 23A, as inserted by subsection (1), is replaced by the following:

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.

37 Eligibility of employers who have schemes established under master trusts

In section 28(b), "scheme." is replaced by "scheme; and", and the following is added:

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

38 How to opt in

(1) After section 34(4), the following is added:

(5) For the purposes of sections 34 to 37, a PAYE intermediary (within the meaning of section OB 1 of the Income Tax Act 2004) acting under subpart NBA of that Act is treated as an employer.

(2) Section 34(5), as inserted by subsection (1), is replaced by the following:

(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.

39 Effect of opting in by employees

In section 36(1),—

(a) in the words before paragraph (a), "opts in" is replaced by "opts in under section 34(1)(a) or (b)":

(b) in paragraph (a),—

(i) in the words before subparagraph (i), "becomes" is replaced by "is":

(ii) in the words before subparagraph (i), "automatic" is omitted:

(iii) in subparagraph (i), "the employer to whom the opting in relates" is replaced by "the employee's employer":

(c) after subsection (1), the following is added:

(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.

40 Commissioner must supply information pack

(1) In section 40(1), "must supply" is replaced by "must initially supply".

(2) In section 40(2), "on request" is replaced by "on any reasonable request".

41 Employer may choose scheme for employees

(1) In section 46(2), "new" is omitted.

(2) In section 46(3)(b), "would apply," is replaced by "apply, or would apply".

42 Effect of employer choice of KiwiSaver scheme

Sections 48(1) and (2) are replaced by the following:

(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.

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

(1) Section 50(1) is replaced by the following:

(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) In section 50(3), the words before the paragraphs are replaced by "As soon as practicable, the Commissioner must, in respect of the person's employment with the employer,—".

44 Completion of allocation to default KiwiSaver scheme if person does not choose KiwiSaver scheme

(1) In section 51(4)(a), "3 months" is replaced by "as soon as practicable after 3 months".

(2) In section 51(5), "Part 1 or 2" is replaced by "Part 2 or 3".

45 Notification of transfers and requirement to transfer funds and information

Sections 56(3)(c)(iv) and (v) are replaced by the following:

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

46 Involuntary transfer

In section 57(3), "section 44" is replaced by "section 44, but excluding section 44(b) (which relates to allocation to an employer's chosen KiwiSaver scheme)".

47 New subpart 4 of Part 2 added

After subpart 3 of Part 2, the following is added:

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

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).

59B Initial back-dated validation

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

(2) The person described in section 59A is treated as a person who meets the requirements of section 6, the requirements for the application of the automatic enrolment rules, or the requirement of section 33(a), for a period—

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

(b) ending on the earlier of—

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

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

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

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.

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

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

(2) The relevant provider must immediately—

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

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

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

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

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

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

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

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

(ii) the amounts paid out by the provider to the person as permitted withdrawals, excluding the amount of Crown contributions included in the permitted withdrawals:

(iii) Crown contributions:

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

(c) the total amount of interest that the Commissioner would be liable for under section 84 on contributions described in paragraphs (a) and (b), excluding amounts described in paragraph (a)(i) to (iii) on a first-in first-

out basis. For the purposes of calculating the amount of interest payable on the relevant contributions, the **interest period** in section 87 is treated as the number of days in the period—

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

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

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

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

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

(b) Subpart 2 of Part 3 does not apply to the accumulation money and holding account money, and the Commissioner must pay the money into the Crown Bank account.

48 When this subpart does not apply

In section 62(c), "is made" is replaced by "is made and the payment is not salary and wages for a private domestic worker."

49 New section 63A inserted

After section 63, the following is inserted:

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.

50 Section 66 replaced

Section 66 is replaced by the following:

66 Obligation to make deductions: general rule

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

66A Obligation to make deductions: transitional rule

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

(a) the employer and the employee agree that they will use the transitional rates in Schedule 4; and

(b) the employer contribution for the payment of salary or wages is equal to or greater than the relevant transitional rate for the employer, given in Schedule 4; and

(c) the employer contribution vests in the employee, as provided by the trust deed of the KiwiSaver scheme, immediately after it is made.

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

51 Deductions entered in and paid out of holding account

In section 73(3), "KiwiSaver scheme" is replaced by "KiwiSaver scheme, without further authority than this section".

52 Initial contributions stay in holding account for 3 months

(1) Section 75(1) is replaced by the following:

(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) In section 75(3), "3 months" is replaced by "3 months (without further authority than this section where those contributions meet the requirements of section 73(1))".

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

In section 77(3), "KiwiSaver scheme" is replaced by "KiwiSaver scheme (without further authority than this section where that amount meets the requirements of section 73(1))".

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

In section 80(1), "the person from whose" is replaced by "a person in relation to whom a contribution was made, or from whose".

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

In section 81(1), "the Commissioner the amount" is replaced by "the Commissioner no more than the amount".

56 Interest on money in holding account

(1) In section 84(2), "Section 69 of the Public Finance Act 1989 does" is replaced by "Sections 68(2) and 69 of the Public Finance Act 1989 do".

(2) After section 84(2), the following is added:

(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.

57 Deductions treated as received on 15th of month for interest purposes

(1) In the heading to section 85, "**Deductions treated as received on 15th of month**" is replaced by "**Time when contributions treated as received**".

(2) After section 85(2), the following is added:

(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.

58 Interest rate

In section 86, the following is added as subsection (2):

(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.

59 New section 92A inserted

After section 92, the following is inserted:

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.

60 Section 93 replaced

Section 93 is replaced by the following:

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.

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

In section 98(3)(d), "subpart 1." is replaced by "subpart 1; and", and the following is added:

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

62 New section 98A inserted

After section 98, the following is inserted:

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.

63 Short payments if not enough employer contribution remitted to cover all employees

(1) In section 99(2), the words before the formula are replaced by the following:

(2) For the purposes of this subpart, the amount of employer contribution (gross of any specified superannuation contribution withholding tax payable under the SSCWT rules) that the Commissioner is treated as receiving for any 1 employee is given by the following formula:

(2) In section 99(2), the words before the formula, as inserted by subsection (1), are replaced by the following:

(2) For the purposes of this subpart, the amount of employer contribution (gross of any ESCT) that the Commissioner is treated as receiving for any 1 employee is given by the following formula:

(3) The following is added to section 99:

(4) For the purposes of this section, employer contribution does not include compulsory employer contribution to the extent of the employer's entitlement to a tax credit under section MK1(2)of the Income Tax Act 2007 in relation to the contribution.

64 Refunds of employer contribution by provider

(1) In section 101(1),—

(a) "may" is replaced by "must":

(b) "that this Act requires the Commissioner to on-pay to the provider" is replaced by "of the employer contribution that this Act requires".

(2) Section 101(2) is repealed.

65 New subpart 3A of Part 3 inserted

After subpart 3 of Part 3, the following is inserted:

Subpart 3A—Compulsory employer contributions to KiwiSaver schemes and complying superannuation funds

101A General

(1) An employer must pay, in accordance with sections 101E and 101F, an amount of employer contribution (a **compulsory employer contribution**) calculated under section 101D for an employee, to the extent to which the employee meets the requirements in section 101C for a period to which a payment of salary or wages relates.

(2) Section 101B provides rules relevant to parties to an employment relationship, and how they bargain in respect of compulsory employer contributions and associated matters.

(3) Section 101G provides rules relevant to providers who receive compulsory employer contributions directly or from the Commissioner.

(4) The rest of this subpart provides rules relating to compulsory employer contributions to complying superannuation funds. Also, subpart 3 provides some rules for employer contributions to KiwiSaver schemes.

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

101B Compulsory contributions must be paid on top of gross salary or wages except to extent that parties otherwise agree after 13 December 2007

(1) The purpose of this section is to ensure that, for contractual arrangements of parties to an employment relationship (as defined in section 4(2) of the Employment Relations Act 2000), compulsory contributions are paid in addition to an employee's gross salary or wages described in section 101D(3).

(2) The contractual arrangements of parties to an employment relationship must not have the effect of defeating the purpose of this section described in subsection (1).

(3) A contractual term or condition has no effect to the extent to which it is contrary to the purpose of this section described in subsection (1).

(4) However, on and after 13 December 2007,—

(a) parties to an employment relationship are free to agree contractual terms and conditions that ignore the purpose of this section described in subsection (1); and

(b) to the extent of such agreement described in subparagraph (a), subsections (1) to (3) do not apply.

(5) For the avoidance of doubt, the duty of good faith described in section 4 of the Employment Relations Act 2000 always applies when parties to an employment relationship bargain for terms and conditions relating to compulsory contributions and associated matters.

(6) In this section, **compulsory contributions** means an amount of employer contributions equal to the amount of compulsory employer contributions that would be required by this subpart in the absence of section 101D(5)(a).

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.

101D Compulsory employer contribution amount: general rule

(1) The amount of a compulsory employer contribution is a positive amount calculated using the following formula:

(payment of gross salary or wages × CEC rate) − other contributions − hybrid schemes amount.

(2) The items in the formula are defined in subsections (3) to (6).

(3) **Payment of gross salary or wages** is the amount of a payment of gross salary or wages from which the employer deducts or is required to deduct an amount for the employee's KiwiSaver scheme or complying superannuation fund.

(4) **CEC rate** is, for the payment of gross salary or wages,—

(a) 1%, if the payment of gross salary or wages is made for a pay period that is in the year starting on 1 April 2008:

(b) 2%, if the payment of gross salary or wages is made for a pay period that is in the year starting on 1 April 2009:

(c) 3%, if the payment of gross salary or wages is made for a pay period that is in the year starting on 1 April 2010:

(d) 4%, if the payment of gross salary or wages is made for a pay period that is in a year starting on or after 1 April 2011.

(5) **Other contributions** is the total of amounts that the employer pays or credits in relation to the employee for the period to which the payment of gross salary or wages relates, to the extent to which the amounts are—

(a) employer contributions made in the absence of this section:

(b) employer's superannuation contributions made to, or amounts credited from within, (collectively, the **contributions**) a registered superannuation scheme (the **contributions scheme**), and—

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

the contributions scheme were registered before 17 May 2007; and

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

(iii) the employee is—

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

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

(iv) the contributions scheme provides that the contributions vest completely in the employee in a period starting on or after the employee first 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 sworn member of the police:

(ii) who is in a class of employees prescribed in regulations made under section 230A.

(6) **Hybrid schemes amount** is the amount given by subsection (7) for a registered superannuation scheme, employer and employee described in subsection (5)(b)(i) to (iii)—

(a) which do not have an amount of other contributions for the period to which the payment of gross salary or wages relates; and

(b) for which relevant retirement benefits are calculated by adding to the employee's total contributions a percentage of those contributions.

(7) For the purposes of subsection (6), the amount is calculated using the following formula:

member's contribution × vesting percentage.

(8) In the formula,—

(a) **member's contribution** is the amount of the employee's contribution for the period to which the payment of gross salary or wages relates:

(b) **vesting percentage** is the percentage of the employee's total contributions to be added to those contributions 5 years after the employee first becomes a member of the registered superannuation scheme.

101E Payment: allocation between schemes and funds

(1) If the employer and employee agree to an allocation of compulsory employer contributions between an employee's KiwiSaver scheme and complying superannuation funds, the contribution allocation agreed is used for allocating payments.

(2) If the employer and employee cannot agree what allocation of the amount of compulsory employer contribution is for an employee's KiwiSaver scheme or complying superannuation funds, the amount is—

(a) first, for the employee's KiwiSaver scheme, up to the maximum required to meet an employer's compulsory employer contribution obligations:

(b) second, for the employee's complying superannuation funds, pro-rata, to the extent to which an amount remains after applying paragraph (a).

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.

101G Rules: providers

(1) A provider must use the contribution allocation for a member to credit the amount of compulsory employer contribution they receive across the investment products to which a member has subscribed or has been allocated.

(2) The contribution vests in the member immediately after it is paid to the provider, despite any provision to the contrary.

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

Complying superannuation funds

101H Failure to pay: provider notice

(1) This section applies if the provider of a complying superannuation fund knows that an employer has failed to pay to the provider an amount of compulsory employer contribution in accordance with this subpart.

(2) The provider must, as soon as practicable, give a notice to the employer, requesting the payment of the amount of compulsory employer contribution. The provider must send to the Government Actuary a copy of the notice.

(3) If the employer does not pay the amount of compulsory employer contribution to the provider within 1 month of this section first applying for the amount, and the total of the amounts of compulsory employer contributions unpaid is more than $500, then the provider must immediately give a notice to the Government Actuary.

(4) A notice under subsection (3) must show the following:

(a) the name of the employer; and

(b) the amounts of compulsory employer contributions unpaid; and

(c) the employer's name, address, and tax file number (if known); and

(d) specify the relevant employees to whom the failure to pay relates, their tax file numbers, and addresses; and

(e) the pay periods and relevant amounts for the employees to whom the failure to pay relates; and

(f) other information required by the Government Actuary.

(5) If the employer pays an amount of compulsory employer contribution remedying a failure to pay that was notified to the Government Actuary under subsection (3), the provider must immediately give a notice to the Government Actuary showing relevant details of the employer's payment.

66 New sections 101I to 101K inserted

After section 101H, the following is inserted:

101I Failure to pay: Government Actuary's duties

(1) If the Government Actuary receives a notice under section 101H(3), the Government Actuary 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 Government Actuary may use any power (with necessary modifications for complying superannuation funds) that the Government Actuary has in respect of KiwiSaver schemes in the performance of the duty to decide imposed by subsection (1).

(3) As soon as practicable, the Government Actuary 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 Government Actuary 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 Government Actuary's decision under subsection (1) within the time allowed under section 186, the Government Actuary 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 Government Actuary makes a decision, upon an employer's objection to the Government Actuary'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 calen-

dar months, the employer is treated as having not objected, and the Government Actuary must immediately give the Commissioner the notice described in subsection (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).

101K Recovered amounts

An amount of compulsory employer contribution for an employee's complying superannuation fund that is received by the Government Actuary 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.

67 Who may apply for contributions holiday

In section 102(b)(ii), "scheme." is replaced by "scheme; or", and the following is added:

(iii) the date that the person is first a member of a complying superannuation fund.

68 Refund of initial contributions

Section 113(5) and (6) are replaced by the following:

(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.

69 New section 117A inserted

After section 117, the following is inserted:

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.

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

In section 121(3)(a), "registered superannuation scheme" is replaced by "KiwiSaver scheme".

71 Requirement for annual report

(1) In section 123(4)(b), "in force." is replaced by "in force; and" and the following is added:

(c) if there has been an increase in a fee referred to in clause 2 of the KiwiSaver scheme rules during the year, the fee as increased is not unreasonable, after having regard to any matters prescribed under section 228(p) and any guidelines published by the Government Actuary under section 127.

(2) In section 123(5)(a), "KiwSaver" is replaced by "KiwiSaver".

(3) In section 123(5)(e), "report." is replaced by "report:", and the following is added:

(f) the total amount of each type of contribution received by the provider for the year, and the number of members credited with each type:

(g) the total amount of members' accumulations at the end of the year, and the number of members with accumulations:

(h) the total amounts of fee subsidies credited to members for the year, and the number of members credited.

(4) After section 123(5), the following is added:

(6) The trustees must send to the Government Actuary a copy of the completed report within 28 days after its completion, and, if only abridged accounts are contained in the report, a copy of the annual accounts.

72 New section 125A added

After section 125, the following is added:

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

The trustee of a KiwiSaver scheme or a complying superannuation fund must provide annually to each person who is a member of the provider's scheme or fund during the relevant year a statement showing the following for that person:

(a) the amount of each type of contribution received by the provider for the year; and

(b) the member's accumulation at the end of the year.

73 Terms relating to members' tax credits implied into trust deed

In section 128A,—

(a) in subsection (1), "The terms relevant to" is replaced by "Terms necessary for giving effect to the law relating to":

(b) in subsection (2),—

(i) the words before subparagraph (a) are replaced by "The terms—":

(ii) in subparagraph (a), "applies" is replaced by "apply":

(iii) in subparagraph (b), "is" is replaced by "are".

74 New section 128B inserted

Before the heading above section 129, the following is inserted:

128B Terms relating to back-dated validation implied into trust deed

(1) Terms necessary for giving effect to the law relating to back-dated validation of invalid membership under subpart 4 of Part 2 are implied into a trust deed that establishes a KiwiSaver scheme in relation to the KiwiSaver scheme.

(2) The terms—

(a) apply despite anything to the contrary in a trust deed of a scheme; and

(b) are enforceable by a trustee, and by a member, of the scheme.

75 New section 128C inserted

Before the heading above section 129, the following is inserted:

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

(1) Terms necessary for giving effect to paragraph (cc) of the definition of **complying fund rules** in section YA 1 of the Income Tax Act 2007 are implied into a trust deed that establishes a complying superannuation fund in relation to the complying superannuation fund.

(2) The terms—

(a) apply despite anything to the contrary in a trust deed of a fund; and

(b) are enforceable by a trustee, and by a member, of the fund.

76 New section 128D inserted

Before the heading above section 129, the following is inserted:

128D Terms relating to compulsory employer contributions implied into trust deed

(1) Terms necessary for giving effect to the law relating to compulsory employer contributions are implied into a trust deed that establishes—

(a) a KiwiSaver scheme in relation to the KiwiSaver scheme:

(b) a complying superannuation fund in relation to the complying superannuation fund.

(2) The terms—

(a) apply despite anything to the contrary in a trust deed of a scheme or fund; and

(b) are enforceable by a trustee, and by a member, of the scheme or fund.

77 Amendment of trust deed governing KiwiSaver scheme

(1) In the heading to section 129, "**or participation agreement**" is inserted after "**trust deed**".

(2) In section 129(1), "trust deed of the scheme" is replaced by "trust deed of the scheme, or to a participation agreement related to the trust deed,".

(3) Section 129(4) is repealed.

78 Effect of registration of KiwiSaver scheme under section 150

(1) In section 153(d), "the Income Tax Act 2004 and the Tax Administration Act 1994" is replaced by "provisions of the Income Tax Act 2004 and the Tax Administration Act 1994, other than those related to portfolio investment entities".

(2) In section 153(d), as amended by subsection (1), "of the Income Tax Act 2004" is replaced by "of the Income Tax Act 2004, the Income Tax Act 2007,".

79 Purpose of register

After section 158(a), the following is inserted:

(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

80 Additional contents of register

(1) After section 161(1), the following is inserted:

(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) After section 161(2), the following is inserted:

(2B) The information contained on the register under this section must be kept in separate subparts of the register.

81 Government Actuary may refuse access to or suspend operation of register, or omit or remove, or restrict public access to, information and documents in register

Section 162(2) is replaced by the following:

(2) The Government Actuary may omit or remove from the register any of the information or documents that relate to a KiwiSaver scheme or complying superannuation fund if—

(a) the scheme or fund is removed from the register; or

(b) the Government Actuary considers, in the public interest, that the information or documents should not form part of the register.

82 Amendments to register

Section 163(a) and (b) are replaced by the following:

(a) to keep the register accurate and up-to-date; or

83 Duty to notify changes to Government Actuary

Section 164(2) is replaced by—

(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).

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

Section 169(3) is repealed.

85 Objections and appeals against decisions of Government Actuary

In section 186(5), "High Court" is replaced by "High Court, unless the objection related to a decision under section 101I".

86 New sections 189B and 189C inserted

After section 189, the following is inserted:

189B Duty to give notice to Government Actuary about fee increases

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

189C Powers of High Court in relation to unreasonable fees

(1) If the High Court is satisfied, on the application of a member or the Government Actuary, that any of the persons referred to in clause 2 of the KiwiSaver scheme rules have charged a fee that is unreasonable, it may order that the fee be annulled or reduced.

(2) The High Court may make any other order it thinks fit for the purpose of giving effect to an order under subsection (1).

(3) An application for an order may be made within 1 year of the day that the fee is imposed or debited.

(4) In determining whether a fee is unreasonable for the purposes of this section, the High Court—

(a) must have regard to any prescribed matter; and

(b) may, to the extent it thinks fit, have regard to any guidelines published by the Government Actuary under section 127; and

(c) may have regard to any other matter it thinks fit.

87 New section 205A inserted

After section 205, the following is inserted:

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.

88 Factual description of, or transmission of information about, KiwiSaver scheme not investment advice

In section 206, in the words before paragraph (a), "investment advice" is replaced by "investment advice and is not an investment broker or a broker,".

89 Certain sections of Securities Act 1978 modified in relation to KiwiSaver scheme

In section 210(2)(b)(ii), "member's interest" is replaced by "member's accumulation" in each place where it appears.

90 Duty of Commissioner under section 50 modified in certain cases in which section 210 applies

(1) In section 211(1)(b), "member's interest" is replaced by "member's accumulation".

(2) In section 211(2), "member's interest" is replaced by "member's accumulation".

91 Application of sections 215 and 216

(1) In the heading to section 214, "**sections 215 and 216**" is replaced by "**section 215**".

(2) In section 214(1),—

(a) "Sections 215 and 216" is replaced by "Section 215":

(b) "or withhold contributions" is omitted.

(3) Section 214(2) is repealed.

92 Penalty for employer to fail to provide information

(1) Section 215(2)(a) is replaced by the following:

(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

(2) In section 215(3), "to which any employer monthly schedule relates" is omitted.

(3) In section 215(4), "and section 216" is omitted.

93 Penalty for employer to fail to make deductions or to incorrectly make deductions

(1) In the heading to section 216, "**to make deductions or to incorrectly make deductions**" is replaced by "**or incorrectly make deductions, or to short pay compulsory employer contributions**".

(2) In section 216(1)(b), "this Act." is replaced by "this Act; or", and the following is added:

(c) has an amount (a **short paid amount**) of short payment under subpart 3 of Part 3 that relates to a compulsory employer contribution.

(3) In section 216(2)(a), "this Act" is replaced by "this Act or if they have short paid amounts".

(4) In section 216(3), "to which any employer monthly schedule relates" is omitted.

(5) In section 216(4), "in which the failure or incorrect deduction occurred" is replaced by "in which the failure to deduct, incorrect deduction, or short paid amount occurred."

94 Section 216 repealed

Section 216 is repealed.

95 Consent to electronic transactions

In section 219, the following is added as subsection (2):

(2) This section does not apply to the Commissioner of Inland Revenue or any employee or officer of the Inland Revenue Department.

96 Refunds made by direct credit to bank account

(1) In section 221(1), "A refund" is replaced by "A refund by the Commissioner".

(2) In section 221(2), "a refund" is replaced by "the refund".

(3) In section 221(3), "a refund" is replaced by "the refund".

97 Fee subsidies

In section 225(2), "or of section 226" is omitted.

98 Crown contribution

(1) Section 226(1) is replaced by the following:

(1) The Crown must pay a contribution to the first KiwiSaver scheme of which a person (**A**) is a member.

(1A) The contribution must be paid as soon as practicable after the date provided by subsection (1B) or (1C).

(1B) Unless subsection (1C) applies, the date for the purposes of subsection (1A) is the last day of the 3-month period that starts on the earliest of the following dates:

(a) the date on which the Commissioner receives the first contribution in respect of a person, if the person is one to whom subpart 1 of Part 3 applies:

(b) the date that the Commissioner is given notice or otherwise knows that the person is a member of the KiwiSaver scheme:

(2) After section 226(1B), the following is inserted:

(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.

(3) In section 226(2), "The provider must credit the contribution on a pro rata basis" is replaced by "The provider must use the contribution allocation for A to credit the contribution".

(4) After section 226(2), the following is inserted:

(2B) The contribution must vest in A immediately after it is paid to the provider, despite any provision to the contrary.

99 Regulations relating to mortgage diversion facility

(1) In section 229(1), "a mortgage diversion facility that allows contributions to be withdrawn from KiwiSaver schemes and applied towards the payment of amounts secured by mortgages" is replaced by "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) In section 229(2), in the words before the paragraphs, "the mortgage diversion facility that is provided for in the regulations" is replaced by "any mortgage diversion facility provided for in regulations".

(3) In section 229(2)(b), "KiwiSaver" is replaced by "KiwiSaver and complying superannuation fund".

(4) Section 229(2)(c)(ii) is replaced by the following:

(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:

(5) In section 229(2)(e), "made available" is replaced by "made available, but only to the extent to which the mortgage continues to be over the person's principal residence".

(6) In section 229(2)(f), "are retained automatically in the person's KiwSaver account" is replaced by "are not diverted from the person's KiwiSaver scheme and complying superannuation funds".

(7) Section 229(2)(i) is replaced by the following:

(i) the amount diverted from a person's KiwiSaver scheme and complying superannuation funds is a fixed dollar amount, and is capped at not more than the total of—

(i) half of the total contributions deducted for or contributed by the person, received by their KiwiSaver scheme provider; and

(ii) half of the person's contributions to their complying superannuation funds, but limited to 4% of their annual gross base salary or wages for each complying superannuation fund:

100 New section 230A inserted

After section 230, the following is inserted:

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.

101 New section 234

After section 233, the following is added:

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.

102 Schedule 1—KiwiSaver scheme rules

(1) Clause 2(2) to (5) is repealed.

(2) In clause 4(3), "equal to that" is replaced by "not more than the".

(3) In clause 8(8), "employer vested contributions" is replaced by "employer vested contributions that are not compulsory employer contributions".

(4) In clause 12(2), the words after "member's accumulation" are omitted.

(5) In clause 12(3)(a), "being unable" is replaced by "being totally and permanently unable".

(6) In clause 13(1), the words after "the trustees" are omitted.

(7) After clause 13(1), the following is inserted:

(1B) The application for a withdrawal under clause 10 must include a completed statutory declaration in respect of the member's assets and liabilities.

(8) In clause 14(2), "accumulation" is replaced by "accumulation less the amount of Crown contribution arising from a tax credit under section KJ 1 of the Income Tax Act 2004 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution)".

(9) In clause 14(2), as amended by subsection (8), "section KJ 1 of the Income Tax Act 2004" is replaced by "section MK 1 of the Income Tax Act 2007".

103 New schedule 4—Transitional contribution rates

The following is added to the KiwiSaver Act 2006:

Schedule 4
Transitional rates for employers and employees

s 66A

Years in which pay period for payment of	Rate for employer (%)	Rate for employee (%)

the employee's gross salary or wages falls		
2 years starting on 1 April 2008	2	2
1 year starting on 1 April 2010	3	3
1 year starting on 1 April 2011	4	4

Superannuation Schemes Act 1989

104 Superannuation Schemes Act 1989

Sections 105 to 111 amend the Superannuation Schemes Act 1989.

105 Interpretation

Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

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

106 When Government Actuary may approve transfers without consent of members and beneficiaries

(1) In section 9BAA(1), "all the members" is replaced by "all or any of the members".

(2) After section 9BAA(1), the following is inserted:

(1B) This section applies despite anything to the contrary in a scheme's trust deed.

(3) After section 9BAA(4), the following is inserted:

(4B) For a transfer that the Government Actuary has approved,—

(a) each relevant member of the old scheme is treated as offering to be a member of the new scheme on the terms and conditions for that new scheme; and

(b) the trustee of the new scheme is treated as accepting the member's offer.

107 New section 9D inserted

After section 9C, the following is inserted:

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

(1) This section applies to a registered superannuation scheme (**scheme A**) if—

(a) scheme A provides or facilitates the provision of insurance (the **scheme insurance**) to a member or other beneficiary (the **person**); and

(b) the benefit of the scheme insurance is calculated by reference to contributions for the person held by a complying superannuation fund (the **contributions**); and

(c) an amount of contributions is transferred out of the complying superannuation fund to a complying superannuation fund or KiwiSaver scheme (other than scheme A).

(2) A term is implied into the trust deed of scheme A. That term must have the effect of allowing the benefit of the person's scheme insurance to be reduced in proportion to the amount of contributions transferred out of the complying superannuation fund to a complying superannuation fund or KiwiSaver scheme (other than scheme A).

108 Complying superannuation funds

(1) Section 34(2) is replaced by the following:

(2) The application must be accompanied by all information necessary to satisfy the Government Actuary of the matters referred to in section 35.

(2) After section 34(2), the following is added:

(3) The application must include a copy of any participation agreements that have been ratified by employers of employees in the scheme as applicable to the registered scheme.

109 Dealing with applications for complying superannuation funds

(1) In section 35(1)(a), "evidence" is replaced by "contain".

(2) Section 35(1)(e) is replaced by the following:

(e) any relevant participation agreement is—

(i) an agreement entered into on or before 1 July 2007:

(ii) an agreement (the **successor participation agreement**) entered into after 1 July 2007, if it succeeds and replaces a participation agreement (the **prior agreement**) entered into on or before 1 July 2007 or entered into after 1 July 2007 as a successor participation agreement for an earlier prior agreement.

(3) After section 35(4), the following is added:

(5) For the purposes of subsection (1)(e),—

(a) **participation agreement** includes a trust deed:

(b) a participation agreement (**agreement A**) succeeds and replaces another participation agreement if—

(i) agreement A succeeds and replaces the other participation agreement due to the merger or acquisition of a party to the other participation agreement; or

(ii) all relevant members of a scheme covered by agreement A transfer by virtue of section 9BAA of the Superannuation Schemes Act 1989 to a scheme covered by the other participation agreement.

110 New sections 37 to 41 inserted

(1) After section 36, the following is added:

41 Transitional provision relating to lodging of participation agreements

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

(2) After section 36, the following is inserted:

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

(1) The trustees of a complying superannuation fund must give notice to the Government Actuary of any changes to—

(a) any of the information referred to in section 161(1B) of the KiwiSaver Act 2006; or

(b) any information required to be contained in the register under section 161(2) of that Act.

(2) This section does not apply if the change has been notified in an annual report sent or delivered under section 14 of this Act before the notice is required to be given under this section.

Compare: 2006 No 40 s 164

38 Form of notice under section 37

(1) A notice under section 37 must—

(a) be in the prescribed form (if any); and

(b) contain, or be accompanied by, any other prescribed information or documentation; and

(c) specify the effective date of the change; and

(d) be given to the Government Actuary within 3 months of the later of—

(i) the effective date of the change; or

(ii) the trustees of the complying superannuation fund first becoming aware of the change.

(2) References in this section to a prescribed form, or to prescribed information or documentation, are references—

(a) to matters prescribed under section 30(b); or

(b) if the matter is not prescribed under that section, to the equivalent matter prescribed under section 228(b) of the KiwiSaver Act 2006 in respect of notices under section 164 of that Act, with all necessary modifications.

Compare: 2006 No 40 s 165

39 Duty to give notice to Government Actuary about fee increases

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

40 Powers of High Court in relation to unreasonable fees

(1) If the High Court is satisfied, on the application of a member or the Government Actuary, that any of the persons referred to in section 39 have charged a fee in relation to a complying superannuation fund that is unreasonable, it may order that the fee be annulled or reduced.

(2) The High Court may make any other order it thinks fit for the purpose of giving effect to an order under subsection (1).

(3) An application for an order may be made within 1 year of the day that the fee is imposed or debited.

(4) In determining whether a fee is unreasonable for the purposes of this section, the High Court—

(a) must have regard to any prescribed matter under the KiwiSaver Act 2006; and

(b) may, to the extent it thinks fit, have regard to any guidelines published by the Government Actuary under section 127 of that Act; and

(c) may have regard to any other matter it thinks fit.

(5) This section does not limit section 20 of this Act and, to avoid doubt, a breach of clause 2 of the KiwiSaver scheme rules as applied by the complying fund rules is a breach of this Act.

111 Schedule 2—Matters to be specified in annual report

(1) In schedule 2, clause 1(o), in the words before the subparagraphs, "for the purposes of the Income Tax Act 2004" is omitted.

(2) In schedule 2, clause 1(o)(iii), "rules." is replaced by "rules; and", and the following is added:

(iv) if there has been an increase in a fee referred to in clause 2 of the KiwiSaver scheme rules during the year, a certificate signed by the trustees of the fund that the fee as increased is not unreasonable, after having regard to any matters prescribed under section 228(p) of the KiwiSaver Act 2006 and any guidelines published by the Government Actuary under section 127 of that Act.

KiwiSaver Regulations 2006

112 KiwiSaver Regulations 2006

Sections 113 to 118 amend the KiwiSaver Regulations 2006.

113 Regulation 6 replaced

Regulation 6 is replaced by the following:

6 Purpose of annual return regulations

Regulations 8 and 9 provide for the annual return required under section 125 of the Act.

114 Regulation 7 revoked

Regulation 7 is revoked.

115 Fee subsidy

In regulation 20(4), "The provider must credit each instalment of the fee subsidy on a pro rata basis" is replaced by "The provider must use the contribution allocation for the member to credit each instalment of the fee subsidy".

116 Mortgage diversion facility

(1) In regulation 21, "KiwiSaver schemes" is replaced by "KiwiSaver schemes and complying superannuation funds".

(2) In regulation 21 the following is added:

(2) For the purposes of regulations 22 to 29, a reference to a KiwiSaver scheme is treated as including a reference to a complying superannuation fund and a reference to KiwiSaver contributions is treated as including a reference to complying superannuation fund contributions.

117 What scheme provider must do to participate in mortgage diversion facility

In regulation 27(b), "(which requires the amount to be capped at no more than half of the person's contribution rate and to be a fixed dollar amount)" is omitted.

118 New heading and regulations 30 and 31 added

After regulation 29, the following is added:

Qualifying person for withdrawal for purpose of purchase of first home

30 Qualifying person

For the purposes of clause 8(3)(c)(ii) of schedule 1 of the KiwiSaver Act 2006, a person is a qualifying person if they hold a notice that complies with regula-

tion 31 and they have given their KiwiSaver scheme provider a copy of that notice.

31 Notice

For the purposes of regulation 30, a notice complies with this regulation if the notice—

(a) is in the name of the person:

(b) is signed by the Minister of Housing or a delegate:

(c) states that the Minister of Housing or delegate is satisfied that the income, assets, and liabilities of the person represent a financial position that would be expected of a person that has never held an estate in land (whether alone or as a joint tenant or tenant in common).

Holidays Act 2003

119 Meaning of ordinary weekly pay

In section 8(1)(c)(iv) of the Holidays Act 2003, "employee." is replaced by "employee:", and the following is added:

(v) any payment of any employer contribution to a superannuation scheme for the benefit of the employee.

120 Meaning of relevant daily pay

In section 9(1)(b)(iii) of the Holidays Act 2003, "employee." is replaced by "employee; but", and the following is added:

(c) excludes any payment of any employer contribution to a superannuation scheme for the benefit of the employee.

121 Meaning of gross earnings

In section 14(c)(ii) of the Holidays Act 2003, "employment." is replaced by "employment:", and the following is added:

(iii) any payment of any employer contribution to a superannuation scheme for the benefit of the employee.

KiwiSaver-related amendments to Income Tax Act 2007

122 Income Tax Act 2007

Sections 123 to 137 amend the Income Tax Act 2007.

123 New section CS 10B inserted

After section CS 10, the following is inserted:

CS 10B Exclusion of permitted withdrawals from KiwiSaver schemes and complying superannuation funds

Section CS 1 does not apply to a permitted withdrawal from a KiwiSaver scheme or a complying superannuation fund.

Defined in this Act: complying superannuation fund, KiwiSaver scheme, permitted withdrawal

Compare: 2004 No 35 s CS 10B

124 Contributions to employees' superannuation schemes

(1) After section DC 7(1), the following is inserted:

Exclusion

(1B) The employer is denied a deduction for a contribution, to the extent of the amount of a tax credit under section MK 9 (Eligibility requirements) for the payment period to which the contribution relates.

(2) In section DC 7, in the list of defined terms, "tax credit" is inserted.

125 What this subpart does

Section MK 1 is replaced by the following:

MK 1 Tax credits for superannuation contributions

Tax credits for members paid to fund providers

(1) A fund provider of a person's KiwiSaver scheme or a complying superannuation fund has a tax credit equal to an amount calculated under section MK 4 for a member credit contribution to the scheme or fund. Section MK 2 imposes some eligibility requirements in relation to the person.

Tax credits for employers

(2) An employer who makes an employer contribution on behalf of an employee to a KiwiSaver scheme or a complying superannuation fund for a payment period has a tax credit for the period equal to an amount calculated under section MK 10 for the amount of their contribution. The employer must meet the requirements of section MK 9.

Calculations: fund providers

(3) A tax credit referred to in subsection (1) is calculated for a year that begins on 1 July and ends on 30 June.

Calculations: employers

(4) A tax credit referred to in subsection (2) is calculated for a payment period.

Defined in this Act: amount, complying superannuation fund, employee, employer, employer contribution, fund provider, KiwiSaver scheme, member credit contribution, pay, tax credit, tax year

Compare: 2004 No 35 ss KJ 1, KJ 6, OB 1 **member credit year**

126 New cross heading

Before section MK 2, "***Tax credits for fund providers***" is inserted as a cross heading.

127 Eligibility requirements

(1) In section MK 2(1), the heading and the words before paragraph (a) are omitted and are replaced by the following:

Requirements for person

(1) For the purposes of section MK 1(1), the requirements for the person at the time the tax credit is calculated are the following:

(2) In section MK 2(1), paragraph (b) is replaced by the following:

(b) they must have a creditable membership of a complying superannuation fund or a KiwiSaver scheme; and

(3) In section MK 2, in the list of defined terms, "creditable membership" is inserted.

128 Payment of tax credits

(1) Section MK 3(1) is replaced by the following:

When this section applies

(1) This section applies when a member credit contribution is made to a KiwiSaver scheme or a complying superannuation fund.

(2) In section MK 3(2), "Subsection (5) overrides this subsection." is added after "section MK 4."

(3) In section MK 3(3), "Subsection (5) overrides this subsection." is added after "the Commissioner."

(4) Section MK 3(4) is replaced by the following:

Payment

(4) The Commissioner must pay the amount of the tax credit to the fund provider within 30 working days of the provider filing a claim form under section 68C(3) or (4) of the Tax Administration Act 1994.

Exception: payment to person or another provider

(5) Despite subsections (2) and (3), the Commissioner may pay the amount of the tax credit as follows:

(a) to the person, if it would be impossible or impractical to pay it to the person's fund provider because either the person has no fund provider, or because the person has died or has suffered a serious illness as defined in schedule 1, clause 12(3) of the KiwiSaver Act 2006; or

(b) to a fund provider (**provider B**) other than the fund provider referred to in subsections (2) and (3), if the fund provider asks for the payment to be

made to provider B because the person is transferring or has transferred to provider B.

(5) In section MK 3, in the list of defined terms,—

(a) "employer contribution" and "member credit contribution" are inserted:

(b) "superannuation contribution" is omitted.

129 Amount of tax credit

Section MK 4 is replaced by the following:

MK 4 Amount of tax credit

What this section does

(1) This section sets out how to calculate the amount of a tax credit paid to a fund provider under section MK 3(2) for a year described in section MK 1(3).

Amount of credit for year

(2) The amount of the tax credit is an amount equal to a person's total member credit contributions for the year for all of their complying superannuation funds and KiwiSaver schemes up to a maximum amount of $1042.86.

Part-year equivalents: amount of tax credit

(3) Despite subsection (2), if the person meets the requirements of section MK 2 for only part of the year, the amount of the tax credit is,—

(a) for a person whose member credit contributions for the year are equal to or less than the part-year maximum amount calculated under subsection (4), an amount equal to their total contributions for the year; or

(b) for a person whose member credit contributions for the year are greater than the part-year maximum amount calculated under subsection (4), the part-year maximum amount.

Part-year equivalents: maximum amount

(4) The part-year maximum amount referred to in subsection (3) is calculated using the formula—

$$\$1042.86 \times \frac{\text{days}}{365.}$$

Definition of item in formula

(5) In the formula, **days** is the number of days in the year in which the person meets the requirements of section MK 2.

Parts of years

(6) In subsection (3), a part of the year may include 1 or more periods of the year in which the person meets the relevant requirements and, if there are several

periods, for the purposes of the item **days** in the formula, the days in those periods are added together.

Defined in this Act: amount, employee, employer contribution, first payment period, fund provider, member credit contribution, salary or wages, second payment period, tax credit

Compare: 2004 No 35 ss KJ 3, OB 1**member credit year**

130 Credit given by fund providers

In section MK 6, "The amount must be credited" is replaced by "The provider must use the contribution allocation for a member to credit the amount of the tax credit".

131 Treatment of tax credits on permanent emigration

In section MK 8(2)(a), "for the person" is replaced by "paid for the person and held by the provider".

132 New sections MK 9 to MK 16 inserted

After section MK 8, the following is inserted:

Tax credits for employers

MK 9 Eligibility requirements

What is required

(1) For the purposes of section MK 1(2), an employer must—

(a) pay an amount of employer contribution in relation to an employee who—

(i) is aged 18 or over; and

(ii) is not entitled to withdraw an amount from a fund or scheme under schedule 1, clause 4(3) of the KiwiSaver scheme rules in the KiwiSaver Act 2006 or a rule that is the same as that clause; and

(b) provide details of the amount of the tax credit relating to the employee in an employer monthly schedule or PAYE payment form; and

(c) meet 1 of the requirements of section 6(2) of the KiwiSaver Act 2006.

When details not required

(2) Subsection (1)(b) does not apply if the employer has—

(a) an unpaid amount of compulsory employer contribution referred to in a notice under section 101I(5) of the KiwiSaver Act 2006; or

(b) an amount of short payment under Part 3, subpart 3 of that Act.

Defined in this Act: amount, compulsory employer contribution, employee, employer, employer contribution, employer monthly schedule, PAYE payment form, tax credit

Compare: 2004 No 35 s KJ 7

MK 10 Amount of credit

Amount of contributions or calculation

(1) For a payment period, the amount of a tax credit under section MK 1(2) is equal to the lesser of—

(a) the amount of the employer contributions for the employee for the period; and

(b) the amount calculated using the formula—

$$\$20 \times \text{weeks in payment period}.$$

Definition of item in formula

(2) In the formula, **weeks in payment period** is the number of weeks in the payment period for the payment of the employee's salary or wages, in which the employee meets the requirements of section MK 9(1)(a), including weeks in the payment period in which the employer does not pay an amount of employer contribution. Parts of a week are expressed as a decimal.

Meaning of payment period

(3) In this section and in sections MK 11 to MK 13, **payment period** means a first payment period, a second payment period, or a month, as applicable, in which PAYE is withheld in relation to the employee.

Defined in this Act: amount, employee, employer contribution, first payment period, salary or wages, second payment period

Compare: 2004 No 35 s KJ 8

MK 11 When tax credits arise

A tax credit referred to in section MK 10 arises—

(a) for an employer who provides details of the amount of the credit under section MK 9(1)(b),—

(i) on the end date for the payment period under section RA 15(3)(a) (Payment dates for interim and other tax payments) if the employer is not a private domestic worker:

(ii) on the date referred to in section RA 10(3) (When obligations not met) if the employer is a private domestic worker:

(b) for an employer to whom section MK 9(2) applies, on the day the Commissioner—

(i) receives the notice referred to in section 101I(5) of the KiwiSaver Act 2006; or

(ii) determines that the employer has an amount of short payment under Part 3, subpart 3 of that Act.

Defined in this Act: amount, Commissioner, employer, notice, private domestic worker, tax credit

Compare: 2004 No 35 s KJ 9(1)

MK 12 Using tax credits

Commissioner's use of credits

(1) The Commissioner must use a tax credit referred to in section MK 10—

(a) first, to pay—

(i) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 relating to a compulsory employer contribution for a payment period; or

(ii) to the fund provider of the complying superannuation fund, an amount equal to an unpaid amount of a compulsory employer contribution referred to in a notice under section 101I(5) of that Act:

(b) second, to pay an employer contribution:

(c) third, to pay an amount payable for the payment period by the employer to the Commissioner under an Inland Revenue Act:

(d) fourth, to pay an amount that is payable by the employer to the Commissioner under an Inland Revenue Act:

(e) fifth, to treat a tax credit as overpaid tax refundable under section RM 2 (Refunds for overpaid tax).

Treatment of tax credit used

(2) An amount of tax credit used or paid under subsection (1)(a) is treated as an amount of compulsory employer contribution—

(a) received by the Commissioner for a payment period, for the purposes of calculating an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006:

(b) consequentially reducing a relevant amount of a compulsory employer contribution remaining unpaid, for the purposes of section 101K of that Act:

(c) received by the Commissioner for the purposes of section 74 of that Act.

Defined in this Act: amount, Commissioner, complying superannuation fund, compulsory employer contribution, employer, fund provider, Inland Revenue Acts, tax, tax credit

Compare: 2004 No 35 s KJ 9(2), (3)

MK 13 When short payment and unpaid compulsory employer contributions found after tax credit used

When this section applies

(1) This section applies when—

(a) the Commissioner uses an amount of a tax credit under either or both section MK 12(1)(b) and (c); and

(b) following that use, for the payment period to which the amount of tax credit relates, there arises—

(i) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006:

(ii) an unpaid amount of compulsory employer contribution referred to in a notice under section 101I(5) of that Act.

Employer's liability

(2) The employer is liable to pay an amount equal to the lesser of—

(a) the amount of the tax credit used:

(b) the amount described in subsection (1)(b).

Treatment as amount of tax

(3) The amount is treated as an amount of tax for the payment period in which notification of the amount described in subsection (1)(b) is given to the employer, and an equal amount is treated as a tax credit for use under section MK 12(1)(a).

Defined in this Act: amount, Commissioner, compulsory employer contribution, employer, notify, tax credit

Compare: 2004 No 35 s KJ 10

MK 14 Employees opting out

When an employee opts out under the KiwiSaver Act 2006, the amount of a tax credit for an employer contribution for the employee's salary or wages is treated as an amount of a tax credit paid in excess of that properly payable under this subpart.

Defined in this Act: employee, employer contribution, salary or wages

Compare: 2004 No 35 s KJ 11

MK 15 Groups of persons

For the purposes of this subpart, a group of persons described in 1 of the following paragraphs is treated as 1 employer:

(a) 2 or more companies, if the companies are a group of companies; and

(b) all partners in a partnership; and

(c) all persons in whom property has become vested, or to whom the control of property has passed in the case of an estate of a deceased person, or a trust, or a company in liquidation, or an assigned estate, or other case in which property is vested or controlled in a fiduciary capacity.

Defined in this Act: company, employer, group of companies, group of persons

Compare: 2004 No 35 s KJ 12

MK 16 Private domestic workers

For the purposes of this subpart, a private domestic worker who is an employer under paragraph (c) of the definition of **employer** in section 4 of the KiwiSaver

Act 2006 is treated as paying salary or wages to themselves in the capacity of employee.

Defined in this Act: employee, private domestic worker, salary or wages

Compare: 2004 No 35 s KJ 6(4)

133 Salary or wages

In section RD 5(1)(c)(vi), "this Act." is replaced by "this Act; and" and the following is added:

(d) is defined in section RD 65(13) for the purposes of that section.

134 Complying fund rules

Section RD 66 is replaced by the following:

RD 66 Complying fund rules

The complying fund rules, for a superannuation fund and an employee's superannuation accumulation, means rules that—

(a) meet all the requirements set out in schedule 28 (Requirements for complying fund rules); and

(b) do not detract from those requirements.

Defined in this Act: complying fund rules, employee's superannuation accumulation, superannuation fund

Compare: 2004 No 35 s OB 1 **complying fund rules**

135 Definitions

(1) This section amends section YA 1.

(2) After the definition of **complying trust**, the following is inserted:

compulsory employer contribution has the same meaning as in the KiwiSaver Act 2006

(3) After the definition of **credit transfer notice**, the following is inserted:

creditable membership, for a person,—

(a) means membership of a KiwiSaver scheme or a complying superannuation fund; and

(b) includes the following periods:

(i) the period beginning on the first day of a month in which a KiwiSaver contribution for the person is first deducted or first received by the Commissioner and ending on the day on which securities are first allotted by the scheme for the person:

(ii) the days in the month in which securities are first allotted by the scheme or fund for the person:

(iii) for the period beginning on 1 July 2007 and ending on the day on which securities are first allotted by the scheme for the person, and for a person

who contributes to the scheme before 1 November 2007, the days in the month on which the scheme receives a valid application for membership from the person and the days remaining in the period

(4) In the definition of **employee's superannuation accumulation**, paragraph (a) is replaced by the following:

(a) employer contributions:

(5) After the definition of **employer**, the following is inserted:

employer contribution has the same meaning as in the KiwiSaver Act 2006

(6) After the definition of **member**, the following is inserted:

member credit contribution, for a person, means the total of the following amounts

(a) an amount of a superannuation contribution to the person's KiwiSaver scheme or complying superannuation fund that is subject to the KiwiSaver scheme rules or complying fund rules, as applicable, other than—

(i) an employer's superannuation contribution for the person:

(ii) a contribution withdrawn under a mortgage diversion facility provided for in regulations made under section 229 of the KiwiSaver Act 2006:

(iii) an amount accounted for under paragraph (b):

(b) an amount received and held for the person by the Commissioner to which section 73, 74, or 75 of the KiwiSaver Act 2006 applies, other than—

(i) an employer's superannuation contribution for the person:

(ii) an amount never paid by the Commissioner to the provider of the person's KiwiSaver scheme unless the amounts are not paid because of the person's death or because of a refund under section 113 of the KiwiSaver Act 2006

(7) In the definition of **superannuation scheme**, paragraph (ii) is repealed.

136 New schedule 28 inserted

The new schedule 28 in the schedule of this Act is inserted after schedule 27 of the Income Tax Act 2007.

137 Schedule 49—Enactments amended

In schedule 49, the item relating to section 153(d) of the KiwiSaver Act 2006 is repealed.

Schedule
New schedule 28 inserted in Income Tax Act 2007

s 136

Schedule 28
Requirements for complying fund rules

RD 66

KiwiSaver rules

1 The first requirement is that the rules are the same, though modified as necessary, as the rules for KiwiSaver schemes set out in—

(a) sections 101G and 196 of the KiwiSaver Act 2006; and

(b) schedule 1, clauses 2, 4(1) to (4), 7, 9, and 17 of that Act.

Withdrawals

2 The second requirement is that the rules—

(a) allow a withdrawal in some or all of the circumstances described in regulations made under section 229(1) of the KiwiSaver Act 2006 and the rules for KiwiSaver schemes in schedule 1, clauses 8 and 10 to 14 of the KiwiSaver Act 2006, modified as necessary, or in none of those circumstances; and

(b) do not allow a withdrawal under any circumstances other than those described in paragraph (a) or clause 1; and

(c) require the trustees, if the employee asks, to pay any withdrawal allowed under this clause and clause 1 as a lump sum, as if the withdrawal were a permitted withdrawal to which schedule 1, clause 5 of the KiwiSaver Act 2006 applies, modified as necessary.

Transfers

3 The third requirement is that the rules require—

(a) a transfer, if the employee asks, of some or all of an employee's superannuation accumulation to another complying superannuation fund or to a KiwiSaver scheme, and for the latter when the requirements of the KiwiSaver Act 2006 are met; and

(b) that the complying fund rules apply to an employee's superannuation accumulation if it is transferred to another complying superannuation fund under paragraph (a); and

(c) a transfer of an employee's superannuation accumulation to a KiwiSaver scheme, if the employee does not ask for a transfer under paragraphs (a) and (b), and the employee—

(i) is no longer eligible to be a member of their complying superannuation fund:

(ii) may not remain a member for any reason, but this paragraph does not apply to a transfer under paragraphs (a), (b), and (d), or a withdrawal of some or all of an employee's superannuation accumulation under these rules; and

(d) a transfer of an employee's superannuation accumulation to a KiwiSaver scheme, if the Government Actuary revokes approval of the superannuation fund as a complying superannuation fund and the accumulation is not transferred to another complying superannuation fund and is not subject to these rules.

Notification

4 The fourth requirement is that the rules require that—

(a) the Commissioner is notified if the employee's superannuation accumulation must be transferred under clause 3(c) and (d):

(b) the fund provider is notified if the employee's superannuation accumulation is transferred to another complying superannuation fund under clause 3(a).

Notification details

5 For the purposes of clause 4,—

(a) notification under clause 4(a) must include the name, address, and tax file number of the employee, the name and address of their employer, and the name and tax file number of the employee's complying superannuation fund:

(b) notification under clause 4(b) must include—

(i) notice of any written evidence given to the old fund provider under section MK 2(2):

(ii) the amount of tax credits received by the old fund provider under subpart MK:

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

Age restriction

6 The fifth requirement is that the rules prevent a person over the qualification age for New Zealand superannuation from joining.

Minimum contributions

7 The sixth requirement is that the rules require, as a minimum, the same contribution to be made for an employee as that provided by section 66 or 66A of the KiwiSaver Act 2006, ignoring the 8% contribution rate.

Funding benefits

8 The seventh requirement is that the rules require that an employee's superannuation accumulation is used to fund benefits that are calculated only by reference to the amount of the accumulation.

Continuation as member

9 The eighth requirement is that the rules commit an employee to continue to be a member unless otherwise provided by clauses 1 to 8.

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1 General

This is an eprint of the Taxation (KiwiSaver) Act 2007. It incorporates all the amendments to the Taxation (KiwiSaver) Act 2007 as at 29 May 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

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

Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36): section 59(2)

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