

Examined and certified:

Clerk of the House of Representatives

*In the name and on behalf of Her Majesty Queen Elizabeth
the Second I hereby assent to this Act this 6th day
of September 2006*

Governor-General.

KiwiSaver Act 2006

Public Act 2006 No 40

Contents

	Page
1 Title	11
2 Commencement	11
Part 1	
Preliminary provisions	
3 Purpose	11
4 Interpretation	11
5 Meaning of provider	19
6 Application	19
7 Act binds the Crown	20
8 Outline	20
Part 2	
Membership of overall KiwiSaver scheme	
Subpart 1—Becoming members of overall KiwiSaver scheme	
9 Outline of how people become members of overall KiwiSaver scheme	20
<i>Automatic enrolment rules</i>	
10 Who automatic enrolment rules apply to	21
11 Meaning of new employment	21
12 Temporary employment	22
13 Employment in schools	22
14 Other situations when automatic enrolment rules do not apply	22

15	Effect of automatic enrolment	23
16	Time limit for opting out	24
17	How to opt out	24
18	Extension of opt-out period	25
19	Commissioner must give notice to employer of opting out	26
20	Effect of opting out	26
21	Opt-out only applies to employment that triggered automatic enrolment rules	26
	<i>Notice requirements for people who start new employment</i>	
22	Employees must give information to employers	26
23	Employers must give information to Commissioner	27
	<i>Exempt employers</i>	
24	Purpose of being exempt employer	27
25	Eligibility to be exempt employer	28
26	How 4% minimum amount may be calculated for exempt employer defined contribution schemes	29
27	Eligibility of employers who provide access to more than one scheme	30
28	Eligibility of employers who have schemes established under master trusts	30
29	How to apply to be exempt employer	31
30	How applications to be exempt employer must be dealt with	31
31	Revocation of exempt employer approval	32
32	Government Actuary must give notice to Commissioner of exempt employers	32
	<i>Opting in</i>	
33	Certain persons may opt in	32
34	How to opt in	32
35	Opting in by persons under 18	33
36	Effect of opting in by employees	33
37	Effect of opting in by persons other than employees	34
	<i>Information about people who contract directly with providers</i>	
38	Providers must give notice to Commissioner if they contract directly with members	34
39	Commissioner must give notice to employer if provider gives notice that employee has opted in under section 38	35
	<i>Information about overall KiwiSaver scheme that must be provided</i>	
40	Commissioner must supply information pack	35

41	What information pack must contain	35
42	Employer must supply information pack to certain employees	36
43	Employer must also supply investment statement for employer's chosen KiwiSaver scheme (if any)	37
	Subpart 2—Allocation of people to KiwiSaver schemes	
44	Outline of how people are allocated to KiwiSaver schemes under subpart	37
	<i>People may choose their own KiwiSaver scheme</i>	
45	People may choose their own KiwiSaver scheme	37
	<i>Employer choice of KiwiSaver scheme</i>	
46	Employer may choose scheme for employees	37
47	When employer choice of KiwiSaver scheme is effective	38
48	Effect of employer choice of KiwiSaver scheme	38
49	Effect on existing members of change, etc, in employer chosen scheme	39
	<i>Default KiwiSaver schemes</i>	
50	Commissioner provisionally allocates certain people to default KiwiSaver schemes and sends investment statement	39
51	Completion of allocation to default KiwiSaver scheme if person does not choose his or her own KiwiSaver scheme	41
52	Effect of completion of allocation	41
	<i>Miscellaneous provisions</i>	
53	Person may be member of only 1 KiwiSaver scheme at any one time	42
	Subpart 3—Transfers between KiwiSaver schemes	
54	Application	42
	<i>Voluntary transfers</i>	
55	People may transfer between KiwiSaver schemes	42
56	Notification of transfers and requirement to transfer funds and information	42
	<i>Involuntary transfers</i>	
57	Involuntary transfers	43
58	Information if employee ceases to be eligible to be member of employer's chosen KiwiSaver scheme	44
59	Commissioner must send information to involuntary transferees	44

Part 3
KiwiSaver contributions

Subpart 1—Deductions of contributions from salary
or wages

*Payments of salary or wages to which deduction
rules apply*

60	Application of subpart	45
61	Commissioner may give notice	45
62	When subpart does not apply	45
63	Part also applies to PAYE intermediaries	46

Deduction rules

64	Contribution rate	46
65	Contribution rates may be changed by Order in Council	46
66	Obligation to make deductions	47
67	PAYE rules apply to deductions	47
68	Money paid for things other than retirement benefits does not count as contribution under this Act	48
69	Unremitted deductions made by employers	49
70	Unexplained remittances of deductions received from employers	49
71	Time at which unexplained remittances deemed to be received	49

Subpart 2—Miscellaneous provisions relating
to contributions

Inland Revenue KiwiSaver Holding Account

72	Inland Revenue KiwiSaver Holding Account	50
73	Deductions entered in and paid out of holding account	50
74	Other contributions entered in and paid out of holding account	51
75	Initial contributions stay in holding account for 3 months	51
76	Employer contributions may stay in holding account until deducted contributions paid	52
77	Small amounts of contributions may be held until big enough to be on-paid	52
78	Treatment of unremitted deductions in holding account	52
79	Information that Commissioner must supply to providers when paying contributions	52
80	Refund by Commissioner of amounts paid in excess of required amount of deduction or if employee opts out	53
81	Refund by provider of amounts paid in excess of required amount of contribution	53
82	Trustee investment rules do not apply to contributions in holding account	53

83	Unclaimed money held by Commissioner	54
	<i>Interest on contributions</i>	
84	Interest on money in holding account	54
85	Deductions treated as received on 15th of month for interest purposes	55
86	Interest rate	55
87	Amount of interest payable	55
88	How and when interest is paid on on-payments	56
89	How and when interest is paid on refunds	56
90	Position if Commissioner's paying rate changes	56
91	Overpaid interest	56
	Subpart 3—Contributions other than deductions from salary or wages	
92	Application of this subpart	56
93	Contributions from employer may be paid via Commissioner	57
94	Employer must give notice that employer contributions to be paid via Commissioner	57
95	Contributions from persons other than employers may be paid via Commissioner	57
96	What Commissioner must do with contributions received under this subpart	58
97	Commissioner must give notice if employer contributions not remitted	58
98	Short payments by employers if not enough money remitted to Commissioner to cover all of employees' deductions and employer contributions	58
99	Short payments if not enough employer contribution remitted to cover all employees	59
100	Refunds of employer contribution by Commissioner if employee opts out	60
101	Refunds of employer contribution by provider	60
	Subpart 4—Contributions holiday	
	<i>Applications for contributions holiday</i>	
102	Who may apply for contributions holiday	60
103	How to apply for contributions holiday	61
104	Granting of contributions holiday	61
105	Commissioner must give notice of grant of contributions holiday	62
106	When deductions stop at start of contributions holiday	62
107	Employers to whom contributions holiday applies	62
108	Contributions holidays have 3-month minimum life	63

	<i>End of contributions holiday</i>	
109	Commissioner must give notice before contributions holiday ends	63
110	Commissioner must give notice to employer of end of contributions holiday	63
111	When deductions start at end of contributions holiday	63
	<i>Revocation and reinstatement of contributions holiday</i>	
112	Revocation and reinstatement of contributions holiday	64
113	Refund of initial contributions	64
114	Refunds if employee loses, etc, contributions holiday notice	65
	Part 4	
	KiwiSaver schemes	
	Subpart 1—Preliminary provisions	
115	Interpretation	65
	Subpart 2—Main features of KiwiSaver schemes	
116	Schemes eligible to be KiwiSaver scheme	65
117	Additional duty of independent trustees	66
	<i>Application of Superannuation Schemes Act 1989 to KiwiSaver scheme</i>	
118	KiwiSaver scheme must be treated as registered superannuation scheme for most purposes	67
119	Application of section 7 of Superannuation Schemes Act 1989	68
120	Application of sections 8 to 11 of Superannuation Schemes Act 1989	68
121	Further modifications to application of sections 8 to 11 of Superannuation Schemes Act 1989	69
122	Application of other provisions of Superannuation Schemes Act 1989	70
123	Requirement for annual report	71
124	Annual report in case of KiwiSaver scheme established under umbrella trust	72
125	Requirement for annual return	72
	<i>Other implied provisions</i>	
126	KiwiSaver scheme rules are implied in trust deeds establishing KiwiSaver scheme	73
127	Exercise of functions by Government Actuary relating to clause 2 of KiwiSaver scheme rules	73
128	Participation agreements executed before registration	74
	<i>Amending trust deed in relation to KiwiSaver scheme</i>	
129	Amendment of trust deed governing KiwiSaver scheme	74

130	Consent to reversion of assets to employer	75
	Subpart 3—Registration of KiwiSaver schemes	
	<i>Application to register new scheme as KiwiSaver scheme</i>	
131	Applications for registration of scheme governed by trust deed	75
132	Application for registration of scheme constituted under Act of Parliament	76
133	Matters required to be specified in application	76
134	Registration of scheme	76
	<i>Conversion of registered superannuation scheme</i>	
135	Trustees may submit proposal to convert superannuation scheme	77
136	Form of proposal	77
137	Government Actuary must provisionally register scheme as KiwiSaver scheme if satisfied of certain matters	78
138	Trustees must provide evidence of consents, and information, to Commissioner	78
139	Exceptions to requirements under section 138	79
140	Process for obtaining consents and evidence to be provided to Government Actuary	80
141	Government Actuary must register scheme as KiwiSaver scheme if certain conditions met	81
142	Date of registration and conversion	82
143	Trust deed must be treated as having been amended in accordance with registration proposal	82
144	Effect of conversion of registered superannuation scheme to KiwiSaver scheme	83
145	Status of contracts and other instruments	84
146	References to scheme in existing instruments	84
147	Continuation of legal and other proceedings	84
	<i>Establishment of KiwiSaver scheme under umbrella trust that also governs registered superannuation scheme</i>	
148	Trustees may submit proposal to establish KiwiSaver scheme under umbrella trust that also governs registered superannuation scheme	85
149	Form of proposal	85
150	Government Actuary must register KiwiSaver scheme if satisfied of certain matters	86
151	Date of registration	86
152	Trust deed must be treated as having been amended in accordance with registration proposal	86
153	Effect of registration of KiwiSaver scheme under section 150	87

154	Advice of right of election must be included in annual report provided under Superannuation Schemes Act 1989	87
155	Right of election of members of registered superannuation scheme	87
	Subpart 4—KiwiSaver schemes register	
156	Register of KiwiSaver schemes	89
157	Operation of register	89
158	Purpose of register	90
159	Government Actuary is Registrar of register	90
160	Contents of register in relation to KiwiSaver schemes	90
161	Additional contents of register	90
162	Government Actuary may refuse access to or suspend operation of register, or omit or remove, or restrict public access to, information and documents in register	91
163	Amendments to register	91
164	Duty to notify changes to Government Actuary	91
165	Form of notice under section 164	92
	Subpart 5—Cancellation of registration and winding up	
	<i>Cancellation of registration and winding up of KiwiSaver schemes</i>	
166	This subpart overrides provisions to contrary in trust deed	92
167	Meaning of winding up in relation to KiwiSaver scheme established under umbrella trust	92
168	Cancellation of registration and order to wind up KiwiSaver scheme	92
169	Powers of Government Actuary in event of scheme operating in contravention of this Act, etc	93
170	Government Actuary must remove scheme from register on cancellation of registration	94
171	Implied terms continue to be implied on cancellation of registration	94
172	Receiver or liquidator to designate or appoint independent trustee if required	95
	<i>Winding up</i>	
173	Initial steps in winding up of KiwiSaver scheme	95
174	Winding up report	96
175	Time for doing certain things may be extended	96
176	Member's right to information	97
	Subpart 6—Default KiwiSaver schemes	
177	Appointment of default providers	97
178	Provisions of instrument of appointment to prevail over provisions of trust deed	97

179	Effect of appointment under section 177	98
180	Availability of instrument of appointment	98
181	Appointment must be notified to Government Actuary and Commissioner	99
182	Minister not required to appoint maximum number of persons	99
183	Power of High Court to act in respect of terms and conditions of appointment as default KiwiSaver scheme and regulations relating to default KiwiSaver schemes	99
184	Revocations, etc, of instruments of appointment	100
185	Duration of obligations as default provider after terminating event	101
Subpart 7—Miscellaneous		
186	Objections and appeals against decisions of Government Actuary	102
187	Power of Government Actuary to delegate	103
188	Government Actuary may carry out investigation as to whether KiwiSaver scheme is operating in accordance with Act	103
189	Power of Government Actuary to require information	104
190	Secrecy	105
191	Duty of certain persons to disclose information to Government Actuary	105
192	Protection of administration managers, investment managers, and auditors	106
193	Personal liability	107
194	Annual report by Government Actuary	107
195	Unclaimed money held by trustees of KiwiSaver scheme	107
196	Member's interest in KiwiSaver scheme not assignable	108
197	Offence to fail to provide information under this Part	108
198	Other offences under this Part	109
199	Criminal penalties for offences under this Part	110
200	Government Actuary may decline to take action if fees not paid	110
201	Trustees not in breach of obligations, etc	110
202	Application of section 13G of Trustee Act 1956 if power of investment exercised in relation to member allocated to scheme under sections 50 to 52	111
203	General application of Financial Transactions Reporting Act 1996	111
204	Application of Financial Transactions Reporting Act 1996 to default allocation of members to KiwiSaver schemes	112

Part 5
General provisions

205	No Crown guarantee of KiwiSaver schemes or products	113
206	Factual description of, or transmission of information about, KiwiSaver scheme not investment advice	113
207	Unique identifiers	113
208	Information held by Commissioner in respect of person who has opted out or who should not have been allocated to overall KiwiSaver scheme	114
	<i>Interface with securities law</i>	
209	Application of Securities Act 1978	115
210	Certain sections of Securities Act 1978 modified in relation to KiwiSaver scheme	115
211	Duty of Commissioner under section 50 modified in certain cases in which section 210 applies	116
	<i>Disputes under Parts 2 and 3</i>	
212	Persons may request reconsideration of certain decisions of Commissioner	117
213	Reconsideration of other decisions	117
	<i>Penalties</i>	
214	Application of sections 215 and 216	117
215	Penalty for employer to fail to provide information	118
216	Penalty for employer to fail to make deductions or to incorrectly make deductions	118
	<i>Giving of notices</i>	
217	Giving of notices by and to Commissioner	119
218	Giving of notices to other persons	119
219	Consent to electronic transactions	120
220	Special rules about giving of investment statements	120
	<i>Miscellaneous provisions</i>	
221	Refunds made by direct credit to bank account	121
222	Role of Commissioner under this Act	121
223	Use of information by Commissioner obtained under this Act and other Inland Revenue Acts	121
224	Administration of Act	122
225	Fee subsidies	122
226	Crown contribution	123
227	Status of Crown contribution and fee subsidy for tax purposes	123
228	Regulations	123
229	Regulations relating to mortgage diversion facility	126
230	Regulations relating to default KiwiSaver providers	128
231	Amendments to other Acts	129

232	Transitional provision requiring all KiwiSaver contributions to be paid to Commissioner in first 3 months	129
	Schedule 1	130
	KiwiSaver scheme rules	
	Schedule 2	138
	Matters to be specified in application for registration or registration proposal	
	Schedule 3	143
	Amendments to other Acts	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the KiwiSaver Act 2006.

2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) One or more Orders in Council may be made bringing different provisions into force on different dates.

Part 1
Preliminary provisions

3 Purpose

- (1) The purpose of this Act is to encourage a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in pre-retirement. The Act aims to increase individuals' well-being and financial independence, particularly in retirement, and to provide retirement benefits.
- (2) To that end, this Act enables the establishment of schemes (**KiwiSaver schemes**) to facilitate individuals' savings, principally through the workplace.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
address, in relation to a person, means all or any of the following:

- (a) the person's last known street address or post office box number:
- (b) the person's last known electronic address, if the person consents to notices under this Act being given to the person's electronic address

automatic enrolment rules means sections 10 to 21

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

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

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

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

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

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

Crown contribution means the contribution made by the Crown under section 226

deduction rate has the meaning given by section 66

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

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

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

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

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

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

employer, in relation to a person (A), means a person who pays, or is liable to pay, salary or wages to A

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

- (a) contributes in respect of some or all of the employees of the employer who are members of the scheme; or
- (b) pays any of the administration costs or costs in relation to benefits to be provided under the scheme in respect of the employees of the employer who are members of the scheme

employer monthly schedule has the same meaning as in section OB 1 of the Income Tax Act 2004

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

employment means employment (including the activities referred to in paragraphs (a) and (b) of the definition of that term in section OB 1 of the Income Tax Act 2004) in respect of which salary or wages is payable

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

fee—

- (a) means a fee charged directly or indirectly in respect of a member's membership of a KiwiSaver scheme; and
- (b) includes a fee charged to a member's account for—
 - (i) administration of the member's account;
 - (ii) management of the member's funds in the KiwiSaver scheme;
 - (ii) the transfer of the member's account or the member's funds in the KiwiSaver scheme to different sections of the KiwiSaver scheme or to a different KiwiSaver scheme; and
- (c) includes any other fee or charge prescribed to be a fee for the purposes of this Act; but

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

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

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

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

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

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

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

- (a) a trustee, including a corporate trustee that is not a trustee corporation, that—
- (i) is not a promoter, administration manager, or investment manager of the scheme; and
 - (ii) is not a related company of a corporate trustee that is an investment manager, administration manager, promoter, or another trustee of the scheme, or a related company of any other corporate trustee that has a role in the provision of the scheme to members; and
 - (iii) is not an employer contributor of the scheme or a related company of an employer contributor of the scheme; and
 - (iv) is not a director of, employee of, or shareholder in, any of the persons referred to in subparagraphs (i) to (iii); and
 - (v) is not a member of the scheme; and

- (vi) is not a representative in any capacity of an organisation (such as a trade union) that represents the interests of 1 or more members of the scheme; and
 - (vii) is not a representative in any capacity of an organisation that represents the interests of 1 or more employer contributors to the scheme; and
 - (viii) in the case of a corporate trustee, does not have a director to whom any of subparagraphs (i) to (vii) would apply if that person were a trustee; or
- (b) a trustee corporation that does not have a director to whom any of paragraph (a)(i) to (vii) would apply if that person were a trustee

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

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

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

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

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

KiwiSaver schemes register means the register established under section 156

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

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

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

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

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

- (a) the member's accumulation; and
- (b) any unvested employer contributions

Minister means—

- (a) the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of Part 4 and Schedules 1 and 2; or
- (b) for the purposes of sections 177 to 182, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for making an appointment under section 177 (or, if more than 1 Minister is authorised to act jointly, the Ministers who are jointly responsible for making an appointment under section 177)

net value means,—

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

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

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

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

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

opt-out notice means a notice given under section 17

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

pay period has the same meaning as in section OB 1 of the Income Tax Act 2004

PAYE period has the same meaning as in section NC 15(8) of the Income Tax Act 2004

PAYE rules has the same meaning as in section OB 1 of the Income Tax Act 2004

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

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

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

promoter has the same meaning as in the Securities Act 1978

provider has the meaning given by section 5

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

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

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

remittance certificate has the same meaning as in section OB 1 of the Income Tax Act 2004

salary or wages, in relation to any person, means salary or wages as defined in paragraphs (a) to (c) of the definition of salary or wages in section OB 1 of the Income Tax Act 2004 (whether the salary or wages are primary or secondary employment earnings) except that, in this Act,—

- (a) it excludes salary or wages of a type referred to in any of subparagraphs (iv), (v), (viii), (ix), or (xi) of paragraph (b) of that definition in that Act:
- (b) it includes extra pay (as defined in section OB 1 of the Income Tax Act 2004)

SSCWT rules has the same meaning as in section OB 1 of the Income Tax Act 2004

tax file number has the same meaning as in section OB 1 of the Income Tax Act 2004

trust deed includes—

- (a) a participation agreement and any other document that, under the terms of the relevant trust deed, forms part of or determines any of the terms of the trust deed; and
- (b) in relation to a registered superannuation scheme or KiwiSaver scheme constituted under an Act of the Parliament of New Zealand, the documents governing the scheme

trustee corporation—

- (a) means the Public Trust or the Maori Trustee or any corporation authorised by any Act of the Parliament of New Zealand to administer the estates of deceased persons and other trust estates; and
- (b) includes any wholly-owned subsidiary of the trustee corporation that is guaranteed by the trustee corporation

trustees,—

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

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

- (2) References in this Act 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 by the Commissioner, or treated as received under section 69(2) (unremitted deductions) or under section 71 (unexplained remittances), in respect of the person.

- (3) References in this Act to **3 months** are references to a period of 92 days.
- (4) An outline provision in this Act is only a guide to the general scheme and effect of the part of the Act that it describes.

5 Meaning of provider

- (1) For the purpose of anything that must or may be done by or to or in relation to a provider of a scheme under this Act, **provider**, unless the context otherwise requires, means—
 - (a) the trustees of the scheme; or
 - (b) in a case in which the trustees of the scheme have made a lawful delegation to do any thing to another person (for example, an administration manager), that person.
- (2) Subsection (1)(b) does not apply if a person who may or must do something to or in relation to a provider has not been given notice of, and could not reasonably be expected to know about, the delegation.

6 Application

- (1) This Act applies to an employee or other natural person only if, at the time when the person becomes subject to the automatic enrolment rules or opts in, the person—
 - (a) is, or normally is, personally present in New Zealand, or is an employee of the State services (within the meaning of the State Sector Act 1988) who is serving outside New Zealand; and
 - (b) is a New Zealand citizen or is entitled, in terms of the Immigration Act 1987, to be in New Zealand indefinitely.
- (2) This Act applies to an employer only if—
 - (a) the employer is a New Zealand resident (within the meaning of sections OE 1 and OE 2 of the Income Tax Act 2004); or
 - (b) the employer carries on business from a fixed establishment in New Zealand (within the meaning of section OB 1 of the Income Tax Act 2004).

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

7 Act binds the Crown

This Act binds the Crown.

8 Outline

- (1) Part 2 provides for employees and other persons to become members of a KiwiSaver scheme.
- (2) Part 3 provides for the deduction and treatment of KiwiSaver contributions.
- (3) Part 4 regulates KiwiSaver schemes.
- (4) Schedule 1 sets out the KiwiSaver scheme rules. These are some of the main terms and conditions of KiwiSaver schemes, and are implied in the trust deeds of those schemes.
- (5) Part 5 and Schedules 2 and 3 contain miscellaneous provisions.

Part 2

Membership of overall KiwiSaver scheme

Subpart 1—Becoming members of overall KiwiSaver scheme

9 Outline of how people become members of overall KiwiSaver scheme

- (1) This subpart provides for employees and other persons to become members of the overall KiwiSaver scheme by—
- (a) the operation of the automatic enrolment rules when an employee starts new employment, with the effect that a person becomes subject to automatic deductions from his or her salary or wages, but may opt out within specified time limits; or
- (b) opting in (whether as an employee who becomes liable for automatic deduction of contributions from his or her salary or wages or otherwise).
- (2) This subpart also provides for employers to be exempt employers, with the effect that the automatic enrolment rules will not apply to their employees when they start new employment.

*Automatic enrolment rules***10 Who automatic enrolment rules apply to**

The automatic enrolment rules apply to every employee who—

- (a) starts new employment with an employer that is not an exempt employer; and
- (b) is aged 18 or over, but less than the New Zealand superannuation qualification age, when he or she starts that new employment.

11 Meaning of new employment

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

- (a) does not include temporary employment (except as provided in section 12); and
- (b) does not include employment in respect of which the employee remains on the same payroll as the payroll that he or she was on immediately before starting that employment; and
- (c) does not include employment with an employer that carries on the same business as the business in which the employee was employed immediately before starting the employment.

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

- (a) a company that results from, or continues after, an amalgamation under the Companies Act 1993 involving the company by which the employee was employed immediately before that employee started the employment; and
- (b) a business that takes over as a going concern the business in which the employee was employed immediately before that employee started the employment.

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

12 Temporary employment

- (1) Employment is **temporary**, and the automatic enrolment rules do not apply, if—
 - (a) the employment is as a casual agricultural worker within the meaning of section OB 1 of the Income Tax Act 2004; or
 - (b) the employment is under a contract of service that is for a period of 28 continuous days or less.
- (2) However, employment ceases to be temporary, and the automatic enrolment rules then apply (as if the employee then started new employment)—
 - (a) on the day after the date on which the employee ceases to be a casual agricultural worker within the meaning of section OB 1 of the Income Tax Act 2004; or
 - (b) in the case of any other employee, on the 28th day after the employee started the employment.

13 Employment in schools

- (1) If a person is employed by a board of trustees to work in a state school or integrated school, the relevant board of trustees must be treated as the employer for the purposes of this Act.
- (2) If a person is employed to work in a state school or integrated school after being employed to work in another state school or integrated school, the person is treated as starting new employment for the purposes of this Act, despite the fact that the person stays on the same payroll.
- (3) In this section,—

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

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

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

14 Other situations when automatic enrolment rules do not apply

- (1) Despite sections 10 to 13, the following are not new employment, and the automatic enrolment rules do not apply:
 - (a) if the person is an employee only because he or she is in receipt of payments of a type referred to in any of the

following subparagraphs of paragraph (b) of the definition of salary or wages in section OB 1 of the Income Tax Act 2004:

- (i) subparagraph (iii) (which relates to payments to working partners):
 - (ii) subparagraph (x) (which relates to parental leave payments paid under Part 7A of the Parental Leave and Employment Protection Act 1987):
 - (iii) subparagraphs (xii) to (xvi) (which relate to certain ACC payments):
- (b) if the new employment is as an election day worker or a private domestic worker as those terms are defined in section OB 1 of the Income Tax Act 2004:
 - (c) if the employee is not required to have tax deductions made from his or her salary or wages under the PAYE rules.
- (2) Despite sections 10 to 13, the automatic enrolment rules do not apply if the employee is already a member of a KiwiSaver scheme.

15 Effect of automatic enrolment

- (1) An employee who is subject to the automatic enrolment rules—
- (a) becomes liable in accordance with subpart 1 of Part 3 to automatic deduction of contributions—
 - (i) from the salary or wages paid in respect of the new employment that triggered the automatic enrolment rules; and
 - (ii) from the salary or wages paid in respect of any other new employment that the employee starts after becoming subject to the automatic enrolment rules; and
 - (b) must become a member of a KiwiSaver scheme under subpart 2 of this Part.
- (2) The employee must continue to be a member of a KiwiSaver scheme until the earliest of—
- (a) an opt-out notice taking effect; or
 - (b) the KiwiSaver end payment date referred to in clause 4 of the KiwiSaver scheme rules (which relates to lock-in of funds); or

- (c) the provider terminating the employee's membership of a KiwiSaver scheme under clause 4(5) of the KiwiSaver scheme rules (which relates to zero account balances); or
 - (d) the date of withdrawal or transfer to a foreign scheme in the case of permanent emigration under clause 14 of the KiwiSaver scheme rules.
- (3) The employee continues to be liable for automatic deduction of contributions in accordance with subsection (1)(a) in respect of salary or wages until the earliest of—
- (a) the dates referred to in subsection (2); or
 - (b) the date on which section 62 otherwise applies to that payment of salary or wages.

16 Time limit for opting out

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

17 How to opt out

- (1) Every employee who wishes to opt out must, within the time limit in section 16, give an opt-out notice either—
- (a) to the Commissioner; or
 - (b) to the employer in respect of the new employment that triggered the automatic enrolment rules.
- (2) An opt-out notice must be—
- (a) given in the form of the opt-out notice in an information pack; or
 - (b) given in any other form and manner permitted by the Commissioner.
- (3) In order to be effective, an opt-out notice must contain the information required by that form or by the Commissioner, as the case may be.
- (4) An opt-out takes effect on the later of—
- (a) the 13th day after the date on which the person started the new employment that triggered the automatic enrolment rules; and
 - (b) the date on which the opt-out notice is—

- (i) accepted by the Commissioner, in the case of a notice given to the Commissioner; or
 - (ii) received by the employer, in the case of a notice given to the employer.
- (5) An employer who receives an opt-out notice must give notice of that opt-out to the Commissioner no later than the time that the next employer monthly schedule is required to be delivered to the Commissioner under section NC 15 of the Income Tax Act 2004.

18 Extension of opt-out period

- (1) This section applies if—
 - (a) an employee gives an opt-out notice outside the time limit in section 16; and
 - (b) 1 or more of the following applies:
 - (i) the employer did not supply the employee with an information pack within 7 days of the employee starting new employment with the employer; or
 - (ii) the Commissioner did not send an investment statement under section 50(3)(c); or
 - (iii) the employer did not supply an investment statement under section 43 (if an employer's choice of KiwiSaver scheme is effective); or
 - (iv) events outside the control of the employee meant that the opt-out notice could not be given within the time limit and, in the opinion of the Commissioner, it is reasonable that a late opt-out notice be accepted.
- (2) The Commissioner may accept the opt-out notice in the period that ends 3 months after the date on which the Commissioner receives the first contribution in respect of the employee.
- (3) If an opt-out notice is received by the Commissioner outside the time limit in section 16, and the Commissioner does not exercise his or her discretion to accept it under this section, the Commissioner must treat the notice as if it were an application for a contributions holiday under section 102, if the person could have applied under that provision.

19 Commissioner must give notice to employer of opting out

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

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

20 Effect of opting out

- (1) An employee who opts out ceases, on the date on which the opt-out takes effect under section 17(4), to be a member of any KiwiSaver scheme of which the employee might have become a member.
- (2) The employer must stop making deductions, with effect on the next payment of salary or wages that the employer calculates,—
 - (a) if the employee opts out by giving the opt-out notice to the employer, after the effective date of the opt-out notice under section 17(4); or
 - (b) if the employee opts out by giving the opt-out notice to the Commissioner, after the date on which the employer receives notice of the employee opting out under section 19.
- (3) The employer may refund any deduction to the employee, rather than pay it to the Commissioner.

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

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

*Notice requirements for people who start new employment***22 Employees must give information to employers**

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

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

23 Employers must give information to Commissioner

- (1) Every employer of a person who starts new employment must give notice to the Commissioner of the information referred to in section 22(1)(a) and (b) that the employee gives the employer, if the employer is satisfied that the employee is subject to the automatic enrolment rules.
- (2) That information must be given no later than the time that the employer is next required to deliver an employer monthly schedule to the Commissioner under section NC 15 of the Income Tax Act 2004 after the information is given to the employer.

Exempt employers

24 Purpose of being exempt employer

- (1) A person who starts new employment with an exempt employer is exempt from the automatic enrolment rules.
- (2) For the avoidance of doubt, subsection (1)—
- (a) does not prevent an employee of an exempt employer from opting in under this subpart; and
 - (b) does not prevent a person who is already a member of a KiwiSaver scheme from becoming liable for automatic deduction of contributions from the salary or wages paid in respect of employment with an exempt employer under section 15(1)(a)(ii) or 36(1)(a)(ii).

25 Eligibility to be exempt employer

- (1) An employer is eligible to be approved as an exempt employer if the Government Actuary is satisfied that the employer provides access to a superannuation scheme for its employees that complies with the following rules:
- (a) every person who becomes, on or after the date of commencement of the automatic enrolment rules, a permanent employee (including a part-time employee) of that employer, and who is aged 18 or over but less than the New Zealand superannuation qualification age, must be eligible, in practice, at the time when the person so becomes an employee,—
 - (i) to become a member of the scheme; and
 - (ii) to transfer to the scheme the member's accumulation in relation to other superannuation schemes (to the extent that transfers are available from those other superannuation schemes); and
 - (b) the scheme must be a registered superannuation scheme; and
 - (c) the trust deed of the scheme must have the effect that each member who satisfies the scheme's requirements for a withdrawal benefit, and who elects to withdraw from membership of the scheme, may transfer the member's accumulation to another registered superannuation scheme or KiwiSaver scheme (to the extent that transfers are available to those other schemes); and
 - (d) the trust deed of the scheme must provide for an amount equal to at least 4% of annual gross base salary or wages to be contributed to, or otherwise credited within, the scheme in respect of each person who becomes, on or after the date of commencement of the automatic enrolment rules, a permanent employee of that employer and a member of the scheme.
- (2) However, subsection (1)(d) does not apply—
- (a) to the extent that an employee is, in accordance with the terms of the scheme, temporarily relieved from contributions at that rate (for example, in the event of financial hardship); or
 - (b) if the scheme is a defined benefit scheme of a type that does not satisfy the 4% minimum amount rule in subsection (1)(d), and if the actuary of the scheme certifies, to the satisfaction of the Government Actuary, that the

value of each employee's accrued benefits to be provided by the scheme is, as a matter of fact, increasing, during each membership period, by an amount at least equivalent to such minimum amount that would otherwise be required by this section and section 26.

(3) In this section,—

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

permanent employees means employees other than those employed in temporary employment within the meaning of section 12.

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

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

- (a) the minimum amount required by section 25(1)(d) may be made up—
 - (i) entirely of contributions by the employee; or
 - (ii) entirely of contributions by an employer; or
 - (iii) partially of contributions by the employee and partially of contributions by an employer; and
- (b) the minimum amount required by section 25(1)(d) must be treated as satisfied if the sum of the following amounts is equal to at least 4% of annual gross base salary or wages:
 - (i) the minimum prescribed amount that the employee must contribute:
 - (ii) the maximum prescribed amount that the employer would be required to contribute if the member were to contribute the maximum prescribed amount:
- (c) any amount contributed to the scheme by an employer in respect of an employee does not count towards the minimum amount required by section 25(1)(d) unless—
 - (i) the employee is legally entitled to require the employer to contribute that amount on his or her behalf; and
 - (ii) the trust deed of the scheme provides for the minimum amount required by section 25(1)(d) to vest completely in the employee no later than the

- time when the employee begins his or her sixth year as a member of the scheme; and
- (d) any amount contributed to the scheme by an employer in respect of an employee must be calculated, for the purposes of the minimum amount required by section 25(1)(d), before any specified superannuation contribution withholding tax payable under the SSCWT rules is deducted.
- (2) Subsection (1)(b) does not limit subsection (1)(c) or (d).

Example

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

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

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

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

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

28 Eligibility of employers who have schemes established under master trusts

An employer who provides access to a superannuation scheme for its employees that is established under a master trust is eligible to be approved as an exempt employer if the Government Actuary is satisfied that the rules in section 25 would be complied with if the Government Actuary considered only—

- (a) the master trust in so far as it relates to the employer's scheme; and
- (b) the participation agreement executed between the employer and the trustees of the master trust in relation to the membership of the employer's employees in the scheme.

29 How to apply to be exempt employer

- (1) A person may apply to the Government Actuary for approval of an employer as an exempt employer.
- (2) The application must be accompanied by—
 - (a) information that satisfies the Government Actuary that the scheme complies with the rules in section 25; and
 - (b) the names, addresses, and tax file numbers of each employer in respect of whom the application is made; and
 - (c) if the application is made in respect of an employer that is part of a group of companies, such details of the names, addresses, tax file numbers, and payroll arrangements of any other members of the group that the Government Actuary may request.

30 How applications to be exempt employer must be dealt with

- (1) The Government Actuary must, within 28 days after receiving an application under section 29 and the documents required to accompany the application,—
 - (a) consider whether he or she is satisfied that each employer in respect of whom the application is made is eligible to be approved as an exempt employer; and
 - (b) if so satisfied, approve the employer as an exempt employer and register the employer on the register of exempt employers.
- (2) The Government Actuary must—
 - (a) give notice to the employer as soon as practicable after approving, or declining to approve, the employer as an exempt employer; and
 - (b) specify in that notice an effective date after which an employee who starts new employment with the employer will be exempt from the automatic enrolment rules (unless those rules do not otherwise apply).

31 Revocation of exempt employer approval

- (1) The Government Actuary may revoke an approval given under section 30 if—
 - (a) the Government Actuary has given not less than 28 days' notice to the employer that the Government Actuary is considering whether to revoke the approval; and
 - (b) the Government Actuary is satisfied on reasonable grounds that the employer no longer provides access to a scheme for its employees that complies with the rules in section 25.
- (2) The revocation may be on application by the employer or on the Government Actuary's initiative.
- (3) The Government Actuary must—
 - (a) give notice to the employer as soon as practicable after revoking the approval; and
 - (b) specify in that notice an effective revocation date after which an employee who starts new employment with the employer will be subject to the automatic enrolment rules (unless those rules do not otherwise apply); and
 - (c) remove the employer from the register of exempt employers.

32 Government Actuary must give notice to Commissioner of exempt employers

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

*Opting in***33 Certain persons may opt in**

A person may opt in at any time provided—

- (a) the person is less than the New Zealand superannuation qualification age; and
- (b) the person is not already a member of a KiwiSaver scheme; and
- (c) the person is not subject to the automatic enrolment rules.

34 How to opt in

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

- (a) contract directly with a provider of a KiwiSaver scheme to become a member of a KiwiSaver scheme;
 - (b) if the person is an employee, give his or her employer a KiwiSaver deduction notice.
- (2) A person who opts in by giving his or her employer a KiwiSaver deduction notice must give the employer—
- (a) his or her name and address; and
 - (b) his or her tax file number.
- (3) The employer must give notice to the Commissioner of the information that the employee gives the employer under subsection (2), if the employer is satisfied that the employee is eligible to opt in under section 33.
- (4) That information must be given no later than the time that the employer is next required to deliver an employer monthly schedule to the Commissioner under section NC 15 of the Income Tax Act 2004.

35 Opting in by persons under 18

- (1) A person who is less than 18 years and who wishes to opt in may only opt in in accordance with section 34(1)(a).
- (2) If a provider of a KiwiSaver scheme accepts a person who is less than 18 years as a member of the KiwiSaver scheme, the contract between the provider and the person under 18 years must be treated, for the purposes of the Minors' Contracts Act 1969, as if the person were aged 18 years.

Compare: 1992 No 141 s 63A

36 Effect of opting in by employees

- (1) An employee who opts in—
- (a) becomes liable in accordance with subpart 1 of Part 3 to automatic deduction of contributions—
 - (i) from the salary or wages paid by the employer to whom the opting in relates; and
 - (ii) from the salary or wages paid in respect of any other new employment that the employee starts after opting in; and
 - (b) must become a member of a KiwiSaver scheme under subpart 2 of this Part.
- (2) The employee must continue to be a member of a KiwiSaver scheme until the earliest of—

- (a) the KiwiSaver end payment date referred to in clause 4 of the KiwiSaver scheme rules (which relates to lock-in of funds); or
 - (b) the provider terminating the employee's membership of a KiwiSaver scheme under clause 4(5) of the KiwiSaver scheme rules (which relates to zero account balances); or
 - (c) the date of withdrawal or transfer to a foreign scheme in the case of permanent emigration under clause 14 of the KiwiSaver scheme rules.
- (3) The employee continues to be liable for automatic deduction of contributions in accordance with subsection (1)(a) in respect of salary or wages until the earliest of—
- (a) the dates referred to in subsection (2); or
 - (b) the date on which section 62 (other than section 62(a)) otherwise applies to that payment of salary or wages.

37 Effect of opting in by persons other than employees

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

*Information about people who contract directly
with providers*

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

- (1) Every provider who contracts directly with a person (A) for membership of its KiwiSaver scheme must give notice to the Commissioner of that fact as soon as practicable after entering into the contract.
- (2) The notice must include all of the following information:
 - (a) A's name and address; and
 - (b) A's tax file number; and
 - (c) the date of the first contribution received by the provider in respect of A (if any); and
 - (d) if A is an employee,—
 - (i) the name and address of each of A's employers in respect of whom deductions of contributions are to be made from salary or wages; and
 - (ii) the contribution rate in relation to each of those employers; and

- (e) the name and address and tax file number of both the provider and the scheme; and
- (f) any other information that the Commissioner requires.

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

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

- (a) that the employer must start to make deductions of contributions from each payment of the person's salary or wages that is calculated by the employer after the date on which the employer receives the notice under this section; and
- (b) the contribution rate; and
- (c) the person's name and tax file number.

Information about overall KiwiSaver scheme that must be provided

40 Commissioner must supply information pack

- (1) The Commissioner must supply to each employer the number of information packs that the Commissioner reasonably believes will be a sufficient number to enable the employer to meet the employer's obligations to supply information packs under this Act.
- (2) The Commissioner must also supply 1 or more information packs, on request, to any person who so requests.

41 What information pack must contain

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

- (a) a description of the overall KiwiSaver scheme; and
- (b) a statement that membership of the overall KiwiSaver scheme, and of any individual KiwiSaver scheme, is at the member's own risk; and
- (c) a summary of what could happen under the default allocation rules or if an employer has a chosen KiwiSaver scheme; and
- (d) a description of how to access information about KiwiSaver schemes; and

- (e) a statement that people should seek financial advice from a professional financial adviser (rather than an employer) if they want information in relation to—
 - (i) their personal financial circumstances; or
 - (ii) deciding whether to opt in or opt out or not; or
 - (iii) choosing a KiwiSaver scheme or investment product of a KiwiSaver scheme; or
 - (iv) the overall KiwiSaver scheme or its financial concepts; and
- (f) an opt-out notice form; and
- (g) a statement about collection of personal information that complies with principle 3 of the information privacy principles in the Privacy Act 1993; and
- (h) any other prescribed information.

42 Employer must supply information pack to certain employees

- (1) Every employer must supply an information pack to—
 - (a) each employee who starts new employment with the employer and to whom the automatic enrolment rules apply, within 7 days of the employee starting the new employment; and
 - (b) each employee who opts in under section 34(1)(b), within 7 days of the employee giving the employer the KiwiSaver deduction notice; and
 - (c) each employee who requests an information pack in contemplation of opting in.
- (2) An employer is not liable for a penalty for a failure to supply an information pack under this section if the employer proves that—
 - (a) the failure of the employer to supply the information pack was caused by the fact that the Commissioner had not given the employer enough information packs to enable the employer to meet its obligations under this Act; and
 - (b) the employer notified the Commissioner that the employer needed more information packs, as soon as practicable after realising that the employer did not have enough.

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

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

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

Subpart 2—Allocation of people to KiwiSaver schemes

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

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

- (a) by the person choosing his or her own KiwiSaver scheme; or
- (b) if the person does not so choose, but if his or her employer has a chosen KiwiSaver scheme, by the person being allocated to the employer's chosen KiwiSaver scheme; or
- (c) in any other case, by the person being allocated to a default KiwiSaver scheme nominated by the Commissioner.

People may choose their own KiwiSaver scheme

45 People may choose their own KiwiSaver scheme

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

Employer choice of KiwiSaver scheme

46 Employer may choose scheme for employees

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

- (2) However, an employer may choose a KiwiSaver scheme under this section only if all new permanent employees of the employer are eligible to be members of the scheme (to the extent that this Act applies to the employees).
- (3) In this section, **permanent employees** means employees other than those employed in temporary employment within the meaning of section 12.

47 When employer choice of KiwiSaver scheme is effective

- (1) The method by which an employer may choose a KiwiSaver scheme is—
 - (a) by agreeing with the provider that the provider will provide access to the scheme for the employer's employees; and
 - (b) by giving notice to the Commissioner of—
 - (i) the name, address, and tax file number of the employer; and
 - (ii) the name, address, and tax file number of both the provider and the chosen KiwiSaver scheme.
- (2) The employer's choice of KiwiSaver scheme is effective—
 - (a) as from the date on which the notice in subsection (1)(b) is accepted by the Commissioner, or on any later date specified in the notice; and
 - (b) until the effective date of the earliest of any of the following notices:
 - (i) notice given by the employer to the Commissioner of an alternative choice of scheme under subsection (1); or
 - (ii) notice given by the employer to the Commissioner stating that the employer no longer has a chosen KiwiSaver scheme; or
 - (iii) notice given by the Commissioner to the employer stating that the employer's choice of KiwiSaver scheme has been revoked by the Commissioner on the grounds that the Commissioner is not satisfied that the scheme is eligible to be the employer's chosen scheme under section 46.

48 Effect of employer choice of KiwiSaver scheme

- (1) This section applies while an employer's choice of KiwiSaver scheme is effective under section 47.

- (2) An employee of the employer to whom the automatic enrolment rules apply, or who opts in under section 34(1)(b), and who has not become a member of a KiwiSaver scheme by contracting directly with the provider of a scheme within 3 months after the Commissioner receives the first contribution in respect of that person is treated, on that date,—
 - (a) as having offered to become a member of the employer's chosen KiwiSaver scheme; and
 - (b) as having subscribed for securities in that scheme.
- (3) The provider of the employer's chosen KiwiSaver scheme must accept that offer and allot those securities.
- (4) The membership contract of the KiwiSaver scheme is binding on the employee and the provider, and enforceable as if it were a contract that was freely and voluntarily entered into.
- (5) The contract may be amended or replaced or otherwise terminated, and the allotment of any securities relating to the contract may be voided, in the same way as if the contract were freely and voluntarily entered into.
- (6) Subsection (5) is subject to section 220(3).
- (7) The Commissioner must, as soon as practicable, give notice to the provider of the scheme of the employee's name, address, date of birth (if known to the Commissioner), tax file number, and any other personal information that the Commissioner considers relevant.

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

- (1) A notice under section 47(2)(b) does not affect any person who became a member of a KiwiSaver scheme while the scheme was the employer's chosen KiwiSaver scheme.
- (2) However, subsection (1) does not limit section 9BAA of the Superannuation Schemes Act 1989 (which provides for transfers without consent in certain circumstances).

Default KiwiSaver schemes

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

- (1) This section applies to a person at the time when the Commissioner receives—

- (a) notice under section 23 of the person's automatic enrolment; or
 - (b) notice under section 34(3) of a person's opt-in under section 34(1)(b).
- (2) However, this section does not apply to a person referred to in subsection (1)(a) or (b)—
- (a) who is an employee of an employer whose chosen KiwiSaver scheme is effective under section 47; or
 - (b) who has opted out; or
 - (c) if the Commissioner has been notified by a provider that the person has become a member of a KiwiSaver scheme.
- (3) The Commissioner must, as soon as practicable,—
- (a) provisionally allocate, on a sequential basis, the person to a default investment product of a default KiwiSaver scheme that is nominated by the Commissioner; and
 - (b) give notice to the person of that allocation, including the name and address of the provider of the nominated default KiwiSaver scheme, and of the name of the default investment product of that scheme, to which the person has been provisionally allocated; and
 - (c) send to the person the investment statement relating to that product in that scheme; and
 - (d) give notice to the person of what will happen if the person does not choose his or her own KiwiSaver scheme.
- (4) Subsection (3) also applies, with necessary modifications, and as provided in section 57 in cases to which that section applies, to a person if the Commissioner receives—
- (a) notice under section 58 of the person having ceased to be eligible to be a member of his or her employer's chosen KiwiSaver scheme; or
 - (b) notice under section 173(1)(b) that the person must transfer to another scheme on a scheme's winding up; or
 - (c) notice under section 210(2); or
 - (d) notice of any other situation where a person is not, or is no longer, eligible to become or be a member of a certain KiwiSaver scheme and needs to be allocated to a KiwiSaver scheme under this section in order to comply with this Act.

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

- (1) This section and section 52 apply, at the final allocation date specified in subsection (4), to a person (A) who has been provisionally allocated under section 50 if the Commissioner has not been notified by that date by a provider that A has applied to become a member of a KiwiSaver scheme.
- (2) The Commissioner must give notice to A that the allocation of A is now completed as per the provisional allocation.
- (3) The Commissioner must give notice to the provider of the default KiwiSaver scheme that A has been allocated to the scheme, and A's name, address, date of birth (if known to the Commissioner), tax file number, and any other personal information that the Commissioner considers relevant.
- (4) The final allocation date is—
 - (a) in the case of a person referred to in section 50(1)(a) or (b), 3 months after the Commissioner receives the first contribution in respect of A:
 - (b) in the case of a person referred to in section 50(4), 3 months after the date on which the Commissioner receives that notice.
- (5) However, if a dispute in relation to Part 1 or 2 is underway under section 212 or 213 as at the date which would otherwise be the final allocation date, the final allocation date is the effective date of the notice given by the Commissioner to the effect that the dispute has been resolved or has otherwise been terminated.

52 Effect of completion of allocation

- (1) A person whose allocation is completed under section 51 is treated as having offered to become a member of that default KiwiSaver scheme and as having subscribed for securities in that scheme.
- (2) The provider of the default KiwiSaver scheme to which the person has been allocated must accept that offer and allot those securities.
- (3) The membership contract of the default KiwiSaver scheme is binding on the person and the provider, and enforceable as if it were a contract that was freely and voluntarily entered into.

- (4) The contract may be amended or replaced or otherwise terminated, and any allotment relating to the contract may be voided, in the same way as if the contract were freely and voluntarily entered into.
- (5) Subsection (4) is subject to section 220(3).

Miscellaneous provisions

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

- (1) A person may be a member of only 1 KiwiSaver scheme at any one time.
- (2) This section does not limit subpart 3.
- (3) This section does not prevent people from having more than 1 account or investment product of any one KiwiSaver scheme.

Subpart 3—Transfers between KiwiSaver schemes

54 Application

- (1) Sections 55 and 56 apply if a person wishes to transfer KiwiSaver schemes (**voluntary transfer**).
- (2) Sections 57 and 58 apply if a person has to transfer KiwiSaver schemes (for example, because the person ceases to be eligible to be a member of their current KiwiSaver scheme) (**involuntary transfer**).

Voluntary transfers

55 People may transfer between KiwiSaver schemes

- (1) A person may, at any time, transfer from one KiwiSaver scheme (an **old scheme**) to another KiwiSaver scheme (a **new scheme**) by contracting directly with the provider of the new KiwiSaver scheme to become a member of that scheme.
- (2) The transfer is effective in relation to the Commissioner's functions under this Act only when the Commissioner receives notice of the transfer under section 56(1).

56 Notification of transfers and requirement to transfer funds and information

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

- (i) that the person has transferred to the new scheme; and
 - (ii) of the person's name, address, date of birth, and tax file number; and
 - (iii) of the new scheme's name and tax file number; and
 - (b) to the provider of the old scheme—
 - (i) that the person has ceased to be a member of the old scheme and the effective date of the transfer; and
 - (ii) of the new scheme's name and address; and
 - (iii) that the provider of the old scheme must transfer the funds and information required to be transferred in accordance with subsection (3).
- (2) The provider of the new scheme must also give evidence to the provider of the old scheme that the member wishes to transfer to the new scheme.
- (3) The provider of the old scheme that is given notice under subsection (1) must—
- (a) transfer the member's accumulation to the new scheme; and
 - (b) give notice to the member of the amount so transferred; and
 - (c) give notice to the provider of the new scheme—
 - (i) of the date on which the member first became a member of a KiwiSaver scheme; and
 - (ii) as to whether the member has made a withdrawal for the purpose of the purchase of a first home under clause 8 of the KiwiSaver scheme rules; and
 - (iii) of any contribution holidays in force.
- (4) The provider must comply with subsection (3) within 35 days of receiving that notice or any longer period agreed between the providers of the old and new schemes.

Involuntary transfers

57 Involuntary transfers

- (1) This section applies if a person has to transfer KiwiSaver schemes, including if—

- (a) the Commissioner has received a notice under section 58 that an employee has ceased to be eligible to be a member of an employer's chosen scheme; or
 - (b) the Commissioner has received a notice under section 173(1)(b) that a person is a member of a KiwiSaver scheme that is being wound up; or
 - (c) the Commissioner has received a notice in respect of a member of a KiwiSaver scheme under section 210(2).
- (2) However, this section does not apply if section 9BAA of the Superannuation Schemes Act 1989 applies.
- (3) The person must be allocated to a new scheme in accordance with the principles in section 44.
- (4) The Commissioner must take whatever steps the Commissioner thinks appropriate to ensure that, so far as practicable, the process for an involuntary transfer follows the process for a voluntary transfer under section 56.
- (5) Section 56(3) and (4) applies to an involuntary transfer, but as if the requirement in section 56(4) referred to 3 months instead of 35 days.
- (6) Sections 45 to 53 apply to an involuntary transfer with necessary modifications.
- (7) Subsections (5) and (6) do not limit subsection (4).

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

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

59 Commissioner must send information to involuntary transferees

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

- (a) an information pack; and
- (b) advice as to the effect of this subpart and of section 50.

Part 3 KiwiSaver contributions

Subpart 1—Deductions of contributions from salary or wages

Payments of salary or wages to which deduction rules apply

60 Application of subpart

- (1) This subpart applies to an employer in respect of any employee to whom 1 or more of the following applies:
 - (a) the employee has started new employment with the employer and the automatic enrolment rules apply;
 - (b) the employee has given the employer a KiwiSaver deduction notice;
 - (c) the Commissioner has given the employer a notice requiring the deduction of contributions from the employee's salary or wages.
- (2) This subpart applies to all payments of salary or wages—
 - (a) after the employee starts that new employment (in a case to which subsection (1)(a) applies); or
 - (b) that are calculated by the employer after the employer receives that notice (in a case to which subsection (1)(b) or (c) applies).

61 Commissioner may give notice

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

62 When subpart does not apply

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

- (a) if section 20(2) has required the employer to stop making deductions after an opt-out; or
- (b) if the employee has given or shown the employer a notice of a contributions holiday, or the Commissioner has notified the employer of a contributions holiday, that has been granted under subpart 4, for so long as the employer is satisfied that the employee is on that contributions holiday; or

- (c) if, in accordance with the PAYE rules, no tax deduction is required to be made from the payment of salary or wages at the time the payment is made.

63 Part also applies to PAYE intermediaries

This Part applies to a PAYE intermediary (within the meaning of section OB 1 of the Income Tax Act 2004) who is acting under subpart NBA of Part N of the Income Tax Act 2004 as if references to the employer were a reference to the PAYE intermediary and with other necessary modifications.

Deduction rules

64 Contribution rate

- (1) The **contribution rate**, in relation to an employee and to an employer and to each payment of salary or wages, is—
 - (a) 4% of the employee's gross salary or wages; or
 - (b) 8% of the employee's gross salary or wages if the employee gives his or her employer a notice requiring contributions to be deducted at that rate.
- (2) The employee may change his or her contribution rate from 4% to 8%, or from 8% to 4%, by giving notice to his or her employer of the new rate.
- (3) The new rate applies to the next payment of salary or wages that is calculated after the employer receives that notice.
- (4) An employee may not change his or her contribution rate in relation to an employer at intervals that are less than 3 months apart unless the employer agrees.

65 Contribution rates may be changed by Order in Council

- (1) The Governor-General may, by Order in Council, do either or both of the following:
 - (a) alter either or both of the rates specified in section 64;
 - (b) provide for additional rates at which employees may contribute under this subpart, instead of at the rates under that section.
- (2) The Order in Council must state the date from which the rate or rates is to have effect (which must be the first day of a tax year (as defined in section OB 1 of the Income Tax Act 2004)).

- (3) The Order in Council must state how it will apply (for example, whether it applies to the persons to whom this subpart already applies).
- (4) Every Order in Council made under this section and laid before the House of Representatives pursuant to the Regulations (Disallowance) Act 1989 expires with the close of the 12-month period commencing on the date on which it was so laid, except in so far as it is expressly validated and confirmed by an Act of Parliament passed before that expiry date.
- (5) Every Order in Council made under this section has the force of law as if it were enacted by this Act.
- (6) The validity of any Order in Council made under this section is not affected by reason only of the repeal of an Act of Parliament validating and confirming it.

66 Obligation to make deductions

The employer must make deductions of contributions from each payment of the employee's salary or wages of—

- (a) an amount equal to the contribution rate; or
- (b) an amount equal to the contribution rate, minus the gross amount of so much of any employer contribution—
 - (i) that the employer makes, during the same PAYE period, as a specified superannuation contribution within the meaning of section OB 1 of the Income Tax Act 2004 to the employee's KiwiSaver scheme on behalf of the employee; and
 - (ii) that vests completely in the employee, as provided by the trust deed of the scheme, immediately after the contribution is made; and
 - (iii) that the employee chooses should count towards the contribution rate.

67 PAYE rules apply to deductions

- (1) The PAYE rules apply to the deduction of contributions under this subpart, as far as applicable and with the necessary modifications, as if—
 - (a) every reference to income tax were a reference to contributions; and

- (b) every reference to tax deductions were a reference to the deduction of contributions; and
 - (c) every reference to a tax code were a reference to a deduction rate; and
 - (d) every reference to an amount required to be deducted under the PAYE rules were a reference to an amount required to be deducted under this Act.
- (2) Every employer and employee must comply with the requirements of the PAYE rules to the extent to which those rules apply under this section.
 - (3) However, the following do not apply to any amount required to be deducted under this subpart:
 - (a) sections BC 1, LD 1, NC 2(1), NC 2(5), NC 6, NC 7, NC 8, NC 8A, NC 9, NC 13, and NC 14 of the Income Tax Act 2004; and
 - (b) sections 139C, 140 to 140DB, 141FD, 141JA, 142E, 144, and 150B of the Tax Administration Act 1994.
 - (4) Any deduction made under this subpart is not part of or included in any tax deduction made under the PAYE rules on account of income tax.
 - (5) The deductions made under this subpart are in addition to any tax deductions required to be made under the PAYE rules.
 - (6) This section is subject to sections 212 to 216.

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

- (1) This section applies if money is paid to a provider of a KiwiSaver scheme in respect of all or any of—
 - (a) the provision of retirement benefits for the member of the scheme; and
 - (b) other things (for example, life insurance premiums).
- (2) The money paid in respect of the other things—
 - (a) does not count as a contribution under this Act or towards the contribution rate; and
 - (b) cannot be paid via the Commissioner.
- (3) This subpart does not require an employer to make deductions from salary or wages in respect of that money.
- (4) This section does not apply to permitted withdrawals.

69 Unremitted deductions made by employers

- (1) This section applies if—
- (a) the Commissioner is satisfied that a deduction has been made in any PAYE period by an employer under this subpart; and
 - (b) the amount of the deduction is not paid to the Commissioner by the employer on or before the date on which an employer is required to pay the deduction to the Commissioner under section NC 15 of the Income Tax Act 2004 (as applied by section 67 of this Act).
- (2) The amount of the deduction is treated, for the purposes of this Act, as having been received by the Commissioner on the 15th day of the month in which the deduction is made.

70 Unexplained remittances of deductions received from employers

- (1) This section applies if—
- (a) the Commissioner receives an amount (the **received amount**) from an employer in relation to the amounts deducted by the employer under this subpart; and
 - (b) the employer has failed to supply to the Commissioner the particulars required by the Commissioner in relation to those amounts deducted; and
 - (c) the Commissioner is unable to ascertain to the Commissioner's satisfaction, in sufficient time prior to the cut-off day for the making of on-payments to the providers of KiwiSaver schemes, the portion of the received amount attributable to each of the persons from whom an amount was deducted by the employer.
- (2) The Commissioner may, for the purposes of this Part, hold the received amount until the amount attributable to each of the persons from whom an amount has been deducted by the employer has been established to the satisfaction of the Commissioner.

Compare: 1991 No 142 s 149

71 Time at which unexplained remittances deemed to be received

Any amount that is held by the Commissioner under section 70(2) is treated, for the purposes of this Act (other than sections 84 to 91 (interest on contributions) and clause 8 of the

KiwiSaver scheme rules (withdrawal for purpose of purchase of first home)), as not having been received by the Commissioner until the day on which the amount attributable to each of the persons from whom an amount has been deducted by the employer has been established to the satisfaction of the Commissioner.

Compare: 1991 No 142 s 150

Subpart 2—Miscellaneous provisions relating to contributions

Inland Revenue KiwiSaver Holding Account

72 Inland Revenue KiwiSaver Holding Account

- (1) The Commissioner must establish a memorandum account, called the Inland Revenue KiwiSaver Holding Account (the **holding account**), for the purpose of recording the receipt, deduction, payment, and refund of contributions and interest under this Act.
- (2) The holding account established under subsection (1) is not a facility for the purposes of the Financial Transactions Reporting Act 1996.

73 Deductions entered in and paid out of holding account

- (1) This section applies to any amount—
 - (a) that the Commissioner is satisfied has been deducted from salary or wages under this Act; and
 - (b) that is shown on an employer monthly schedule delivered under section NC 15 of the Income Tax Act 2004 as a deduction made from an employee's salary or wages under subpart 1.
- (2) As soon as practicable after receiving that monthly schedule, the Commissioner must enter that amount in the holding account in respect of the person from whose salary or wages the deduction was made.
- (3) Subject to sections 75 to 77, as soon as practicable after entering an amount in the holding account under this section, the Commissioner must pay the amount to the provider of the relevant KiwiSaver scheme.
- (4) Money entered in the holding account under this section is not trust money for the purposes of sections 66 to 68 of the Public Finance Act 1989.

- (5) This section is subject to sections 70 and 71.
- (6) The Commissioner is entitled, for the purpose of subsection (1)(a), to assume, in the absence of information to the contrary, that amounts entered on an employer monthly schedule have been deducted from salary or wages.

74 Other contributions entered in and paid out of holding account

- (1) This section applies to any amount of contribution that is received by the Commissioner other than an amount referred to in section 73.
- (2) As soon as practicable after receiving the amount, the Commissioner must enter that amount in the holding account in respect of the person to whom the contribution relates.
- (3) Subject to sections 75 to 77, as soon as practicable after entering an amount in the holding account under this section, the Commissioner must pay the amount to the provider of the relevant KiwiSaver scheme.
- (4) Money entered in the holding account under this section is trust money for the purposes of sections 66 to 68 of the Public Finance Act 1989.

75 Initial contributions stay in holding account for 3 months

- (1) This section applies to all contributions received by the Commissioner in respect of a person until 3 months after the Commissioner receives the first contribution in respect of that person.
- (2) The Commissioner must hold those contributions in the holding account.
- (3) The Commissioner must pay those contributions to the provider of the person's KiwiSaver scheme as soon as practicable after the expiry of that 3 months.
- (4) The Commissioner must give notice to the person as soon as practicable after paying those contributions to the provider of the person's KiwiSaver scheme.
- (5) The provider must give notice to the person as soon as practicable after receiving those contributions.
- (6) Subsection (3) is subject to section 77.

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

- (1) This section applies if the Commissioner receives a contribution under subpart 3 (contributions other than deductions from salary or wages) from an employer in respect of a person to whom subpart 1 (deductions from salary or wages) also applies.
- (2) The Commissioner may hold the contribution made under subpart 3 in the holding account, and then pay it to the provider of the person's KiwiSaver scheme at the same time as the contribution that is deducted under subpart 1 is paid by the Commissioner to the KiwiSaver scheme.

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

- (1) This section applies if the Commissioner and the provider of a KiwiSaver scheme agree on a minimum threshold for the payment of contributions to the provider.
- (2) The Commissioner may hold in the holding account any amount of contribution that relates to a person until the amount meets that minimum threshold.
- (3) Then the Commissioner must pay that amount to the provider of the person's KiwiSaver scheme.

78 Treatment of unremitted deductions in holding account

To the extent that an amount referred to in section 73(1) is not paid to the Commissioner on or before the date on which the employer is required to pay the deduction to the Commissioner under section NC 15 of the Income Tax Act 2004,—

- (a) the Commissioner must pay the amount out of a Crown Bank Account, without further authority than this section; and
- (b) the amount is treated, for the purposes of section 73, as having been received by the Commissioner on the 15th day of the month in which the deduction is made.

79 Information that Commissioner must supply to providers when paying contributions

The Commissioner must supply, to the provider of a KiwiSaver scheme to which the Commissioner makes any

payment under this subpart, any information, and in any format, that the Commissioner determines after consultation with the provider of the KiwiSaver scheme.

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

- (1) The Commissioner may refund any amount of contribution to the person from whose salary or wages the amount was deducted if—
 - (a) the person opts out and the contribution is in the possession of the Commissioner; or
 - (b) the contribution is in excess of the amount that this Act requires to be deducted and the contribution is in the possession of the Commissioner; or
 - (c) the person has opted out and the contribution was deducted from salary or wages but was not refunded to the person or paid to the Commissioner.
- (2) However, if a request is made under section 173L of the Tax Administration Act 1994, the Commissioner may apply any amount of that contribution in accordance with that request.

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

- (1) A provider must refund to the Commissioner the amount of contribution paid to the provider by the Commissioner in respect of a member of that provider's KiwiSaver scheme that is in excess of the amount that is required to be paid to the provider under the KiwiSaver scheme and this Act.
- (2) The Commissioner must refund or give credit for the amount refunded under subsection (1) in the manner that the Commissioner thinks fit.
- (3) However, if a request is made under section 173L of the Tax Administration Act 1994, the Commissioner may apply any amount of that contribution in accordance with that request.

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

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

83 Unclaimed money held by Commissioner

- (1) This section applies to any money—
 - (a) that has been in the Commissioner's possession under this Act for a period of no less than 6 years; and
 - (b) about which the Commissioner has insufficient information in order to process that money in accordance with this Act.
- (2) No interest is payable on that money under this subpart in respect of the period that this section applies.
- (3) The Unclaimed Money Act 1971, and not sections 70 and 74 of the Public Finance Act 1989, applies to that money—
 - (a) as if the Commissioner is the holder of the money for the purposes of the Unclaimed Money Act 1971; and
 - (b) as if the money must be processed in accordance with this Act, and not paid to the owner, if a valid claim is made to the money; and
 - (c) as if the money would not cease to be unclaimed money under subparagraph (i) of the proviso to section 4(1) of the Unclaimed Money Act 1971 (which sets a \$100 cap); and
 - (d) with other necessary modifications.
- (4) If the Commissioner enters into a special arrangement under section 9 of that Act, the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Unclaimed Money Act 1971 must carry out, after consultation with the Minister of Finance, the responsibilities that would otherwise have been carried out by the Commissioner under that Act.

*Interest on contributions***84 Interest on money in holding account**

- (1) The Commissioner is liable to pay interest in accordance with sections 85 to 91 on any amount of contribution that is received, or treated as received, by the Commissioner in respect of a person under this Act.
- (2) Section 69 of the Public Finance Act 1989 does not apply to the holding account.

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

- (1) Every amount of contribution that is deducted from salary or wages under this Act is treated, for the purpose of the payment of interest, as received by the Commissioner on the 15th day of the month in which the deduction is made.
- (2) Subsection (1) applies if the Commissioner is satisfied that a deduction has been made in any month under this Act.

86 Interest rate

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

$$\text{Commissioner's paying rate} \times (1 - \text{lowest tax rate})$$

where—

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

lowest tax rate is the basic rate of tax stated in Part B of Schedule 1 of the Income Tax Act 2004 in respect of taxable income that is not more than \$38,000 for a tax year (expressed as a decimal).

87 Amount of interest payable

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

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

where—

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

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

interest rate is the rate calculated under section 86.

88 How and when interest is paid on on-payments

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

89 How and when interest is paid on refunds

- (1) This section applies to interest that would be payable under section 84 in respect of an amount of contribution that is refunded under this Part (except section 81).
- (2) Interest must be paid with the refund.
- (3) However, no interest is payable if the amount of the interest in respect of that refund is less than \$5.
- (4) The Governor-General may, by Order in Council, increase the amount in subsection (3).

90 Position if Commissioner's paying rate changes

- (1) This section applies if the rate of interest established and notified as the Commissioner's paying rate by an Order in Council made under section 120H of the Tax Administration Act 1994 changes during an interest period in respect of which interest is payable under section 84.
- (2) The Commissioner's paying rate, for the purposes of section 86, must be taken to be the weighted-average rate based on the number of days on which each rate applied during that period.

91 Overpaid interest

Interest overpaid by the Commissioner under sections 84 to 90 may be recovered in the same manner as income tax that is payable under the Income Tax Act 2004.

**Subpart 3—Contributions other than deductions from
salary or wages**

92 Application of this subpart

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

93 Contributions from employer may be paid via Commissioner

- (1) An employer may make a contribution to an employee's KiwiSaver scheme by paying it to the Commissioner, provided that the contribution is a specified superannuation contribution within the meaning of section OB 1 of the Income Tax Act 2004.
- (2) The contribution must be accompanied by a remittance certificate.
- (3) The contribution must be made to the Commissioner within the time prescribed in section NC 15 of the Income Tax Act 2004 for the payment of tax deductions, as if the contribution were a tax deduction.
- (4) The employer must include details of the contribution made in respect of each employee on the employer monthly schedule that the employer is required to deliver to the Commissioner under section NC 15 of that Act in relation to that month.

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

The employer must give notice that the employer intends to make contributions by paying them to the Commissioner—

- (a) to the provider of the KiwiSaver scheme, if the employer has a contractual obligation to the provider to pay those contributions;
- (b) to the employee, if the employer has a contractual obligation to the employee to pay those contributions.

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

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

- (a) A's name and address; and
- (b) A's tax file number; and
- (c) any other information that the Commissioner may require.

96 What Commissioner must do with contributions received under this subpart

- (1) The Commissioner must, in accordance with subpart 2,—
 - (a) first, pay the contribution into the holding account; and
 - (b) secondly, on-pay the contribution to the provider of the person's KiwiSaver scheme.
- (2) The payments required under subsection (1) must be made net of specified superannuation contribution withholding tax payable under the SSCWT rules (if any).

97 Commissioner must give notice if employer contributions not remitted

- (1) This section applies if—
 - (a) an employer, for a PAYE period, shows a payment of employer contribution under this subpart on either or both of a remittance certificate or an employer monthly schedule; and
 - (b) the payment is not received in full by the Commissioner by the time the Commissioner receives either or both of the remittance certificate or the employer monthly schedule for that PAYE period.
- (2) The Commissioner must give notice to the employer that the payment has not been received.

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

- (1) This section applies if—
 - (a) an employer, for a PAYE period, shows payments of employer contribution under this subpart on either or both of a remittance certificate or an employer monthly schedule; and
 - (b) the total amount received by the Commissioner for that PAYE period by way of total deductions and employer contribution in respect of all of the employer's employees is less than the amounts shown on either or both of the remittance certificate or employer monthly schedule in respect of those matters.
- (2) The amount of employer contribution (gross of any specified superannuation contribution withholding tax payable under

the SSCWT rules) that is treated as received by the Commissioner for the purpose of this subpart is so much of the payment that is actually received by the Commissioner that exceeds the amounts shown on the remittance certificate and employer monthly schedule in respect of total deductions.

- (3) In this section, **total deductions** means the total of the following:
- (a) the total amount of combined tax and earner premium deductions (within the meaning of the Income Tax Act 2004); and
 - (b) the total child support deductions; and
 - (c) the total student loan deductions; and
 - (d) the total contributions deducted under subpart 1.

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

- (1) This section applies if—
- (a) an employer, for a PAYE period, shows payments of employer contribution under this subpart on a remittance certificate or employer monthly schedule in respect of more than 1 of the employer's employees; and
 - (b) the total amount received by the Commissioner for that PAYE period in respect of employer contribution under this subpart is less than the amounts shown on the remittance certificate and employer monthly schedule in respect of all of those employees.
- (2) The amount of employer contribution (gross of any specified superannuation contribution withholding tax payable under the SSCWT rules) that is treated as received by the Commissioner in respect of any 1 employee for the purpose of this subpart must be calculated by the Commissioner in accordance with the following formula:

$$\frac{a \times b}{c}$$

where—

- a is the total employer contributions received by the Commissioner under this subpart for all of the employer's employees for the month to which the employer monthly schedule relates

- b is the employer contribution shown on the employer monthly schedule for the relevant employee for the month to which the employer monthly schedule relates
 - c is the total employer contributions shown on either or both of the remittance certificate or employer monthly schedule for all of the employer's employees for the month to which the employer monthly schedule relates.
- (3) Subsection (2) does not prevent the provider of a KiwiSaver scheme from crediting amounts on the basis provided for in the trust deed or other document governing employer contributions, rather than in accordance with the calculation under subsection (2).

100 Refunds of employer contribution by Commissioner if employee opts out

If an employee opts out after an employer contribution is paid to the Commissioner, the Commissioner may, if it is still in his or her possession, refund the employer contribution to the employer.

101 Refunds of employer contribution by provider

- (1) The provider of a KiwiSaver scheme may refund to the Commissioner any amount of employer contribution that was paid under this Act by the Commissioner in excess of the amount that this Act requires the Commissioner to on-pay to the provider.
- (2) However, no refund may be made if the contribution paid in respect of any payment of salary or wages would be less, after the refund is deducted, than that required under this Act according to the employee's contribution rate.

Subpart 4—Contributions holiday

Applications for contributions holiday

102 Who may apply for contributions holiday

A person to whom subpart 1 (deductions of contributions from salary or wages) applies may apply to the Commissioner for a contributions holiday—

- (a) at any time after the Commissioner receives the first contribution in respect of that person, if the person is suffering, or likely to suffer, financial hardship; or
- (b) at any time after 12 months have expired since the earlier of—
 - (i) the date that the Commissioner received the first contribution in respect of that person; or
 - (ii) the date that a provider received the first contribution in respect of that person's membership of a KiwiSaver scheme.

103 How to apply for contributions holiday

- (1) An application for a contributions holiday may be made by any means that the Commissioner accepts.
- (2) The application must tell the Commissioner—
 - (a) the person's name and address; and
 - (b) the person's tax file number; and
 - (c) the name and address of each of the person's employers to whom the person intends that the holiday will apply; and
 - (d) the period of time for which the holiday is required; and
 - (e) in the case of an application made under section 102(a), details of the financial hardship; and
 - (f) any other information that the Commissioner requires.

104 Granting of contributions holiday

- (1) The Commissioner must accept an application for a contributions holiday, and grant a contributions holiday, if the Commissioner is satisfied that the person meets the requirements of section 102, and the application is made in accordance with section 103.
- (2) A contributions holiday granted in respect of an application made under section 102(a) must be granted for a period of 3 months, unless the Commissioner agrees to a longer period.
- (3) A contributions holiday granted in respect of an application made under section 102(b) must be granted for—
 - (a) a minimum period of 3 months; and
 - (b) a maximum period of whichever is the shorter of—
 - (i) 5 years; or
 - (ii) the period specified in the application.

105 Commissioner must give notice of grant of contributions holiday

- (1) The Commissioner must, as soon as practicable after granting a contributions holiday, give notice—
- (a) to the person who applied for the holiday—
 - (i) that the holiday has been granted; and
 - (ii) of the date on which the holiday will end; and
 - (b) to each relevant employer—
 - (i) that a contributions holiday has been granted in respect of the person; and
 - (ii) that the employer must stop making deductions of contributions from the salary or wages of the person; and
 - (c) to the provider of the person's KiwiSaver scheme—
 - (i) that a contributions holiday has been granted in respect of the person; and
 - (ii) of the names of the relevant employers; and
 - (iii) that deductions of contributions may not be made from the salary or wages paid to the person by the relevant employers during the period of the holiday.
- (2) In this section, **relevant employer** means each employer to whom the person stated, in the application for the contributions holiday, that the contributions holiday was intended to apply.

106 When deductions stop at start of contributions holiday

If an employer is notified under section 105, subpart 1 ceases to apply—

- (a) to the employer in respect of the person who applied for the contributions holiday; and
- (b) with effect on the next payment of salary or wages that the employer calculates after the date on which the employer receives the notice.

107 Employers to whom contributions holiday applies

A contributions holiday granted under this subpart, while it is in force,—

- (a) has effect, subject to section 108, in respect of each employer to whom the person stated, in the application

- for the contributions holiday, that the contributions holiday was intended to apply; and
- (b) may be used, if the person chooses, in respect of any other employer.

108 Contributions holidays have 3-month minimum life

- (1) The purpose of this section is to prevent employees requesting employers to stop and start deductions of contributions too often.
- (2) No contributions holiday may be used in respect of an employer for less than 3 months unless the employer agrees.

End of contributions holiday

109 Commissioner must give notice before contributions holiday ends

The Commissioner must give notice to a person who is on a contributions holiday before the holiday ends.

110 Commissioner must give notice to employer of end of contributions holiday

The Commissioner must give notice to each affected employer known to the Commissioner, as soon as practicable after the end of a contributions holiday,—

- (a) of the date on which the contributions holiday ended; and
- (b) that the employer must start making deductions of contributions from the salary or wages of the person.

111 When deductions start at end of contributions holiday

- (1) If an employer is notified under section 110 about the end of a person's contributions holiday, or under section 112 about the revocation of a person's contributions holiday, subpart 1 applies—
- (a) to the employer in respect of that person; and
- (b) with effect on the next payment of salary or wages that the employer calculates after the date on which the employer receives the notice.
- (2) This section is subject to any new contributions holiday that is granted under this subpart.

*Revocation and reinstatement of contributions holiday***112 Revocation and reinstatement of contributions holiday**

- (1) Subject to section 108, a person may at any time revoke his or her contributions holiday in respect of an employer by giving notice to the employer requiring the employer to start making deductions from salary or wages under subpart 1.
- (2) A person may at any time reinstate his or her contributions holiday in respect of an employer by giving notice to the employer requiring the employer to stop making deductions from salary or wages under subpart 1.
- (3) Sections 106 and 108 apply, with necessary modifications, as if the reinstatement of a contributions holiday were the granting of a contributions holiday.

113 Refund of initial contributions

- (1) A person may apply to the Commissioner for a refund of any contributions that are being held in the holding account under section 75 if the person is suffering, or likely to suffer, significant financial hardship or is suffering serious illness.
- (2) In this section, **significant financial hardship** has the same meaning as in clause 11 of the KiwiSaver rules and **serious illness** has the same meaning as in clause 12 of those rules.
- (3) The application may be made by any means that the Commissioner accepts.
- (4) The application must tell the Commissioner—
 - (a) the person's name and address; and
 - (b) the person's tax file number; and
 - (c) details of the significant financial hardship or serious illness; and
 - (d) any other information that the Commissioner requires.
- (5) The Commissioner must refund the contributions to which the application relates if the Commissioner is satisfied that the person and the application meet the requirements of this section.
- (6) However, the Commissioner must not refund under this section any employer contributions that were made under section 93.
- (7) The Commissioner must give notice of the refund to the provider of the relevant KiwiSaver scheme (if any).

114 Refunds if employee loses, etc, contributions holiday notice

- (1) This section applies if—
 - (a) an employee has a contributions holiday that has not yet ended; and
 - (b) the employee starts new employment, but cannot comply with section 22(1)(c)(ii).
- (2) The employer may, at any time after the employee complies with section 22(1)(c)(ii), refund to the employee any contributions that were deducted from the employee's salary or wages before the employee complied.
- (3) The Commissioner may refund that money to the employee if the money is held by the Commissioner.

**Part 4
KiwiSaver schemes****Subpart 1—Preliminary provisions****115 Interpretation**

In this Part, unless the context otherwise requires, any term or expression that is used but not defined in this Act but that is defined in the Superannuation Schemes Act 1989—

- (a) has the meaning given to it by that Act; and
- (b) has the same meaning in relation to a KiwiSaver scheme as it has in relation to a registered superannuation scheme.

Subpart 2—Main features of KiwiSaver schemes**116 Schemes eligible to be KiwiSaver scheme**

- (1) A scheme is eligible to be a KiwiSaver scheme if—
 - (a) it is—
 - (i) established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; or
 - (ii) in the case of a proposal under section 135 or 148, proposed to be established as a KiwiSaver scheme and governed under a trust deed that meets the criteria in subparagraph (i); or
 - (iii) a scheme constituted under an Act of the Parliament of New Zealand; and

- (b) its principal purpose is to provide retirement benefits directly or indirectly to natural persons; and
 - (c) it is a defined contribution scheme; and
 - (d) the benefits provided by the scheme are fully funded as they accrue; and
 - (e) the scheme has at least 1 independent trustee; and
 - (f) in the case of a scheme that is not constituted under an Act of the Parliament of New Zealand,—
 - (i) it has at least 1 trustee who is a New Zealand resident; or
 - (ii) if any of the trustees is a corporate trustee, at least 1 of the directors of the corporate trustee is a New Zealand resident.
- (2) However, subsection (1)(e) does not apply in the case of a scheme that is, or is to be, registered under section 141 or 150 if the registered superannuation scheme in respect of which the proposal under section 135 or 148 is made was in existence before this section came into force.
- (3) The provisions of the trust deed referred to in subsection (1)(a)(i) and (ii) may also govern a registered superannuation scheme.
- (4) This section is subject to the requirement for registration under subpart 3.

117 Additional duty of independent trustees

- (1) This section applies to a trustee if—
- (a) the trustee is named as an independent trustee in an application or proposal submitted in relation to the KiwiSaver scheme under sections 131, 132, 135, or 148 (unless a substitute has been appointed for that person in accordance with paragraph (c)); or
 - (b) the trustee is, in fact, an independent trustee in the event that no trustee is named as an independent trustee in an application or proposal submitted in relation to the KiwiSaver scheme under sections 131, 132, 135, or 148 or none of the persons so named in the application or proposal, or their substitutes appointed under paragraph (c), continue to be trustees; or
 - (c) the trustee is appointed as a substitute for a person named as an independent trustee in an application or proposal submitted in relation to the KiwiSaver scheme

under sections 131, 132, 135, or 148 (or as a substitute for a person subsequently appointed) if the trustees notify the Government Actuary of the appointment.

- (2) A trustee to whom this section applies—
- (a) must, in managing the affairs of the KiwiSaver scheme, exercise the care, diligence, and skill that a prudent person engaged in the profession or business of managing trusts must exercise; and
 - (b) is liable in any civil proceedings for any act or omission as if that standard of care, diligence, and skill applied.

*Application of Superannuation Schemes Act 1989 to
KiwiSaver scheme*

118 KiwiSaver scheme must be treated as registered superannuation scheme for most purposes

- (1) A KiwiSaver scheme must, for the purposes of any other enactment (unless the enactment indicates otherwise), be treated as a registered superannuation scheme and, accordingly,—
- (a) a reference in an enactment to a scheme registered under the Superannuation Schemes Act 1989 includes a reference to a KiwiSaver scheme;
 - (b) a reference in an enactment to any person, right, obligation, duty, interest, property, funds, or any other matter that would apply in relation to a registered superannuation scheme applies with necessary modifications in relation to a KiwiSaver scheme.
- (2) Despite subsection (1), but subject to subsection (3), a KiwiSaver scheme—
- (a) must not be treated as a registered superannuation scheme for the purposes of this Act or the Superannuation Schemes Act 1989 except as provided in sections 119 to 123; and
 - (b) must instead be established, registered, and wound up in accordance with this Part and subject to the express provisions of this Part.
- (3) This section is subject to sections 119 to 124.

119 Application of section 7 of Superannuation Schemes Act 1989

- (1) The requirement in section 7 of the Superannuation Schemes Act 1989 to specify certain matters in the trust deed of a registered superannuation scheme applies to the trust deed of a KiwiSaver scheme so as to require the same matters to be specified in relation to a KiwiSaver scheme.
- (2) Despite subsection (1), if this Act expressly sets out requirements in relation to the matters set out in section 7 of the Superannuation Schemes Act 1989 (for example, by terms implied by the KiwiSaver scheme rules or provision for how a scheme must be wound up),—
 - (a) the provisions of this Act prevail; and
 - (b) section 7 of the Superannuation Schemes Act 1989 (as applied by this section) is satisfied by reference to the relevant provisions in this Act in respect of those matters.

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

- (1) Sections 8 to 11 of the Superannuation Schemes Act 1989 (which relate to trust deeds and their provisions) apply with necessary modifications to a KiwiSaver scheme as if it were a registered superannuation scheme.
- (2) However,—
 - (a) section 9B of the Superannuation Schemes Act 1989 applies as if a reference to section 20 of the Superannuation Schemes Act 1989 were a reference to section 169 of this Act; and
 - (b) section 9BA of the Superannuation Schemes Act 1989 applies as if a reference to section 23 of the Superannuation Schemes Act 1989 were a reference to section 186 of this Act.
- (3) This section is not limited by any requirement in this Act for the Government Actuary to consider or be satisfied of any matters that are certified by the trustees under Schedule 2.
- (4) This section is subject to section 121.

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

- (1) Nothing in this section limits the application of sections 8 to 11 of the Superannuation Schemes Act 1989 under section 120 with necessary modifications.
- (2) Despite section 120,—
 - (a) sections 9B to 9BA of the Superannuation Schemes Act 1989 do not apply in relation to transfers to which subpart 3 of Part 2 applies; and
 - (b) nothing in sections 9 to 9BA of the Superannuation Schemes Act 1989 applies in relation to amendments to the trust deed of a registered superannuation scheme, alterations to a registered superannuation scheme or the transfer of members of a registered superannuation scheme that are effected in accordance with sections 135 to 147 or sections 148 to 155.
- (3) In respect of any transfer that does occur under section 9B of the Superannuation Schemes Act 1989 (as applied by section 120 and this section) from one KiwiSaver scheme to another KiwiSaver scheme,—
 - (a) a member (A) of the registered superannuation scheme who gives consent to a proposed transfer under section 9B of the Superannuation Schemes Act 1989 (as applied by section 120 and this section) must give to the trustees the following information:
 - (i) A's name, address, and date of birth; and
 - (ii) A's tax file number; and
 - (iii) the date on which A first became a member of a KiwiSaver scheme; and
 - (iv) if A is an employee,—
 - (A) the name and address of each of A's employers; and
 - (B) the rate at which A intends each of those employers to make deductions of contributions from his or her salary or wages; and
 - (v) the name and address and tax file number of both the provider and the scheme; and
 - (vi) any other information that the Commissioner requires; and
 - (b) the trustees of the KiwiSaver scheme from which it is proposed to transfer members must, in addition to the

matters to be notified in writing under section 9B(2B) of the Superannuation Schemes Act 1989, provide to the satisfaction of the Government Actuary evidence that they have provided in respect of each member of the scheme the information set out in paragraph (a) to the Commissioner.

- (4) Despite subsection (3)(b), the trustees of a registered superannuation scheme are not required to provide any or all of the information listed in subsection (3)(a) in respect of any or all of the members of the scheme to the Commissioner if the information is not in the control or possession of the trustees.

122 Application of other provisions of Superannuation Schemes Act 1989

- (1) Sections 13, 15A, 16, 17, and 18 of the Superannuation Schemes Act 1989 apply, as far as applicable and with necessary modifications, in relation to a KiwiSaver scheme.
- (2) Despite subsection (1), section 13(2) of the Superannuation Schemes Act 1989 does not apply in relation to a KiwiSaver scheme.
- (3) Section 15A of the Superannuation Schemes Act 1989 applies as if the references to a trust deed exclude participation agreements that would not relate to a person if the person were to become a member of the KiwiSaver scheme.
- (4) Section 16(2) of the Superannuation Schemes Act 1989 applies in relation to KiwiSaver schemes subject to any exemptions made under regulations made under section 228(t).
- (5) Section 17 of the Superannuation Schemes Act 1989 applies subject to the following:
 - (a) the requirement in section 17(1)(a) (which relates to a requirement to give members a copy of the annual report) does not apply in relation to a member's account that is an inactive account unless the member requests a copy of the annual report; and
 - (b) the requirements in section 17(1)(b)(ii) and (iii) must be treated as if the references to a trust deed exclude participation agreements that do not relate to the relevant member.

- (6) Section 18 of the Superannuation Schemes Act 1989 applies in relation to a KiwiSaver scheme as if it also required the trustees of a KiwiSaver scheme that is not constituted under an Act of Parliament, and in respect of which any of the trustees is a corporate trustee, to notify the Government Actuary as soon as practicable after the corporate trustee ceases to have at least 1 director who is a New Zealand resident.

123 Requirement for annual report

- (1) The trustees of a KiwiSaver scheme must, within 5 months after the end of each financial year, prepare a report on the scheme for that year.
- (2) The annual report must, to the extent the information is applicable in respect of a KiwiSaver scheme, specify the information set out in Schedule 2 of the Superannuation Schemes Act 1989.
- (3) However,—
- (a) clause 1(d) of Schedule 2 of the Superannuation Schemes Act 1989 does not apply; and
 - (b) instead, the annual report must include a statement by the trustees as to whether they have applied contributions received in respect of each member, including contributions paid via the Commissioner in respect of that member, in accordance with the trust deed.
- (4) The annual report must contain a certificate signed by the trustees certifying that—
- (a) they have, in respect of each member of the scheme, applied any fee subsidies received in respect of that member in accordance with prescribed requirements; and
 - (b) there is a scheme provider agreement between the Commissioner and the provider of the scheme that remains in force.
- (5) The annual report must also specify—
- (a) the number of members of the scheme who during the year have made a withdrawal for the purchase of a first home under clause 8 of the KiwiSaver scheme rules and the total amount withdrawn by all of those members;
 - (b) the number of members of the scheme who during the year have made a withdrawal on the grounds of significant financial hardship under clause 10 of the

KiwiSaver scheme rules and the total amount withdrawn by all of those members:

- (c) the number of members of the scheme who during the year have made a withdrawal on the grounds of serious illness under clause 12 of the KiwiSaver scheme rules and the total amount withdrawn by all those members:
- (d) the number of members of the scheme who during the year have made a withdrawal on the grounds of permanent emigration under clause 14 of the KiwiSaver scheme rules and the total amount withdrawn by all of those members:
- (e) the total amount of fees that have been charged in the period subsequent to the last annual report.

124 Annual report in case of KiwiSaver scheme established under umbrella trust

- (1) In a case in which a KiwiSaver scheme is established under an umbrella trust, the trustees may provide a combined report on the KiwiSaver scheme and the registered superannuation scheme concerned, for the purposes of—
 - (a) section 123, in relation to the KiwiSaver scheme; and
 - (b) section 14 of the Superannuation Schemes Act 1989, in relation to the registered superannuation scheme.
- (2) However, a combined report must—
 - (a) report separately on all matters within the report that relate only to the KiwiSaver scheme or that relate only to the registered superannuation scheme concerned; and
 - (b) clearly identify that information as separate information relating to the relevant scheme.
- (3) Nothing in this section requires information that relates to both the KiwiSaver scheme and the registered superannuation scheme to be combined.

125 Requirement for annual return

- (1) The trustees of a KiwiSaver scheme must provide an annual return to the Government Actuary that—
 - (a) is in the prescribed form; and
 - (b) meets any further prescribed requirements.
- (2) The prescribed requirements may include a requirement to provide statistical information in relation to the KiwiSaver scheme.

- (3) The annual return must be provided before the prescribed date and relate to the prescribed 12-month period.
- (4) Nothing in this section requires the trustees of a KiwiSaver scheme to provide—
 - (a) information about an identifiable individual; or
 - (b) information that is not in the possession or control of the trustees; or
 - (c) information that is not reasonably ascertainable from information that is in the possession or control of the trustees.

Other implied provisions

126 KiwiSaver scheme rules are implied in trust deeds establishing KiwiSaver scheme

- (1) The provisions set out in Schedule 1 are to be known as the KiwiSaver scheme rules.
- (2) The KiwiSaver scheme rules set out in Schedule 1 are implied in every trust deed that establishes a KiwiSaver scheme in relation to the KiwiSaver scheme.
- (3) The KiwiSaver scheme rules—
 - (a) apply despite anything to the contrary in the trust deed; and
 - (b) are enforceable by the trustees or any member of the scheme.
- (4) The provisions implied as KiwiSaver scheme rules under this section are in addition to the provisions implied in the trust deed of a KiwiSaver scheme by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by section 120).
- (5) Nothing in sections 8 to 10 of the Superannuation Schemes Act 1989 overrides the KiwiSaver scheme rules.

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

- (1) In exercising any function under this Act that requires the Government Actuary to consider whether a KiwiSaver scheme complies with clause 2 of the KiwiSaver scheme rules (which relates to a requirement that fees not be unreasonable), the Government Actuary—
 - (a) must have regard to any prescribed matter:

- (b) may have regard to any other matter that the Government Actuary considers relevant:
 - (c) may make decisions in accordance with any prescribed process.
- (2) The Government Actuary may publish, in any form that the Government Actuary considers fit, guidance as to matters that the Government Actuary considers relevant to considering whether a KiwiSaver scheme complies with clause 2 of the KiwiSaver scheme rules (including principles that the Government Actuary may use to make that assessment).
 - (3) The Government Actuary is not limited to considering matters published by the Government Actuary under subsection (2).

128 Participation agreements executed before registration

- (1) In the case of a KiwiSaver scheme registered under section 141, a participation agreement relating to a member of the scheme that was executed before the registration of the KiwiSaver scheme, and that is still in force immediately before the scheme is registered, must be treated as forming part of the trust deed at the time of the registration of the KiwiSaver scheme.
- (2) In the case of a KiwiSaver scheme registered under section 150, a participation agreement relating to a member of the scheme that was executed before the registration of the KiwiSaver scheme, and that is still in force immediately before the scheme is registered, must be treated as forming part of the trust deed at the time of the partial or full transfer of the member's interest under section 155.
- (3) Subsections (1) and (2) apply despite anything to the contrary in the trust deed or in any other enactment or rule of law or agreement, or any defect in the form or mode of execution of the participation agreement.

Amending trust deed in relation to KiwiSaver scheme

129 Amendment of trust deed governing KiwiSaver scheme

- (1) This section applies if the trustees of a KiwiSaver scheme propose to make any amendment to the trust deed of the scheme that will or may affect the members of the scheme in their capacity as members of that scheme or the trustees of the scheme in their capacity as trustees of the scheme.

- (2) The trustees or the trustees' solicitor must, before any amendment of the type referred to in subsection (1) is made, give a certificate that the trust deed, when amended as proposed,—
 - (a) will comply with section 7 of the Superannuation Schemes Act 1989 (as applied by section 119); and
 - (b) will not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by sections 120 and 121); and
 - (c) will not contain any provision that is contrary to the KiwiSaver scheme rules.
- (3) Within 14 days after any amendment to the trust deed is made, the trustees must lodge a copy of that certificate and a copy of the amendment with the Government Actuary.
- (4) Nothing in this section applies to a participation agreement that forms part of the trust deed.

130 Consent to reversion of assets to employer

Where section 10 of the Superannuation Schemes Act 1989 (as applied by section 120) applies, the Government Actuary must not give consent to the reversion of any assets of a KiwiSaver scheme to any employer unless satisfied—

- (a) that sufficient assets would remain to support the member's interests of all of the members; and
- (b) that the reversion is fair and equitable to the members, taking into account the manner in which the scheme acquired those assets.

Subpart 3—Registration of KiwiSaver schemes

Application to register new scheme as KiwiSaver scheme

131 Applications for registration of scheme governed by trust deed

- (1) The trustees of a scheme established under a trust deed may apply to the Government Actuary for registration of the scheme under this Act if it is eligible to be a KiwiSaver scheme under section 116.
- (2) In any case in which the scheme that is proposed to be registered as a KiwiSaver scheme is a registered superannuation scheme,—
 - (a) this section and sections 132 to 134 do not apply; and

- (b) the application must be in the form of a proposal under section 135.
- (3) In any case in which the scheme that is proposed to be registered as a KiwiSaver scheme is established under a trust deed under which a registered superannuation scheme is also established,—
 - (a) this section and sections 132 to 134 do not apply; and
 - (b) the application must be in the form of a proposal under section 148.
- (4) Every application under this section must include a copy of the trust deed and of every amendment to the trust deed.

132 Application for registration of scheme constituted under Act of Parliament

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

133 Matters required to be specified in application

Every application for registration under section 131 or 132 must specify the matters set out in Part 1 of Schedule 2.

134 Registration of scheme

- (1) The Government Actuary must within 28 days after receiving the application for registration under section 131 or 132 and the documents required to accompany the application, or within a longer period of time agreed on by the Government Actuary and the trustees,—
 - (a) consider whether he or she is satisfied—
 - (i) that the application is made in accordance with this Act; and
 - (ii) that the scheme is eligible to be a KiwiSaver scheme under section 116; and
 - (iii) of the matters required to be certified under Part 1 of Schedule 2; and

- (iv) that fees charged in accordance with any information provided in the application will comply with clause 2 of the KiwiSaver scheme rules; and
 - (b) if so satisfied, register the scheme as a KiwiSaver scheme.
- (2) The registration of a KiwiSaver scheme under this section must be treated as having taken effect on the date on which the Government Actuary enters the scheme as a KiwiSaver scheme in the KiwiSaver schemes register.

Conversion of registered superannuation scheme

135 Trustees may submit proposal to convert superannuation scheme

- (1) The trustees of a registered superannuation scheme may submit to the Government Actuary a proposal to convert the scheme to a KiwiSaver scheme.
- (2) The proposed KiwiSaver scheme must be eligible to be a KiwiSaver scheme under section 116.
- (3) The proposal may propose amendments to any of the provisions of the trust deed that establishes the registered superannuation scheme (including repeals and additions to those provisions) that are necessary or desirable to—
 - (a) implement the proposal in accordance with this Act and the Superannuation Schemes Act 1989; and
 - (b) ensure that the scheme complies with subsection (2).

136 Form of proposal

A proposal that is submitted to the Government Actuary under section 135 must—

- (a) include—
 - (i) a copy of the proposed amendments to the trust deed; and
 - (ii) a copy of each participation agreement related to the scheme; and
 - (iii) a copy of the trust deed and every amendment to the trust deed; and
 - (iv) a copy of the explanatory material that will be notified to members in accordance with section 140(1); and
- (b) contain the matters specified in Part 2 of Schedule 2.

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

- (1) The Government Actuary must, within 28 days of receiving a proposal under section 135, or within a longer period of time agreed on by the Government Actuary and the trustees,—
 - (a) consider whether he or she is satisfied—
 - (i) that the proposal is made in accordance with this Act; and
 - (ii) that the scheme is or will be eligible to be a KiwiSaver scheme under section 116; and
 - (iii) of the matters required to be certified under Part 2 of Schedule 2; and
 - (iv) that fees charged in accordance with any information provided in the proposal will comply with clause 2 of the KiwiSaver scheme rules; and
 - (b) if so satisfied,—
 - (i) provisionally register the registered superannuation scheme as a KiwiSaver scheme by recording the provisional registration in the KiwiSaver schemes register; and
 - (ii) give notice to the trustees of the scheme of the provisional registration.
- (2) Provisional registration as a KiwiSaver scheme does not affect the status of the scheme as a registered superannuation scheme or have the effect that the scheme is a KiwiSaver scheme.

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

- (1) The Government Actuary must not, in relation to a scheme that has been provisionally registered under section 137, proceed to final registration of the scheme as a KiwiSaver scheme unless the trustees have provided, to the satisfaction of the Government Actuary, evidence that they have—
 - (a) obtained the consent of the persons referred to in subsection (3) in accordance with section 140; and
 - (b) provided the information listed in subsection (4) in respect of each member of the scheme to the Commissioner.

- (2) A member who gives consent for the purpose of subsection (1)(a) must provide the information set out in subsection (4) to the trustees.
- (3) For the purposes of subsection (1)(a), the persons from whom consent must be obtained are—
 - (a) every member of the registered superannuation scheme; and
 - (b) every person who is an employer contributor in relation to that scheme.
- (4) For the purposes of subsection (1)(b) and subsection (2), the information that must be provided in respect of a member (A) is—
 - (a) A's name, address, and date of birth; and
 - (b) A's tax file number; and
 - (c) if A is an employee,—
 - (i) the name and address of each of A's employers; and
 - (ii) the rate at which A intends each of those employers to make deductions of contributions from his or her salary or wages; and
 - (d) the name and address and tax file number of both the provider and the scheme; and
 - (e) any other information that the Commissioner requires.

139 Exceptions to requirements under section 138

- (1) Despite section 138, the Government Actuary may exempt the trustees of a registered superannuation scheme from the requirement to obtain the written consent in accordance with section 140 and proceed to final registration if the Government Actuary is satisfied that—
 - (a) the terms and conditions of the trust deed of the registered superannuation scheme as proposed to be amended in accordance with sections 135 and 136 are no less favourable to members than the terms and conditions of the trust deed of the scheme immediately before the proposal to the Government Actuary is made; and
 - (b) the exemption is otherwise reasonable in all the circumstances; and
 - (c) the procedure in section 9BAB of the Superannuation Schemes Act 1989 has been followed, as if—

- (i) an application for an exemption under this section were an application for approval of a transfer under that section; and
 - (ii) the notice given under that section included the advice referred to in section 140(1)(a)(i).
- (2) The Government Actuary may decline to give the exemption if the Government Actuary considers that to do so would adversely affect the interests of all or any of the members and beneficiaries of the scheme in any material way.
- (3) The trustees of a registered superannuation scheme are not required to provide any or all of the information listed in subsection 138(4) in respect of any or all of the members of the scheme to the Commissioner if the information is not in the control or possession of the trustees.
- (4) In determining whether subsection (1) or (2) applies, the Government Actuary may—
 - (a) have regard to the likely effect of the proposed scheme (including the effect of any amendments proposed in accordance with sections 135 and 136) on benefits to members as a whole; and
 - (b) have regard to any other relevant matter.
- (5) The Government Actuary may publish, in any form that the Government Actuary considers fit, guidance about matters that the Government Actuary considers relevant to considering whether subsection (1) applies (including principles that the Government Actuary may use to make that assessment).

140 Process for obtaining consents and evidence to be provided to Government Actuary

- (1) For the purposes of section 138(1) and (2), the trustees of a registered superannuation scheme must obtain the necessary consents by—
 - (a) giving notice to every member of the registered superannuation scheme and every person who is an employer contributor in relation to that scheme of—
 - (i) the implications of the proposal for members and employer contributors; and
 - (ii) the date on which the proposed conversion is intended to occur; and
 - (iii) the fact that the Government Actuary has provisionally approved the scheme for registration as a

- KiwiSaver scheme subject to the consent of all members of the registered superannuation scheme and all persons who are employer contributors in relation to that scheme; and
- (iv) the date by which the written consent must be received by the trustees in order to proceed with registration on the provisional date; and
 - (b) providing to those persons with that notice a copy of the certificates required under Part 2 of Schedule 2 that were provided to the Government Actuary on making the proposal.
- (2) The date by which written consent must be received from each member and employer contributor must be no earlier than 28 days after the date on which notice is given under this section.
 - (3) For the purposes of section 138, the trustees must provide evidence to the satisfaction of the Government Actuary in the form required by the Government Actuary that the necessary consents have been obtained in accordance with subsections (1) and (2).
 - (4) If the trustees do not provide evidence to the Government Actuary in accordance with subsection (3), subject to any exception from those requirements under section 139, the Government Actuary may—
 - (a) cancel the provisional registration of the scheme as a KiwiSaver scheme; and
 - (b) remove the record of provisional registration in the KiwiSaver schemes register.

141 Government Actuary must register scheme as KiwiSaver scheme if certain conditions met

- (1) This section applies if the trustees provide to the Government Actuary—
 - (a) evidence that they have complied with sections 138 and 140, subject to any applicable exception under section 139; and
 - (b) a copy of the proposed amendments referred to in section 136(a)(i) with the proposal in executed form.
- (2) If this section applies, the Government Actuary must, within 28 days after the provision of the things referred to in subsection (1), or within a longer period of time agreed on by the Government Actuary and the trustees,—

- (a) consider whether he or she is satisfied that—
 - (i) the trust deed has not been amended since the time of making the proposal; and
 - (ii) there is no material change in facts or circumstances since the time the scheme was provisionally registered as a KiwiSaver scheme that would, had those facts or circumstances applied and been known to the Government Actuary at that time, have resulted in the Government Actuary failing to be satisfied of the matters set out in section 137(1)(a); and
- (b) if so satisfied,—
 - (i) remove the record of provisional registration; and
 - (ii) register the registered superannuation scheme as a KiwiSaver scheme under this Act; and
 - (iii) remove the registered superannuation scheme from the register maintained under the Superannuation Schemes Act 1989.

142 Date of registration and conversion

- (1) The registration of a KiwiSaver scheme under section 141 must be treated as having taken effect on the later of—
 - (a) the date on which the Government Actuary enters the scheme as a KiwiSaver scheme in the KiwiSaver schemes register; or
 - (b) the date of commencement of the automatic enrolment rules.
- (2) A registered superannuation scheme that is subject to a proposal under section 135 is converted to a KiwiSaver scheme on the date registration of the scheme takes effect under this section.

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

- (1) If the Government Actuary registers a KiwiSaver scheme under section 141, the trust deed of the scheme must be treated as having been amended in the form submitted in the proposal to the Government Actuary—
 - (a) as if those amendments were authorised to be made and were made in accordance with the provisions of the trust deed before the amendments were made; and

- (b) despite any defect in the form or mode of execution of the amendments.
- (2) This section applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment or rule of law or agreement.
- (3) Nothing in this section applies to the terms of any agreement between an employer and a provider (for example, terms in a participation agreement) unless the employer agrees that this section will apply so as to amend the terms and conditions of that agreement.

144 Effect of conversion of registered superannuation scheme to KiwiSaver scheme

- (1) On the registration of a KiwiSaver scheme under section 141 taking effect,—
 - (a) the scheme ceases to be a superannuation scheme that is registered under the Superannuation Schemes Act 1989 and is instead a KiwiSaver scheme that is registered under this Act:
 - (b) despite its change in registration status,—
 - (i) no assets or liabilities are removed from the existing scheme; and
 - (ii) no new settlement occurs; and
 - (iii) the scheme must, subject to the provisions of this Act, be treated as the same scheme:
 - (c) the persons who were trustees immediately before the scheme's registration as a KiwiSaver scheme continue in their capacity as trustees of the scheme:
 - (d) all persons who were members of the scheme immediately before the scheme's registration as a KiwiSaver scheme continue to be members of the scheme subject to section 145(3):
 - (e) the nature of any contractual obligations between employer contributors and the provider of the scheme is governed by section 145.
- (2) Subsection (1)(a) is subject to sections 116 to 124.
- (3) Amendments to, and terms implied into, a trust deed that relate to registration of a KiwiSaver scheme under section 141 do not give rise to—
 - (a) a settlement under the definition of **settlement** in section OB 1 of the Income Tax Act 2004:

- (b) a disposition of property under the definition of **disposition of property** in section 2 of the Estate and Gift Duties Act 1968.

145 Status of contracts and other instruments

- (1) This section applies to contracts, agreements, guarantees, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether in writing or not), entered into by, made with, given to or by, or addressed to the trustees of the scheme (whether alone or with another person) before the registration of the scheme as a KiwiSaver scheme under section 141 and subsisting immediately before registration under section 141.
- (2) The instruments to which this section applies are, on and after the registration of the scheme as a KiwiSaver scheme, binding on, and enforceable by, against, or in favour of, the trustees of the scheme despite the change in the scheme's registration status.
- (3) This section is subject to the provisions of this Act and the nature of the interest of members of the scheme is varied at the time of registration of the scheme as a KiwiSaver scheme in accordance with the provisions of this Act and, in particular, the KiwiSaver scheme rules.

146 References to scheme in existing instruments

A reference (express or implied) to the scheme or the trustees of the scheme in an instrument made, given, passed, or executed before the registration of the scheme as a KiwiSaver scheme under section 141 is a reference to the scheme or the trustees of the scheme on and after the registration of the scheme as a KiwiSaver scheme.

147 Continuation of legal and other proceedings

- (1) An action, arbitration, a proceeding, or cause of action that was pending or that existed by, against, or in favour of, the trustees of the scheme or to which the trustees were a party before the registration of the scheme as a KiwiSaver scheme under section 141 may, on and after the registration of the scheme as a KiwiSaver scheme, be continued and enforced by, against, or in favour of, the trustees on and after the registration of the scheme as a KiwiSaver scheme.

- (2) It is not necessary to amend an application, notice, or other document to do so.

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

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

- (1) The trustees of a registered superannuation scheme may submit to the Government Actuary a proposal to establish a KiwiSaver scheme under an umbrella trust that governs by one trust deed and the same trustees, as separate schemes,—
- (a) a superannuation scheme registered under the Superannuation Schemes Act 1989; and
 - (b) a KiwiSaver scheme registered under this Act.
- (2) The proposed KiwiSaver scheme must be eligible to be a KiwiSaver scheme under section 116.
- (3) The proposal may propose amendments to any of the provisions of the trust deed that establishes the registered superannuation scheme (including repeals and additions to those provisions) that are necessary or desirable to—
- (a) enable the governance of the registered superannuation scheme and the KiwiSaver scheme as separate schemes; and
 - (b) implement the proposal in accordance with this Act and the Superannuation Schemes Act 1989; and
 - (c) ensure that the scheme complies with subsection (2).

149 Form of proposal

A proposal that is submitted to the Government Actuary under section 148 must—

- (a) include—
 - (i) a copy of the proposed amendments to the trust deed;
 - (ii) a copy of any participation agreements that have been ratified by employers of employees in the scheme as applicable to the KiwiSaver scheme;
 - (iii) a copy of the trust deed and every amendment to the trust deed; and
- (b) contain the matters specified in Part 3 of Schedule 2.

150 Government Actuary must register KiwiSaver scheme if satisfied of certain matters

- (1) The Government Actuary must, within 28 days of receiving a proposal under section 148, or within a longer period of time agreed on between the trustees and the Government Actuary, enter the proposed scheme as a KiwiSaver scheme in the KiwiSaver schemes register, if the Government Actuary is satisfied—
 - (a) that the proposal is made in accordance with this Act; and
 - (b) that the scheme is or will be eligible to be a KiwiSaver scheme under section 116 after section 152 has effect; and
 - (c) of the matters required to be certified under Part 3 of Schedule 2; and
 - (d) that fees charged in accordance with any information provided in the proposal will comply with clause 2 of the KiwiSaver scheme rules.
- (2) Registration of the scheme as a KiwiSaver scheme does not affect the status of the registered superannuation scheme.

151 Date of registration

The registration of a KiwiSaver scheme under section 150 must be treated as having taken effect on the date on which the Government Actuary enters the scheme as a KiwiSaver scheme in the KiwiSaver schemes register.

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

- (1) If the Government Actuary registers a KiwiSaver scheme under section 150, the trust deed must be treated for all purposes as having been amended in the form submitted in the proposal to the Government Actuary—
 - (a) as if those amendments were authorised to be made and were made in accordance with the provisions of the trust deed before the amendments were made; and
 - (b) despite any defect in the form or mode of execution of the amendments.
- (2) This section applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment or rule of law or agreement.

- (3) Nothing in this section applies to a participation agreement that forms part of the trust deed.

153 Effect of registration of KiwiSaver scheme under section 150

On the registration of a KiwiSaver scheme under section 150 taking effect,—

- (a) there is an umbrella trust that governs by one trust deed and the same trustees, as separate schemes,—
- (i) the superannuation scheme registered under the Superannuation Schemes Act 1989; and
 - (ii) the KiwiSaver scheme registered under this Act:
- (b) no person who is a member of the registered superannuation scheme becomes a member of the KiwiSaver scheme:
- (c) no assets or liabilities are removed from the registered superannuation scheme by reason only that the KiwiSaver scheme has been registered:
- (d) the umbrella trust, the registered superannuation scheme, and the KiwiSaver scheme must be treated as the same person for the purposes of the Income Tax Act 2004 and the Tax Administration Act 1994.

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

The trustees of a registered superannuation scheme and a KiwiSaver scheme that has been registered under section 150 must, when providing the first copy of the annual report to members of the registered superannuation scheme under section 17(1) of the Superannuation Schemes Act 1989 after the registration of the KiwiSaver scheme, include with that report notice to each member about his or her right of election under section 155.

155 Right of election of members of registered superannuation scheme

- (1) Registration of a KiwiSaver scheme under section 150 confers a right on any person who is a member of the registered superannuation scheme established under the umbrella trust to—

- (a) elect, by notice in writing to the trustees within 28 days after the date the trustees give the notice referred to in section 154, or at any other time accepted by the trustees, to transfer a specified part of the member's interest in the registered superannuation scheme to the KiwiSaver scheme (**partial transfer**); or
 - (b) elect, by notice in writing to the trustees within 28 days after the date on which the trustees give the notice referred to in section 154, or at any other time accepted by the trustees, to transfer all of the member's interest in the registered superannuation scheme to the KiwiSaver scheme (**full transfer**); or
 - (c) elect, by failure to make an election in accordance with paragraph (a) or (b), not to transfer any of the member's interest in the registered superannuation scheme to the KiwiSaver scheme.
- (2) A member of the registered superannuation scheme who makes an election under subsection (1)(a) or (b) must provide the information set out in subsection (10) to the trustees.
- (3) However, subsection (1) does not apply to a member of a registered superannuation scheme under a participation agreement entered into by that person's employer unless the terms of the trust deed (including the participation agreement) enable the member to make an election under this section.
- (4) The trustees of the scheme must carry out any transfers in accordance with an election made in accordance with this section as soon as practicable after the automatic enrolment rules come into force (but not before).
- (5) However, the trustees of the scheme may transfer any part of the member's interest that consists of unvested employer contributions only to the extent that the relevant employer consents to the transfer of that amount.
- (6) In the case in which a person has elected to make a partial transfer, a person continues to be a member of the registered superannuation scheme and also a member of the KiwiSaver scheme.
- (7) In the case in which a person has elected to make a full transfer, a person is no longer a member of the registered superannuation scheme but is a member of the KiwiSaver scheme.

- (8) In the case in which a person has not made an election, the person continues to be a member of the registered superannuation scheme but is not a member of the KiwiSaver scheme.
- (9) Nothing in this section prevents a person becoming a member of a KiwiSaver scheme at a subsequent time or prevents subsequent transfers of any or all of a member's interest from the registered superannuation scheme to the KiwiSaver scheme.
- (10) If a member (A) makes a partial or full transfer, the trustees must provide to the Commissioner, in respect of A,—
- (a) A's name, address, and date of birth; and
 - (b) A's tax file number; and
 - (c) the date of the transfer of the part or whole of the member's interest to the KiwiSaver scheme; and
 - (d) if A is an employee,—
 - (i) the name and address of each of A's employers; and
 - (ii) the rate at which A intends each of those employers to make deductions of contributions from his or her salary or wages; and
 - (e) the name and address and tax file number of both the provider and the scheme; and
 - (f) any other information that the Commissioner requires.

Subpart 4—KiwiSaver schemes register

156 Register of KiwiSaver schemes

- (1) A register called the KiwiSaver schemes register is established.
- (2) The register may be—
- (a) an electronic register; or
 - (b) kept in any other manner that the Government Actuary thinks fit.

157 Operation of register

The register must be operated at all times unless—

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

158 Purpose of register

The purpose of the register is—

- (a) to enable a member of the public to—
 - (i) determine whether a scheme is registered as a KiwiSaver scheme under this Act; and
 - (ii) know how to contact the trustees of the scheme; and
 - (iii) know whether a scheme is authorised to be a default KiwiSaver scheme; and
 - (iv) know whether an employer is an exempt employer; and
- (b) to assist any person—
 - (i) in the exercise of the person's powers under this Act or any other enactment; or
 - (ii) in the performance of the person's functions under this Act or any other enactment.

159 Government Actuary is Registrar of register

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

160 Contents of register in relation to KiwiSaver schemes

The register must contain the following information and documents for each KiwiSaver scheme:

- (a) the name of the scheme; and
- (b) whether it is a default KiwiSaver scheme; and
- (c) the commencement date of the scheme as a KiwiSaver scheme; and
- (d) the names of the trustees of the scheme and an address for service for the trustees; and
- (e) the date upon which the financial year of the scheme ends; and
- (f) each notice of change sent or delivered under section 164.

161 Additional contents of register

- (1) The register must contain the names of employers who are exempt employers.

- (2) The register must contain any other prescribed information or documents.
- (3) This section is subject to section 162.

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

- (1) The Government Actuary may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Government Actuary considers that it is not practical to provide access to the register.
- (2) The Government Actuary may omit or remove from the register any of the information or documents referred to in section 160 that relate to a KiwiSaver scheme if—
 - (a) the KiwiSaver scheme is removed from the register; or
 - (b) the Government Actuary considers, in the public interest, that the information or documents should not form part of the register.
- (3) This section does not limit the Official Information Act 1982 or the Privacy Act 1993.

163 Amendments to register

The Government Actuary may, at any time, make any amendments to the register that are necessary—

- (a) to reflect any changes to information that relates to a KiwiSaver scheme or to information required to be contained in the register; or
- (b) to correct a mistake caused by any error or omission on the part of the Government Actuary or any other person; or
- (c) for the purposes of section 162; or
- (d) to comply with any order or decision made under section 186(8).

164 Duty to notify changes to Government Actuary

- (1) The trustees of a KiwiSaver scheme must ensure that they give notice to the Government Actuary of any changes to—
 - (a) any of the information referred to in section 160 (a) to (e); or
 - (b) any information required to be contained in the register under section 161.

- (2) This section does not apply if the change has been notified in an annual report sent or delivered under section 14 of the Superannuation Schemes Act 1989 (as applied by section 120) before the notice is required to be given under this section.

165 Form of notice under section 164

A notice under section 164 must—

- (a) be in the prescribed form (if any); and
- (b) contain, or be accompanied by, any other prescribed information or documentation; and
- (c) specify the effective date of the change; and
- (d) be given to the Government Actuary within 3 months of the later of—
 - (i) the effective date of the change; or
 - (ii) the trustees of the KiwiSaver scheme first becoming aware of the change.

Subpart 5—Cancellation of registration and winding up

*Cancellation of registration and winding up of
KiwiSaver schemes*

166 This subpart overrides provisions to contrary in trust deed

- (1) The provisions of this subpart override contrary provisions in the trust deed of a KiwiSaver scheme.
- (2) This section is subject to section 169(5).

167 Meaning of winding up in relation to KiwiSaver scheme established under umbrella trust

In this subpart, **winding up**, in relation to a KiwiSaver scheme that is established as a KiwiSaver scheme under an umbrella trust,—

- (a) means the winding up of the KiwiSaver scheme; and
- (b) does not relate to the registered superannuation scheme.

168 Cancellation of registration and order to wind up KiwiSaver scheme

The Government Actuary may cancel the registration of a KiwiSaver scheme and order its winding up—

- (a) upon giving 28 days' notice to the trustees, if satisfied on reasonable grounds that a KiwiSaver scheme is no longer eligible to be a KiwiSaver scheme under section 116; or
- (b) upon giving 28 days' notice to the trustees, if the Government Actuary has reasonable cause to believe that any KiwiSaver scheme has no members; or
- (c) upon receipt of an application by the trustees, if satisfied that the members of the scheme have been advised of the consequences of the scheme ceasing to be registered; or
- (d) in accordance with section 169.

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

- (1) This section applies if, in respect of any KiwiSaver scheme, the Government Actuary has reasonable cause to believe that—
 - (a) the scheme is not operating in accordance with this Act or any regulations made under this Act, or meeting the requirements of this Act or regulations made under this Act; or
 - (b) the financial position of the scheme or the security of benefits or the management of the scheme is inadequate; or
 - (c) prescribed circumstances apply.
- (2) A failure to operate in accordance with this Act or meet the requirements of this Act referred to in subsection (1)(a) includes a failure to operate in accordance with any terms implied in the trust deed of the scheme, or to meet the requirements of any terms implied in the trust deed of the scheme, that are implied by section 120 or 126 and the KiwiSaver scheme rules.
- (3) The Government Actuary may apply to the Court for an order that subsection (2) applies in relation to clause 2 of the KiwiSaver scheme rules and any or all members of a scheme and, if an application is made under this subsection, the Court may exercise any powers that it may exercise under clause 2 of the KiwiSaver scheme rules.
- (4) If subsection (1) applies, the Government Actuary may do any or all of the following:

- (a) direct the trustees to supply all members of the scheme with information specified by the Government Actuary;
 - (b) upon giving 28 days' notice to the trustees, direct the trustees or the administration manager or the investment manager, as the case may be, to operate the scheme in a specified manner;
 - (c) upon giving 28 days' notice to the trustees, cancel the registration of the KiwiSaver scheme and order that it be wound up.
- (5) The Government Actuary must not give a direction under subsection (4)(b) if the operation of the scheme in accordance with the direction would be contrary to the provisions of the trust deed.

Compare: 1989 No 10 s 20

170 Government Actuary must remove scheme from register on cancellation of registration

- (1) On cancelling the registration of a KiwiSaver scheme, the Government Actuary must remove it from the KiwiSaver schemes register.
- (2) The cancellation of registration must be treated as taking effect on the date on which the scheme is removed from the register.
- (3) The Government Actuary must give notice of the cancellation of registration, as soon as practicable after the registration of the scheme is cancelled, to—
 - (a) the trustees of the scheme; and
 - (b) the Commissioner.

171 Implied terms continue to be implied on cancellation of registration

If the registration of a KiwiSaver scheme is cancelled, the following provisions must continue to be implied in the trust deed of the scheme until the scheme is wound up:

- (a) sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by section 120); and
- (b) the KiwiSaver scheme rules.

172 Receiver or liquidator to designate or appoint independent trustee if required

- (1) This section applies if a receiver has been appointed in respect of any property of an employer or if a liquidator has been appointed for the employer and either—
 - (a) the receiver or liquidator is designated or appointed as a trustee of a relevant KiwiSaver scheme; or
 - (b) before the appointment of the receiver or liquidator, the employer had the power to appoint a trustee of a relevant KiwiSaver scheme.
- (2) The receiver or liquidator must be satisfied that, at all times, at least 1 of the trustees of the relevant KiwiSaver scheme is an independent person and, if the receiver or liquidator is not so satisfied, designate or appoint an independent person as trustee of the scheme.
- (3) For the purposes of this section, a **relevant KiwiSaver scheme** is one in relation to which the employer is an employer contributor.
- (4) For the purposes of this section, **an independent person** is a person who—
 - (a) has no interest in the assets of the employer or of the scheme, other than as a trustee of the scheme; and
 - (b) is not associated with, or employed by, the employer, the receiver, or the liquidator.
- (5) Any independent person designated or appointed under this section as a trustee of the scheme—
 - (a) holds office as if he or she were designated or appointed under the trust deed of the scheme; and
 - (b) is entitled to be paid out of the assets of the scheme reasonable remuneration for, and any expenses reasonably incurred by that person in, acting in his or her capacity as a trustee of the scheme.

Compare: 1989 No 10 s 20A

*Winding up***173 Initial steps in winding up of KiwiSaver scheme**

- (1) If a KiwiSaver scheme is to be wound up, the trustees must, within 14 days after a winding-up resolution or an order by the Government Actuary that the scheme be wound up is made,—

- (a) lodge a copy of any order or resolution with the Government Actuary and the Commissioner; and
 - (b) give notice to the Commissioner of the name and address of each member of the KiwiSaver scheme.
- (2) Sections 50 to 52 set out the effect of notice to the Commissioner in relation to members of the KiwiSaver scheme and subpart 3 of Part 2 relates to the transfer of members' interests to another KiwiSaver scheme.

174 Winding up report

The persons who were trustees of the relevant KiwiSaver scheme immediately before the scheme was wound up—

- (a) must, within 4 months of the date on which the winding up takes effect, ensure that final accounts of the scheme, showing the financial position of the scheme as at the date on which the winding up takes effect, are prepared; and
- (b) must, within 4 months of the date on which the winding up takes effect, ensure that those final accounts are audited; and
- (c) must, within 28 days after the final accounts have been audited,—
 - (i) send a copy of those accounts to the Government Actuary and to every person who was a member of the scheme immediately before it was wound up; and
 - (ii) advise the Government Actuary and the members in writing as to the manner in which remaining assets (if any) of the scheme are to be distributed; and
- (d) must inform the Government Actuary of the date on which the distribution of the assets is completed.

Compare: 1989 No 10 s 21(1)

175 Time for doing certain things may be extended

The Government Actuary may, by giving notice to the relevant person, extend the time period within which a person must comply with any of the requirements set out in sections 173 and 174.

Compare: 1989 No 10 s 21(1A)

176 Member's right to information

- (1) Each person who was a member of a KiwiSaver scheme immediately before its winding up continues to have the right, upon request,—
 - (a) to look at, at any reasonable time, a copy of the trust deed;
 - (b) to receive, upon payment of the relevant fee, a copy of the trust deed.
- (2) The relevant fee is the amount prescribed in respect of documents to which regulation 2(d) of the Securities (Fees) Regulations 1998 applies.

Compare: 1989 No 10 s 21(2)

Subpart 6—Default KiwiSaver schemes**177 Appointment of default providers**

- (1) The Minister may appoint 1 or more eligible KiwiSaver providers for a specified term to provide—
 - (a) a default KiwiSaver scheme that is specified in the instrument of appointment; and
 - (b) a default investment product of that default KiwiSaver scheme that is specified in the instrument of appointment.
- (2) An eligible KiwiSaver provider is one that has at least 1 trustee of the scheme that is proposed to be provided under the instrument of appointment that is a trustee corporation.
- (3) The appointment may be made subject to such terms and conditions as the Minister considers fit.
- (4) The instrument of appointment must—
 - (a) identify the default KiwiSaver scheme and the default investment product of the scheme;
 - (b) state any terms and conditions of the appointment;
 - (c) state any prescribed information.

178 Provisions of instrument of appointment to prevail over provisions of trust deed

- (1) The trustees of a default KiwiSaver scheme must amend the trust deed to ensure that its terms are consistent with the instrument of appointment.

- (2) The provisions of the instrument of appointment prevail over the terms of the trust deed establishing the KiwiSaver scheme that relate to the KiwiSaver scheme.
- (3) An investment statement relating to a KiwiSaver scheme to which an instrument of appointment under section 177 relates must draw attention to the implications of this section.
- (4) Amendments made in accordance with this section—
 - (a) must be treated as if they were authorised to be made and were made in accordance with the provisions of the trust deed before the amendments were made; and
 - (b) apply despite any defect in the form or mode of execution of the amendments.
- (5) Subsection (4) applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment or rule of law or agreement.

179 Effect of appointment under section 177

If a person is appointed as a provider of a default KiwiSaver scheme under an instrument of appointment under section 177,—

- (a) the default KiwiSaver scheme must be shown as a default KiwiSaver scheme on the KiwiSaver schemes register for the purposes of section 160; and
- (b) the Commissioner may nominate the default investment product of the scheme as a default investment product to which persons may be allocated for the purposes of sections 50 to 52.

180 Availability of instrument of appointment

- (1) The Minister must—
 - (a) make the instrument of appointment referred to in section 177 available for inspection, during working hours, free of charge at the head office of the Department; and
 - (b) make copies of the instrument of appointment available for purchase at a reasonable price at the head office of the Department; and
 - (c) make copies of the instrument of appointment available free of charge, at all reasonable times, on an Internet website maintained by, or on behalf of, the Department; and

- (d) give notice in the *Gazette* that—
 - (i) the instrument of appointment has been executed and the date on which the instrument of appointment was executed; and
 - (ii) the instrument of appointment is available for inspection during working hours, free of charge, and the place at which it can be inspected; and
 - (iii) copies of the instrument of appointment can be purchased and the place at which they can be purchased; and
 - (iv) the instrument of appointment is available on the Internet, free of charge, and the website address.
- (2) This section also applies to any variation or renewal or revocation of the instrument of appointment.

181 Appointment must be notified to Government Actuary and Commissioner

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

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

182 Minister not required to appoint maximum number of persons

Nothing in section 177 or regulations made under section 228(h) requires the Minister to appoint the maximum number of persons prescribed by regulations made under section 228(h).

183 Power of High Court to act in respect of terms and conditions of appointment as default KiwiSaver scheme and regulations relating to default KiwiSaver schemes

- (1) This section applies if, on the application of the Crown, it appears to the High Court that a provider of a default KiwiSaver scheme appointed under section 177 intends to engage, or is engaging, or has engaged, in conduct that constitutes, or would constitute,—
 - (a) a breach of the terms and conditions of the instrument of appointment referred to in section 177; or

- (b) a breach of regulations made under section 230.
- (2) If this section applies, the High Court may make any orders on any terms and conditions that it thinks appropriate, including, without limitation,—
 - (a) an order to—
 - (i) restrain the trustees of the default KiwiSaver scheme, or the provider of the scheme who has been appointed under section 177 (if different from the trustees), or both, from engaging in conduct that constitutes, or would constitute, the breach:
 - (ii) require the trustees of the default KiwiSaver scheme, or the provider of the scheme who has been appointed under section 177 (if different from the trustees), or both, to do a particular act or thing:
 - (iii) require the trustees of the default KiwiSaver scheme, or the provider of the scheme who has been appointed under section 177 (if different from the trustees), or both, to comply with the conditions of the instrument of appointment:
 - (b) an interim order.
- (3) In any proceeding under this section, the Crown, on the order of the High Court, may obtain discovery and administer interrogatories.
- (4) The High Court may at any time rescind or vary an order made under this section.

184 Revocations, etc, of instruments of appointment

- (1) An instrument of appointment may provide for its renewal or variation or expiry or revocation by the Minister or the provider.
- (2) Despite any matter provided for in an instrument of appointment as to its expiry or revocation, the Minister may, by notice in writing to a provider, revoke an instrument of appointment if—
 - (a) the Government Actuary cancels the registration of the scheme as a KiwiSaver scheme under section 168 or 169; or
 - (b) the Minister is satisfied that—

- (i) the provider is not operating in accordance with the terms and conditions of the instrument of appointment; and
 - (ii) the failure to operate in accordance with the terms and conditions of the instrument of appointment is a significant breach as prescribed in regulations made under section 230.
- (3) The appointment of the provider under section 177 ceases on revocation of the instrument of appointment.
- (4) The Minister must notify the Government Actuary and the Commissioner as soon as practicable after an instrument of appointment is revoked.

185 Duration of obligations as default provider after terminating event

- (1) In this section,—
 - reporting obligations**, in relation to a provider and the provider's scheme,—
 - (a) means any requirement for the provider to report to persons specified in an instrument of appointment; and
 - (b) any requirement for the provider to produce to any persons specified in an instrument of appointment, any papers, documents, records, or things in respect of the scheme (and the power of any person to require production of those papers, document, records, or things)
 - terminating event** means—
 - (a) the revocation of an instrument of appointment by the provider or the Minister under the terms and conditions of the instrument of appointment; or
 - (b) the revocation of an instrument of appointment in accordance with section 184(2); or
 - (c) the expiry of the term of appointment (as specified in the instrument of appointment and in accordance with any renewal of the term of appointment).
- (2) Despite any terminating event,—
 - (a) any terms and conditions of the instrument of appointment that relate to a provider's reporting obligations in respect of the provider's scheme continue to apply until the date when the term of appointment would have expired but for the terminating event; and

- (b) regulations made under section 230 continue to apply in relation to the provider until the provider has completed every act or thing that the regulations require the provider to do following any terminating event.

Subpart 7—Miscellaneous

186 Objections and appeals against decisions of Government Actuary

- (1) Any person who is dissatisfied with an order or decision made by the Government Actuary in the exercise of the Government Actuary's powers, functions, and discretions under this Act may object to that order or decision by notice to the Government Actuary.
- (2) Every objection under subsection (1) must be made within 28 days after notice of the order or decision is given, or within any extended time as the Government Actuary may allow on application made either before or after the 28-day period has elapsed.
- (3) The Government Actuary must, if the person objecting so requests, allow that person an opportunity of being heard by him or her within 28 days after receiving that request.
- (4) The Government Actuary must, within 28 days after receiving the objection or holding any hearing requested under subsection (3), give notice of his or her decision to the person who made the objection.
- (5) Any person whose objection is disallowed by the Government Actuary may appeal against that disallowance to the High Court.
- (6) Every appeal under subsection (5) must be made by notice of appeal, and must be lodged with the Registrar of the High Court in Wellington, together with a duplicate of that notice, within 28 days after the date on which the applicant was notified of the disallowance of the objection, or within any further time as the High Court may allow on application made either before or after the 28-day period has elapsed.
- (7) Every appeal under subsection (5) must be by way of rehearing of the matter in respect of which the Government Actuary made the decision.

- (8) In its determination of any appeal, the High Court may confirm, modify, or reverse the order or decision appealed against.
- (9) Subject to the provisions of this section, the procedure in respect of any appeal under subsection (5) must be in accordance with the rules of the High Court.

Compare: 1989 No 10 s 23

187 Power of Government Actuary to delegate

- (1) The Government Actuary may delegate to any person (whether an employee of the State services or not), either generally or particularly, any of the Government Actuary's functions, duties, and powers except the power of delegation.
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions that the Government Actuary thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not affect or prevent the performance or exercise of a function, duty, or power by the Government Actuary.
- (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who purports to perform or exercise a function, duty, or power under a delegation by the Government Actuary—
 - (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
 - (b) must produce evidence of his or her authority to do so, if reasonably requested to do so.

188 Government Actuary may carry out investigation as to whether KiwiSaver scheme is operating in accordance with Act

- (1) The Government Actuary may, on his or her own motion, or as a result of any information that comes into the possession of the Government Actuary, carry out an investigation as to whether a KiwiSaver scheme is operating in accordance with

or meeting the requirements of this Act or regulations made under this Act.

- (2) The Government Actuary may, for the purposes of any such investigation, request the Commissioner to provide, as soon as reasonably practicable, any information, papers, documents, records, or things in respect of the scheme that are held by the Commissioner that, in the Government Actuary's opinion, are necessary or desirable for the Government Actuary to carry out that investigation.
- (3) This section is subject to the provisions of the Tax Administration Act 1994.

189 Power of Government Actuary to require information

- (1) This section applies in relation to a KiwiSaver scheme and a scheme that has ceased to be registered as a KiwiSaver scheme under this Act.
- (2) For the purpose of performing or exercising any of his or her functions, duties, or powers under this Act, the Government Actuary may require the trustees or administration manager of the scheme to supply specified information in respect of the scheme.
- (3) For the purpose of investigating whether a scheme is operating in accordance with or meeting the requirements of this Act, or regulations made under this Act, the Government Actuary may, in the circumstances set out in subsection (4), require any person, by notice in writing, to produce any papers, documents, records, or things in respect of the scheme.
- (4) The circumstances are—
 - (a) the Government Actuary believes, on reasonable grounds, that the exercise of the powers under subsection (3) is necessary to enable the Government Actuary to carry out his or her investigation; and
 - (b) the person to whom the notice under subsection (3) is given has failed to comply with a previous request to produce to the Government Actuary, within a reasonable time, the information, papers, documents, records, or things required by the notice; and
 - (c) the Government Actuary believes, on reasonable grounds, that—

- (i) it is not reasonably practicable to obtain the information required by the Government Actuary from another source; or
 - (ii) for the purposes of the investigation, it is necessary to obtain the information, papers, documents, records, or things to verify or refute information obtained from another source.
- (5) Nothing in this section requires a person to—
 - (a) provide any information or produce any document that would be privileged in a court of law; or
 - (b) produce to the Government Actuary any information, papers, records, documents, or things if compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on the person by an enactment (other than the Official Information Act 1982 or the Privacy Act 1993).

190 Secrecy

The Government Actuary, or any person who has information, papers, documents, records, or things as a result of a delegation by the Government Actuary of any of his or her functions, duties, and powers under this Act, is not required to produce in any court or tribunal any information, paper, document, record, or thing, or to divulge or communicate to any court or tribunal any matter or thing coming under that person's notice in the performance of that person's duties, except when it is necessary to do so for the purposes of carrying into effect—

- (a) any provision of this Act or any regulations made under this Act; or
- (b) any provision of the Inland Revenue Acts or regulations made under the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994) that is relevant to carrying into effect the provisions of this Act.

Compare: 1989 No 10 s 26

191 Duty of certain persons to disclose information to Government Actuary

- (1) This section applies if a person who holds office as an administration manager, investment manager, or auditor of a KiwiSaver scheme forms an opinion in the course of, or in

connection with, the performance of the functions of that office that there is a serious problem with the KiwiSaver scheme.

- (2) If this section applies, the person must disclose to the Government Actuary information that is specified by the Government Actuary relating to the affairs of the KiwiSaver scheme obtained in the course of holding that office.
- (3) For the purposes of this section, a **serious problem** means—
 - (a) the KiwiSaver scheme is not operating in accordance with this Act and any regulations made under this Act, or fails to meet any requirements of this Act or any regulations; or
 - (b) the financial position of the KiwiSaver scheme or the security of benefits or the management of the KiwiSaver scheme is inadequate.
- (4) For the avoidance of doubt, this section does not require any person who holds office as an administration manager, investment manager, or auditor of a KiwiSaver scheme to carry out functions additional to those functions that he or she would ordinarily carry out in the course of holding that office, other than to disclose to the Government Actuary information relating to the affairs of the KiwiSaver scheme.

Compare: 1989 No 10 s 18A

192 Protection of administration managers, investment managers, and auditors

- (1) No civil, criminal, or disciplinary proceedings lie against any administration manager, investment manager, or auditor arising from the disclosure in good faith of information to the Government Actuary under section 191.
- (2) No person may remove from office, or terminate the contract of appointment of, any administration manager, investment manager, or auditor by reason of the disclosure in good faith of information to the Government Actuary under section 191.
- (3) No tribunal, body, or authority having jurisdiction in respect of the professional conduct of any administration manager, investment manager, or auditor may make any order against, or do any act in relation to, that person in respect of the fact of that disclosure.

- (4) No information received by the Government Actuary under section 191 is admissible as evidence in any proceedings against the administration manager, investment manager, or auditor concerned.
- (5) Nothing in subsection (4) limits the admissibility of any information obtained in any other way.

Compare: 1989 No 10 s 18B

193 Personal liability

Neither the Government Actuary, nor any person acting as a delegate of the Government Actuary, is personally liable for any act done or omitted to be done by the Government Actuary or any such person in good faith in the exercise or intended exercise of the functions, duties, or powers of the Government Actuary under this Act.

Compare: 1989 No 10 s 27

194 Annual report by Government Actuary

- (1) The Government Actuary must, within 3 months after the end of every financial year, report to the Minister on the principal matters transacted under this Act during that year.
- (2) Every report must be presented to the House of Representatives by the responsible Minister as soon as practicable after it has been received by that Minister.

Compare: 1989 No 10 s 28

195 Unclaimed money held by trustees of KiwiSaver scheme

- (1) Section 77 of the Trustee Act 1956 applies subject to this section in relation to a member's interest in a KiwiSaver scheme held by, or in the control of, the trustees of that scheme.
- (2) Section 77 of the Trustee Act 1956 applies to the member's interest only if, at the time that section is applied,—
 - (a) the member of the scheme in respect of which the trust exists is able to be identified, according to the information held by or available to the trustees, as being at least 5 years older than the date on which a withdrawal is permitted under clause 4 of the KiwiSaver scheme rules; and

- (b) the trustees have made reasonable efforts to locate the member but the member is unable to be found; and
- (c) there has been no contribution made to the member's account in the preceding 5 years, excluding any fee subsidy or Crown contribution.

196 Member's interest in KiwiSaver scheme not assignable

- (1) Except as expressly provided in this Act, a member's interest or any future benefits that will or may become payable to a member under the KiwiSaver scheme must not be assigned or charged or passed to any other person whether by way of security, operation of law, or any other means.
- (2) However, nothing in subsection (1) prevents a member's interest or any future benefits that will or may become payable to a member under the KiwiSaver scheme from being released, assigned, or charged, or from passing to any other person if it is required by the provisions of any enactment, including a requirement by order of the Court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

197 Offence to fail to provide information under this Part

- (1) Every person commits an offence against this Part, and is liable on summary conviction to a fine not exceeding the amount set out in section 199, who fails without reasonable excuse, as and when required by this Part or any regulations made under section 228,—
 - (a) to deliver any paper, document, record, report, copy, thing, or certificate; or
 - (b) to allow a person to look at a paper, document, record, report, copy, or thing; or
 - (c) to supply any return or to give any certificate or information.
- (2) For the purposes of sections 15A, 16, and 17 of the Superannuation Schemes Act 1989, as applied by section 122 of this Act,—
 - (a) requests must be made to the trustees of the KiwiSaver scheme to which the request relates; and
 - (b) if a person has a right to look at a document, report, or copy, the trustees of the KiwiSaver scheme to which the document, report, or copy relates have a duty to ensure

- that the person is allowed to look at, at any reasonable time, that document, report, or copy; and
- (c) if a person has a right to receive a document, statement, report, copy, certificate, or information, the trustees of the KiwiSaver scheme to which the document, statement, report, copy, certificate, or information relates have a duty to ensure that the document, statement, report, copy, certificate, or information is delivered or supplied to the person; and
 - (d) if a person has a right to be advised of certain information, the trustees of the KiwiSaver scheme to which the information relates have a duty to ensure that the information is supplied to the person.

198 Other offences under this Part

- (1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding the amount set out in section 199, who knowingly or recklessly—
 - (a) fails to carry out any direction or order of the Government Actuary made under section 169(4)(a) or (b); or
 - (b) fails to designate or appoint an independent trustee, if required to do so under section 172; or
 - (c) as and when required by this Part or any regulations made under section 228, fails to deliver any paper, document, record, report, copy, thing, or certificate; or
 - (d) as and when required by this Part or any regulations made under section 228, fails to allow a person to look at a paper, document, record, report, copy, or thing; or
 - (e) as and when required by this Part or any regulations made under section 228, fails to supply any return or to give any certificate or information; or
 - (f) makes any statement or supplies any paper, document, record, report, copy, thing or certificate required by this Act knowing that it is false or misleading; or
 - (g) advertises or otherwise promotes, or describes in a written form, a KiwiSaver scheme as a unit trust.
- (2) If any company commits an offence against this Act, every officer of the company who knowingly authorises or permits the offence also commits an offence against this Act.

199 Criminal penalties for offences under this Part

- (1) A person who is convicted of an offence under section 197(1)(a), (b), or (c) is liable,—
 - (a) the first time the person is convicted in relation to a particular type of offence, to a fine not exceeding \$4,000;
 - (b) the second time the person is convicted of the same type of offence, to a fine not exceeding \$8,000;
 - (c) on every other occasion the person is convicted of the same type of offence, to a fine not exceeding \$12,000.
- (2) A person who is convicted of an offence under section 198(1)(a), (b), (c), (d), or (e) is liable,—
 - (a) the first time the person is convicted in relation to a particular type of offence, to a fine not exceeding \$25,000; and
 - (b) on every other occasion the person is convicted for the same type of offence, to a fine not exceeding \$50,000.
- (3) A person who is convicted of an offence under section 198(1)(f) or (g) is liable to a fine not exceeding \$300,000.

200 Government Actuary may decline to take action if fees not paid

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

Compare: 1989 No 10 s 29

201 Trustees not in breach of obligations, etc

Nothing effected or authorised by the trustees of a registered superannuation scheme or KiwiSaver scheme in accordance with the requirements of this Act—

- (a) places the trustees in their capacity as trustees of that scheme, or any other person, in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or otherwise makes any of them guilty of a civil wrong; or
- (b) gives rise to a cause of action against the trustees in their capacity as trustees; or
- (c) gives rise to a right for a person to—

- (i) terminate, cancel, or modify a contract or an agreement; or
- (ii) enforce or accelerate the performance of an obligation; or
- (iii) require the performance of an obligation not otherwise arising for performance; or
- (d) places the trustees in their capacity as a trustee of that scheme, or any other person, in breach of any enactment, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment, transfer, or issue of property or the disclosure of information; or
- (e) releases a surety wholly or in part from an obligation; or
- (f) invalidates or discharges a contract or security.

202 Application of section 13G of Trustee Act 1956 if power of investment exercised in relation to member allocated to scheme under sections 50 to 52

- (1) This section applies if—
 - (a) a member has been allocated to a default KiwiSaver scheme under sections 50 to 52; and
 - (b) the trustees of the scheme purport to exercise a power of investment under the trust deed of that KiwiSaver scheme; and
 - (c) the power of investment is exercised in accordance with the express terms relating to the default investment product specified in an instrument of appointment made under section 177.
- (2) If this section applies, the exercise of the power must be treated, for the purposes of section 13G of the Trustee Act 1956, as consistent with any requirements of the trust deed or statute that are binding on the trustees and that relate to the obtaining of consent or compliance with any direction with respect to the investment of trust funds.

203 General application of Financial Transactions Reporting Act 1996

- (1) For the avoidance of doubt, an offer to become a member of a KiwiSaver scheme is, subject to section 204, a request to a financial institution for the person to become a facility holder within the meaning of the Financial Transactions Reporting Act 1996.

- (2) A provider must, for the purposes of section 6 of the Financial Transactions Reporting Act 1996, unless the provider has already verified the person's identity, treat a request by a member to make a permitted withdrawal as if it was a request to a financial institution for the person to become a facility holder within the meaning of that Act.

204 Application of Financial Transactions Reporting Act 1996 to default allocation of members to KiwiSaver schemes

- (1) This section applies in respect of any allocation of a person (A) to, or any offer by a person (A) to become a member of, a KiwiSaver scheme under sections 50 to 52.
- (2) For the purposes of section 6 of the Financial Transactions Reporting Act 1996, an offer or allocation to which this section applies is not a request to a financial institution for the person to become a facility holder as defined in section 2(1) of that Act.
- (3) Despite subsection (2),—
- (a) a provider of a KiwiSaver scheme must make reasonable efforts to verify A's identity at the time that A becomes a member of a KiwiSaver scheme; and
 - (b) if A makes a voluntary payment into the KiwiSaver scheme, the payment must, for the purposes of section 6 of the Financial Transactions Reporting Act 1996, unless the provider has already verified A's identity, be treated as a request to a financial institution for the person to become a facility holder within the meaning of that Act.
- (4) In this section, **voluntary payment** means,—
- (a) in relation to a member of a KiwiSaver scheme who has become a member of that scheme under section 48 or 52, a payment made by or for the benefit of that person into the KiwiSaver scheme that is not a deduction from salary or wages made under subpart 1 of Part 3; and
 - (b) in relation to a member of a KiwiSaver scheme to whom paragraph (a) does not apply, a payment made by or for the benefit of that person into the KiwiSaver scheme that is in excess of the amount the member is contractually bound to pay into the scheme within a defined period.

Part 5 General provisions

205 No Crown guarantee of KiwiSaver schemes or products

- (1) There is no Crown guarantee in respect of any KiwiSaver scheme or investment product of a KiwiSaver scheme.
- (2) Every investment statement relating to a KiwiSaver scheme must contain a statement to that effect.

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

For the avoidance of doubt, the Crown or any other person does not give investment advice for the purposes of the Investment Advisers (Disclosure) Act 1996 if the Crown or that person—

- (a) supplies an information pack as required or authorised by this Act; or
- (b) gives a factual description to another person of the features of a KiwiSaver scheme or of KiwiSaver schemes, (for example, information about admission as a member or termination of membership); or
- (c) gives information of the type referred to in paragraph (b) in the course of promoting the benefits of retirement savings in general; or
- (d) acts only as an intermediary who transmits information about a KiwiSaver scheme; or
- (e) otherwise exercises or carries out a function, duty, or power under this Act.

207 Unique identifiers

- (1) In this section, **specified functions, duties, or powers** means functions, duties, or powers that—
 - (a) a provider is required to exercise or carry out for the purposes of this Act; or
 - (b) are reasonably necessary for the effective administration of the overall KiwiSaver scheme.
- (2) Despite Information Privacy Principle 12(2) or (4) of the Privacy Act 1993, a provider of a KiwiSaver scheme may—
 - (a) require an individual to disclose any unique identifier that has been assigned to that person by the Commissioner for the purposes of carrying out specified functions, duties, or powers; and

- (b) assign to a proposed member, or member, of the KiwiSaver scheme any unique identifier assigned to that person by the Commissioner.
- (3) This section does not authorise a provider of a KiwiSaver scheme to use a unique identifier assigned by the Commissioner, except for the purpose of carrying out the specified functions, duties, or powers.

208 Information held by Commissioner in respect of person who has opted out or who should not have been allocated to overall KiwiSaver scheme

- (1) This section applies—
 - (a) if an employee has given an opt-out notice to the Commissioner or to an employer under section 17 and the relevant date referred to in subsection (2) has expired; or
 - (b) a person is allocated to a KiwiSaver scheme in circumstances in which this Act does not require the person to be allocated to a KiwiSaver scheme and the person does not opt into any KiwiSaver scheme or choose to remain in the KiwiSaver scheme to which the person is allocated.
- (2) For the purposes of subsection (1)(a), the relevant date is,—
 - (a) in a case in which the opt-out notice is given to the Commissioner and it does not result in a requirement under this Act for contributions that are in the possession of the Commissioner to be repaid, the date the opt-out notice is accepted by the Commissioner; or
 - (b) in a case in which the opt-out notice is received by an employer and it does not result in a requirement under this Act for contributions that are in the possession of the Commissioner to be repaid, the date the Commissioner receives a copy of the notice from the employer under section 17(5); or
 - (c) in a case in which the opt-out notice results in a requirement under this Act for contributions that are in the possession of the Commissioner to be repaid, the date of the final refund of those contributions.
- (3) The Commissioner must not use personal information collected in respect of a person to whom subsection (1) applies

for purposes other than the administration of the KiwiSaver scheme if the personal information—

- (a) was provided to the Commissioner in respect of a member as required by this Act or for the purposes of this Act; and
- (b) has not been used by the Commissioner for purposes related to any of the other Inland Revenue Acts.

Interface with securities law

209 Application of Securities Act 1978

- (1) A person is not a promoter or issuer in relation to an interest in a KiwiSaver scheme for the purposes of the Securities Act 1978 by reason only that, acting as an employer, that person—
 - (a) complies with the person's responsibilities as an employer under this Act; or
 - (b) chooses a KiwiSaver scheme as the employer's chosen KiwiSaver scheme under section 47.
- (2) No act or omission by the Crown, or any officer or employee of the Crown, that occurs during the exercise or performance, or intended exercise or performance, of any functions, duties, or powers under this Act,—
 - (a) has the effect that the Crown or those officers or employees are promoters or issuers for the purposes of the Securities Act 1978; or
 - (b) gives rise to any civil or criminal liability of the Crown or those officers or employees under the Securities Act 1978.

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

- (1) This section applies if an interest in a KiwiSaver scheme is allotted in contravention of—
 - (a) section 37 of the Securities Act 1978 (which relates to void irregular allotments of securities); or
 - (b) section 37A of the Securities Act 1978 (which relates to voidable irregular allotments of securities); or
 - (c) section 38F(9)(b) of the Securities Act 1978 (which relates to the distribution of an investment statement); or

- (d) section 44(6)(b) of the Securities Act 1978 (which relates to the cancellation of the registration of a registered prospectus).
- (2) If this section applies,—
 - (a) any resulting duty of the trustees (as issuer) or any other person to repay subscriptions or any other amount under section 37(5), 37(6), 37A(6), 37A(7), 38F(9)(b), 38F(13), 44(6)(b), or 44(7) of the Securities Act 1978 does not apply; but
 - (b) the trustees must instead provide the Commissioner with a notice of—
 - (i) the application of the relevant section or sections of the Securities Act 1978 in respect of the allotment of securities to that member; and
 - (ii) if all or part of the consideration for the allotment of securities to that member was the transfer of the member's interest from another KiwiSaver scheme, the name of that scheme from which the member's interest was transferred; and
 - (iii) the name, address, and tax file number of the member.
- (3) If subsection (2) applies, a process for a person to be allocated to a new scheme (*see* sections 50 to 52, and section 211) and a process for a person to be transferred to a new scheme (*see* section 57) both apply.

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

- (1) This section applies if—
 - (a) the Commissioner receives a notice under section 210(2); and
 - (b) the notice states the name of that scheme from which the member's interest was transferred (the **member's previous KiwiSaver scheme**).
- (2) If this section applies, the Commissioner must apply section 50 as if a reference to a default investment product of a default KiwiSaver scheme were instead a reference to the investment product or products of the member's previous KiwiSaver scheme to which the member's interest was applied.

- (3) Subsection (2) does not apply if, in the opinion of the Commissioner, the application of section 50 in accordance with that subsection is not practicable.

Disputes under Parts 2 and 3

212 Persons may request reconsideration of certain decisions of Commissioner

- (1) This section applies to any matter that under Parts 2 and 3 is left to the discretion, judgment, opinion, approval, consent, or determination of the Commissioner.
- (2) A person affected by the Commissioner's decision on the matter has 20 working days from the date on which notice of the decision was given to the person (or any longer period allowed by the Commissioner) to—
- (a) request the Commissioner to reconsider the decision; and
 - (b) give the Commissioner any information in support of that request.
- (3) The Commissioner may require a person to make that request by notice.
- (4) On receiving a request, the Commissioner may—
- (a) accept the person's request; or
 - (b) seek further information from the person; or
 - (c) decline the person's request; or
 - (d) accept or decline the person's request in part and decline or accept the other part.

213 Reconsideration of other decisions

Part 8A of the Tax Administration Act 1994 applies to every notice of a disputable decision given by the Commissioner under this Act.

Penalties

214 Application of sections 215 and 216

- (1) Sections 215 and 216 set out penalties that apply, in addition to the provisions of the Tax Administration Act 1994, if there is a failure to provide information or withhold contributions under Part 2 or 3.
- (2) However, if sections 215 and 216 apply, the following provisions of the Tax Administration Act 1994 do not apply:

- (a) Part 7 (interest):
- (b) section 139B (late payment penalty):
- (c) sections 141 to 141L (tax shortfalls).

215 Penalty for employer to fail to provide information

- (1) Every employer is liable for the penalty in subsection (2) who fails to give information as required by Part 2 or 3.
- (2) The penalty is—
 - (a) nil if the Commissioner has not given notice to the employer, within the preceding 12 months, that a penalty may be imposed on the employer if the employer does not provide information as required by Part 2 or 3; and
 - (b) in any other case,—
 - (i) \$50 if the employer is a small employer; and
 - (ii) \$250 if the employer is not a small employer.
- (3) However, an employer is not liable for more than one penalty per month to which any employer monthly schedule relates.
- (4) In this section and section 216, a person is a **small employer**—
 - (a) if the person was an employer in the preceding tax year in respect of whom gross tax deductions payable and specified superannuation contribution withholding tax payable in that preceding tax year were, in total, less than \$100,000; or
 - (b) if the person was not an employer in the preceding year, until the time when gross tax deductions payable and specified superannuation contribution withholding tax payable in the current tax year, in total, exceed \$100,000.
- (5) The penalty is due and payable on the day on which the next tax deduction required to be made by the employer under the PAYE rules is due to be paid to the Commissioner after the end of the PAYE period in which the failure occurred.

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

- (1) Every employer is liable for the penalty in subsection (2) who—
 - (a) fails to deduct a contribution from a payment of salary or wages as required by this Act; or

- (b) deducts an amount of contribution from a payment of salary or wages that is not the correct amount required by this Act.
- (2) The penalty is—
 - (a) nil if the Commissioner has not given notice to the employer, within the preceding 12 months, that a penalty may be imposed on the employer if the employer does not correctly make deductions in accordance with this Act; and
 - (b) in any other case,—
 - (i) \$50 if the employer is a small employer; and
 - (ii) \$250 if the employer is not a small employer.
- (3) However, an employer is not liable for more than one penalty per month to which any employer monthly schedule relates.
- (4) The penalty is due and payable on the day on which the next tax deduction required to be made by the employer under the PAYE rules is due to be paid to the Commissioner after the end of the PAYE period in which the failure or incorrect deduction occurred.

Giving of notices

217 Giving of notices by and to Commissioner

- (1) Section 14 of the Tax Administration Act 1994 applies when this Act requires the Commissioner to give a notice to a person.
- (2) Section 14B of the Tax Administration Act 1994 applies when this Act requires a person to give a notice to the Commissioner.

218 Giving of notices to other persons

- (1) This section applies when this Act requires a person to give a notice to a person other than the Commissioner.
- (2) The person must give the notice in writing.
- (3) The person may use the methods set out in subsections (4) to (7) to give the notice, subject to any conditions described in those subsections.
- (4) The person may give the notice by personal delivery to an addressee who is not a corporate body.

- (5) The person may give the notice by personal delivery to an addressee that is a corporate body, if the personal delivery is made to the addressee's office during working hours.
- (6) The person may give the notice by an electronic means of communication to the addressee, if the person complies with the Electronic Transactions Act 2002.
- (7) The person may give the notice by posting it—
 - (a) to the street address of the addressee's usual or last known place of residence; or
 - (b) to the street address of any of the addressee's usual or last known places of business; or
 - (c) to any other address, if the addressee has notified the person that he or she accepts notices at the address.
- (8) A notice given by post is treated as having been given at the time it would have been delivered in the ordinary course of post.

Compare: 1994 No 166 s 14C

219 Consent to electronic transactions

A person who gives his or her electronic address to any other person under this Act is treated as having consented to use, provide, or accept information in an electronic form for all of the purposes of this Act and the Electronic Transactions Act 2002.

Compare: 2002 No 35 s 16

220 Special rules about giving of investment statements

- (1) Sections 217 to 219 apply to the giving of an investment statement under this Act as if it were the giving of a notice except that, if the person has given the Commissioner or the employer, as the case may be, a street address or post office box number, the investment statement must be sent in hard copy to that address in preference to its being sent electronically to any email address given by the person.
- (2) Subsection (3) applies if a person does not receive an investment statement—
 - (a) from an employer under section 43(a); or
 - (b) from the Commissioner under section 50(3)(c).
- (3) The investment statement must be treated for the purposes of the Securities Act 1978 as if it had been received by the person

immediately before the person is treated as having subscribed for securities in the scheme under section 48(2)(b) or 52(1).

Miscellaneous provisions

221 Refunds made by direct credit to bank account

- (1) A refund of contribution must be made by direct credit to a bank account nominated by the person entitled to the refund.
- (2) When a person claims a refund, the person must provide to the Commissioner the particulars of a bank account in New Zealand to which a direct credit of the amount of the refund is to be made.
- (3) However, if the Commissioner is satisfied that the application of subsections (1) and (2) would result in undue hardship to a person, or is not practicable, a refund of contribution may be made by other means acceptable to the Commissioner.
- (4) In this section, **bank account** means an account with a bank that is a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989 or a private savings bank or a credit union or a building society or the PSIS Limited.

Compare: 1994 No 166 s 184A

222 Role of Commissioner under this Act

- (1) The Commissioner has the function of ensuring oversight of those provisions of this Act that are administered in the Inland Revenue Department under section 224.
- (2) Without limitation, this includes the functions and powers of—
 - (a) requiring persons affected by this Act to verify certain matters with the Commissioner as requested by the Commissioner; and
 - (b) requiring persons to give notice to the Commissioner to ensure that this Act is complied with.

223 Use of information by Commissioner obtained under this Act and other Inland Revenue Acts

Despite anything in any other Act, nothing prevents the Commissioner or any officer of the Inland Revenue Department from—

- (a) using information obtained under this Act for the purposes of carrying into effect any of the Inland Revenue Acts; or
- (b) using information obtained under any of the Inland Revenue Acts for the purposes of carrying into effect the provisions of this Act.

224 Administration of Act

- (1) Parts 1 to 3 and Schedule 3 are administered in the Inland Revenue Department.
- (2) Part 4 and Schedules 1 and 2 are administered in the department of State that, with the authority of the Prime Minister, is responsible for the administration of those provisions.
- (3) This Part is administered in the department of State that, with the authority of the Prime Minister, is responsible for the administration of those provisions, and different departments of State may be authorised to administer different provisions of this Part.

225 Fee subsidies

- (1) The chief executive of the Department must pay any fee subsidy that is required to be paid under prescribed requirements in respect of a member of a KiwiSaver scheme in accordance with those prescribed requirements.
- (2) The chief executive may delegate the administration of all or any part of the administration of this section or of section 226 to 1 or more persons.
- (3) The delegation must be in writing.
- (4) Section 41 of the State Sector Act 1988 applies if the delegation is to a chief executive or to an employee (as those terms are defined in that Act).
- (5) If the delegation is to another person,—
 - (a) the delegation may not include the power to delegate under this section; and
 - (b) subject to any general or special directions given or conditions imposed by the chief executive, the person to whom the delegation is made may administer this section in the same manner and with the same effect as if this Act and any regulations made under this Act (and not the delegation) so provided; and

- (c) every person purporting to act under the delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

226 Crown contribution

- (1) The Crown must pay a contribution to the first KiwiSaver scheme of which a person (A) is a member,—
 - (a) in the case of a person to whom subpart 1 of Part 3 applies, as soon as practicable after 3 months after the Commissioner receives the first contribution in respect of a person; or
 - (b) in any other case, as soon as practicable after 3 months after the Commissioner is given notice that the person is a member of the KiwiSaver scheme.
- (2) The provider must credit the contribution on a pro rata basis across the investment products of the KiwiSaver scheme to which A has subscribed or been allocated.
- (3) The amount of the contribution that must be paid by the Crown is \$1,000 or such other amount as may be prescribed by the Governor-General by Order in Council.
- (4) A person who ceases being a member of any KiwiSaver scheme and subsequently becomes a member of a KiwiSaver scheme is not entitled to be paid a contribution under this section again.

227 Status of Crown contribution and fee subsidy for tax purposes

A Crown contribution paid in respect of a member of a KiwiSaver scheme under section 226 or a fee subsidy paid in respect of a member of a KiwiSaver scheme under regulations made under section 228(n) is not—

- (a) income for the purposes of the Income Tax Act 2004; or
- (b) a gift for the purposes of the Estate and Gift Duties Act 1968.

228 Regulations

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

- (a) prescribing forms for the purpose of this Act, and prescribing—

- (i) specified information or documents to be included or attached to forms:
 - (ii) forms to be signed by specified persons:
- (b) prescribing requirements with which documents that are sent, given, or delivered must comply (including documents sent, given, or delivered for registration) and prescribing information that must be included in any notice given under this Act that is in addition to the information specified in this Act:
- (c) prescribing fees payable to the Commissioner or the Government Actuary in respect of any matter under this Act or the manner in which fees may be calculated:
- (d) prescribing procedures, requirements, and other matters for the KiwiSaver schemes register, including matters relating to—
 - (i) the operation of that register:
 - (ii) access to that register:
 - (iii) the location of, and hours of access to, that register:
- (e) recognising specific foreign superannuation schemes or classes of specific foreign superannuation schemes that are based in named countries as schemes to which funds can be transferred on permanent emigration under the provision implied by clause 14 of the KiwiSaver scheme rules:
- (f) prescribing circumstances for the purposes of clause 8(3)(a) of the KiwiSaver scheme rules or prescribing who is a qualifying person for the purpose of clause 8(3)(c)(ii) of the KiwiSaver scheme rules:
- (g) prescribing requirements in relation to annual returns for the purposes of section 125, including the date by which the return must be provided and the 12-month period to which it must relate (by reference to annual dates):
- (h) prescribing the maximum number of persons that the Minister may appoint under section 177:
- (i) specifying information that must be contained in the instrument of appointment referred to in section 177:
- (j) prescribing the information or matters that must be included in the information packs referred to in Part 2:

- (k) providing for operational matters and electronic compatibility between the Commissioner and all or any class of providers, including—
 - (i) requiring the Commissioner and all or any class of providers to sign scheme provider agreements before registration of a scheme as a KiwiSaver scheme; and
 - (ii) providing for the updating of those agreements after registration; and
 - (iii) specifying the matters that may be required to be covered in all or any of those agreements:
- (l) prescribing circumstances for the purposes of section 169(1)(c):
- (m) providing for fees or charges that must be treated as fees for the purposes of this Act:
- (n) providing for the payment of fee subsidies in respect of members, or classes of members, of KiwiSaver schemes, and the setting of those fee subsidies or the manner in which those fee subsidies may be calculated (which may include mechanisms for capping fee subsidies):
- (o) providing for when fee subsidies referred to in paragraph (n) may or will be paid, and terms and conditions relating to payment and to the application of those contributions and subsidies, and how those terms and conditions may be enforced:
- (p) prescribing matters that are relevant to a determination or consideration as to whether a fee is unreasonable for the purposes of clause 2 of the KiwiSaver scheme rules or section 127:
- (q) prescribing circumstances in which the purchase of an estate in land enables a withdrawal under clause 8 of the KiwiSaver scheme rules:
- (r) prescribing matters that may be regarded as matters from which significant financial difficulties have arisen for the purposes of clause 11 of the KiwiSaver scheme rules:
- (s) prescribing what must be treated as reasonable efforts for the purposes of section 204:
- (t) exempting any person or class of persons or any transaction or class of transactions from compliance with any or all of the provisions of the Securities Act 1978 or

the Securities Regulations 1983 in connection with any or all KiwiSaver schemes:

- (u) varying any requirements of regulations made under the Securities Act 1978 in relation to investment statements of KiwiSaver schemes or providing for additional requirements to those contained in regulations made under the Securities Act 1978 in relation to investment statements of KiwiSaver schemes:
- (v) providing for any matters that are necessary for the administration of regulations made under paragraph (h) or (i) by the Department:
- (w) providing for any transitional or savings matters concerning the coming into force of this Act:
- (x) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

229 Regulations relating to mortgage diversion facility

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Finance, make regulations providing for a mortgage diversion facility that allows contributions to be withdrawn from KiwiSaver schemes and applied towards the payment of amounts secured by mortgages.
- (2) The Minister of Finance may make a recommendation under subsection (1) only if the Minister is satisfied that the mortgage diversion facility that is provided for in the regulations will be consistent with the following principles:
 - (a) there is no compulsion on providers to provide a mortgage diversion facility:
 - (b) there is no compulsion on mortgagees to allow amounts secured by mortgages to be paid via KiwiSaver contributions:
 - (c) the mortgage diversion facility is available in relation to a person at any time after 12 months have expired since the earlier of—
 - (i) the date that the Commissioner received the first contribution in respect of the person; or
 - (ii) the date that a provider received the first contribution in respect of that person's membership of a KiwiSaver scheme:

- (d) the mortgage diversion is available only in relation to a mortgage over the person's principal residence (for example, the family home):
 - (e) the mortgage diversion may apply for the remainder of the term of the mortgage after the diversion is made available:
 - (f) after the total amount secured by the mortgage is paid, ongoing contributions are retained automatically in the person's KiwiSaver account:
 - (g) if the person chooses to cease the mortgage diversion facility before the amounts secured by the mortgage are fully paid, the contributions are redirected towards retirement savings:
 - (h) the provider, and not the Commissioner, is responsible for paying the amount diverted under the mortgage diversion facility:
 - (i) the diverted amount is capped at no more than half of the person's contribution rate and is a fixed dollar amount:
 - (j) employer contributions may not be diverted:
 - (k) the facility is available for new mortgages and existing mortgages.
- (3) The regulations may specify all or any of the terms and conditions that apply to the mortgage diversion facility, including—
- (a) which types of mortgages qualify for participation in the diversion facility; and
 - (b) what a scheme must do to participate in the mortgage diversion facility (for example, in relation to notification); and
 - (c) how the regulations affect the trust deed (for example, whether all or any of the terms and conditions in the regulations are implied terms of the trust deed); and
 - (d) what happens if the scheme decides to terminate participation in the mortgage diversion facility; and
 - (e) whether payment via the mortgage diversion facility counts as payment by the mortgagor for the purpose of the terms of the mortgage; and
 - (f) any other matters.

- (4) If a provider chooses to participate in the mortgage diversion facility, any withdrawal made in accordance with those regulations must be treated as if it were a withdrawal that is permitted under the KiwiSaver scheme rules.

230 Regulations relating to default KiwiSaver providers

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the following purposes:
- (a) providing for matters that may be treated by the Minister as a significant breach of an instrument of appointment for the purposes of section 184(2):
 - (b) providing for procedures for the purpose of—
 - (i) the Minister notifying a default KiwiSaver provider that the Minister considers the provider is in breach of a term or condition of the instrument of appointment and the possible consequences:
 - (ii) facilitating resolution of any dispute between the Minister and a default KiwiSaver provider about whether the KiwiSaver provider is in breach of the instrument of appointment or the consequences that should apply:
 - (iii) setting out any procedures that will apply before revocation of an instrument of appointment by the Minister under section 184(2):
 - (c) requiring the provider of a scheme that is or was a scheme provided under an instrument of appointment to do any act or thing following any terminating event under section 185 including, without limitation,—
 - (i) requiring the members of the scheme to be notified of the terminating event or of any other matter and specifying time frames for notification to occur:
 - (ii) prescribing any advice, information, or documents that must accompany any notification given under subparagraph (i):
 - (iii) requiring the provider to do any act or thing or carry out any prescribed procedures to facilitate or enable the transfer of members to another KiwiSaver scheme in accordance with this Act:
 - (iv) requiring the provider to report to any specified person or persons, or to produce to any specified

person or persons, any papers, documents, records, or things in respect of the scheme, at specified times or contingent on any specified events:

- (d) requiring the provider of any new scheme to which members are or are to be transferred from a scheme that is subject to a terminating event under section 185 to do any act or thing or to carry out any prescribed procedures to facilitate or enable the transfer of members to the provider's KiwiSaver scheme.
- (2) However, regulations made under subsection (1)(c)(iii) may not require a provider to report to any person or produce any papers, documents, or records, after the provider's scheme no longer has any members who became members of the scheme under section 52.

231 Amendments to other Acts

The enactments specified in Schedule 3 are amended in the manner shown in that schedule.

232 Transitional provision requiring all KiwiSaver contributions to be paid to Commissioner in first 3 months

- (1) Every person who wishes to pay an amount of contribution in the first 3 months must pay it to the Commissioner.
 - (2) No provider may accept payment of any amount of contribution in the first 3 months.
 - (3) Subparts 2 and 3 of Part 3 apply to the amount of contribution.
 - (4) **First 3 months** means the 3 months starting on the date of commencement of the automatic enrolment rules.
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Schedule 1

KiwiSaver scheme rules

1 Enforceability

The KiwiSaver scheme rules are enforceable by the trustees or any member of the scheme.

2 Fees must not be unreasonable

- (1) The following persons must not charge a fee that is unreasonable:
 - (a) the trustees of the scheme;
 - (b) the administration manager of the scheme;
 - (c) the investment manager of the scheme;
 - (d) the promoter of the scheme;
 - (e) any other person who charges a fee for services in relation to the provision of a KiwiSaver scheme.
- (2) If the Court is satisfied, on the application of a member, that any of the persons referred to in subclause (1) have charged a fee that is unreasonable, it may order that the fee be annulled or reduced.
- (3) The Court may make any other order it thinks fit for the purpose of giving effect to an order under subclause (2).
- (4) An application for an order may be made within 1 year of the day that the fee is imposed or debited.
- (5) In determining whether a fee is unreasonable for the purposes of this clause, a 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.

3 Minimum contribution for employee member

- (1) For each pay period, an employee member must contribute to the KiwiSaver scheme at least the minimum contribution rate of that employee's salary or wages in accordance with sections 64 to 68.
- (2) Subclause (1) does not apply if the employee is taking a contributions holiday.

- (3) For the purposes of this clause, a member does not contribute to the KiwiSaver scheme, if the contributions are made for a purpose other than—
- (a) to enable the payment of future benefits to the member under the KiwiSaver scheme; or
 - (b) to enable the payment of fees in respect of the KiwiSaver scheme.

4 Lock-in of funds to KiwiSaver end payment date

- (1) Subject to other permitted withdrawals, a member may not make a withdrawal from the KiwiSaver scheme until the KiwiSaver end payment date or a date after that date.
- (2) For the purposes of subclause (1), the KiwiSaver end payment date is the later of—
- (a) the date on which the member reaches the New Zealand superannuation qualification age; or
 - (b) the date on which the member has been a member of a KiwiSaver scheme for 5 years.
- (3) A member is entitled to withdraw an amount equal to that member's accumulation on the later date referred to in subclause (2).
- (4) Nothing in this clause requires a member to withdraw from the KiwiSaver scheme on the date specified in subclause (2).
- (5) A person ceases, at the option of the provider of the KiwiSaver scheme, to be a member of the KiwiSaver scheme if—
- (a) the balance in all of the member's accounts reaches zero; and
 - (b) the provider gives notice to the member that the person's membership is terminated.

5 Trustees must pay permitted withdrawal as lump sum

- (1) The trustees must, at the member's request, pay a permitted withdrawal as a lump sum.
- (2) Nothing in subclause (1) prevents a member purchasing annuities or a pension from all or part of the member's accumulation or member's interest that is withdrawn by that member.

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

A trustee may reasonably require a member who applies to make a permitted withdrawal to provide evidence of the facts necessary to establish the member's right to make the withdrawal.

7 Release of funds required under other enactments

- (1) The trustees must comply with the provisions of any enactment that requires them to release funds from the KiwiSaver scheme in accordance with that enactment.
- (2) A requirement to release funds from the KiwiSaver scheme under any enactment includes a requirement by order of any court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

8 Withdrawal for purpose of purchase of first home

- (1) This clause applies to a member if,—
 - (a) in the case of a member in respect of whom the Commissioner has received contributions, at least 3 years have expired after the Commissioner received the first contribution in respect of the person (whether or not a contribution in relation to the scheme of which the member is currently a member); and
 - (b) in the case of any other member, the person has been a member of 1 or more KiwiSaver schemes for a period of 3 years or more; and
 - (c) in the case of any member, the member has not made a withdrawal under this clause before (whether or not from the member's current KiwiSaver scheme or from a KiwiSaver scheme to which the person previously belonged).
- (2) Every amount of contribution that is deducted from salary or wages under this Act is treated, for the purpose of subclause (1)(a), as received by the Commissioner on the 15th day of the month in which the deduction is made.
- (3) A member to whom this clause applies may make a withdrawal from the KiwiSaver scheme of which the member is currently a member for the purchase of an estate in land (whether alone or as a joint tenant or tenant in common) if—

- (a) the purchase is made in the prescribed circumstances;
or
 - (b) both of the following apply:
 - (i) the land is, or is intended to be, the principal place of residence for the member or for the member and members of the member's family;
and
 - (ii) the member has not, at any time before applying to make a withdrawal under this clause (whether before or after becoming a member of the KiwiSaver scheme) held an estate in land (whether alone or as a joint tenant or tenant in common); or
 - (c) both of the following apply:
 - (i) the land is, or is intended to be, the principal place of residence for the member or for the member and members of the member's family;
and
 - (ii) the member is a qualifying person under the regulations.
- (4) A member may not make a withdrawal under this clause of more than an amount equal to the member's accumulation less the amount of the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution) at the time of the withdrawal.
- (5) If a person holds an estate in land in either of the following circumstances, that estate must be disregarded for the purposes of subclause (3)(b)(ii):
- (a) the person holds the estate in land as a bare trustee:
 - (b) the person holds the estate in land as a trustee who—
 - (i) is a discretionary, contingent, or vested beneficiary under the relevant trust; but
 - (ii) has no reasonable expectation of being entitled to occupy the land as the principal place of residence for the person or the person's family until the death of the person who currently occupies the land (the **occupier**) or the death of the occupier's survivor.
- (6) In this clause, **estate** means a fee simple estate, a leasehold estate, or a stratum estate.

- (7) It is a condition of subclause (3) that—
- (a) any withdrawal made under that provision must be paid to the member's solicitor; and
 - (b) the trustees may require from the member's solicitor, before payment of the withdrawal,—
 - (i) a copy of an agreement for the sale and purchase of the estate in land showing the member as purchaser; and
 - (ii) an undertaking that the agreement is unconditional at the time the trustees make the request; and
 - (iii) an undertaking that the funds will be paid to the vendor as part of the purchase price or, if the settlement is not completed by the due date or any extended date, repaid to the trustees on account of the member.
- (8) This clause is subject to the terms of any participation agreement that restricts or prevents the withdrawal of employer vested contributions in relation to the member.

9 Withdrawal by member's personal representative

If a member dies, the trustees must, on application by the member's personal representative, pay to that person an amount that is equal to the value of the member's accumulation at the date on which the application is accepted as part of the member's estate.

10 Withdrawal in cases of significant financial hardship

- (1) If the trustees are reasonably satisfied that a member is suffering or is likely to suffer from significant financial hardship, the member may, on application to the trustees in accordance with clause 13, make a significant financial hardship withdrawal in accordance with this clause.
- (2) The amount of that significant financial hardship withdrawal may, subject to the trustees' approval under subclause (3), be up to the value of the member's accumulation less the amount of the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution) on the date of withdrawal.
- (3) The trustees—

- (a) must be reasonably satisfied that reasonable alternative sources of funding have been explored and have been exhausted; and
- (b) may direct that the amount withdrawn be limited to a specified amount that, in the trustees' opinion, is required to alleviate the particular hardship.

11 Meaning of significant financial hardship

- (1) For the purposes of these rules, **significant financial hardship** includes significant financial difficulties that arise because of—
 - (a) a member's inability to meet minimum living expenses; or
 - (b) a member's inability to meet mortgage repayments on his or her principal family residence resulting in the mortgagee seeking to enforce the mortgage on the residence; or
 - (c) the cost of modifying a residence to meet special needs arising from a disability of a member or a member's dependant; or
 - (d) the cost of medical treatment for an illness or injury of a member or a member's dependant; or
 - (e) the cost of palliative care for a member or a member's dependant; or
 - (f) the cost of a funeral for a member's dependant; or
 - (g) the member suffering from a serious illness.
- (2) In this section, **serious illness** has the meaning given to it by clause 12(3).

12 Withdrawal in cases of serious illness

- (1) In addition to a withdrawal on the grounds of serious illness under clause 11(1)(g), if the trustees are reasonably satisfied that a member is suffering from serious illness, the member may, on application to the trustees in accordance with clause 13, make a serious illness withdrawal in accordance with this clause.
- (2) The amount of that serious illness withdrawal may be up to the value of the member's accumulation less the amount of the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution) on the date of withdrawal.

- (3) In this clause, **serious illness** means an injury, illness, or disability—
- (a) that results in the member being unable to engage in work for which he or she is suited by reason of experience, education, or training, or any combination of those things; or
 - (b) that poses a serious and imminent risk of death.

13 Application for withdrawal for significant financial hardship or serious illness

- (1) The application for a withdrawal under clause 10 or 12 must be in the form required by the trustees and must include a completed statutory declaration in respect of the member's assets and liabilities.
- (2) The trustees—
- (a) may require that any medical matter asserted in support of the application for withdrawal be verified by medical evidence:
 - (b) may require that any other documents, things, or information produced in support of the application be verified by oath, statutory declaration, or otherwise.

14 Withdrawal or transfer to foreign scheme in cases of permanent emigration

- (1) A member may, on application to the trustees, and no earlier than 1 year after the member's permanent emigration from New Zealand, withdraw an amount equal to the value of the member's accumulation on the date of withdrawal.
- (2) A member may, on application to the trustees, at any time after the member's permanent emigration from New Zealand, have the trustees transfer the member's accumulation to a foreign superannuation scheme authorised for that purpose under regulations made under section 228.
- (3) An application under subclause (1) or (2) must be in the form required by the trustees and must include—
- (a) a completed statutory declaration in respect of the member to the effect that the member has permanently emigrated from New Zealand; and
 - (b) proof to the satisfaction of the trustees—
 - (i) of the member's departure from New Zealand (for example, evidence of confirmed travel

- arrangements, passport evidence, and evidence of any necessary visas); and
- (ii) that the member has resided at an overseas address at some time during the year following the member's departure from New Zealand.
- (4) The trustees may require that any other documents, things, or information produced in an application under subclause (1) or (2) be verified by oath, statutory declaration, or otherwise.

15 Contributions holiday

A employee member may, at any time, take a contributions holiday in accordance with subpart 4 of Part 3.

16 Transfer of members

- (1) A member may, at any time during that person's membership of a KiwiSaver scheme, on application to the trustees, apply to have the trustees transfer the member's accumulation to another KiwiSaver scheme.
- (2) On application by a member, the trustees must, if the other KiwiSaver scheme indicates it will accept that person as a member, transfer the member's accumulation to the other KiwiSaver scheme in accordance with subpart 3 of Part 2.
- (3) A member may, at any time during that person's membership of a KiwiSaver scheme, be transferred to another KiwiSaver scheme in the circumstances provided for in, and in accordance with, this Act.
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ss 133, 134, 136, 137, 140,
149, 150

Schedule 2

Matters to be specified in application for registration or registration proposal

Part 1

Matters to be specified in application for registration of KiwiSaver scheme

- 1 The name of the proposed KiwiSaver scheme (the **scheme**).
- 2 The proposed commencement date of the scheme.
- 3 The names of—
 - (a) the trustees of the scheme and, where a trustee is a company, the directors of that company; and
 - (b) 1 or more independent trustees; and
 - (c) every administration manager, investment manager, and insurer of the scheme (as applicable); and
 - (d) any actuaries, auditors, and solicitors acting for the scheme (or the names of their firms).
- 4 The name and address for all of the trustees of the scheme who are New Zealand residents and, in a case in which any of the trustees is a corporate trustee, the name and contact address of at least 1 of the directors of that trustee who is a New Zealand resident.
- 5 The name and address of the person to whom all correspondence from the Government Actuary should be sent.
- 6 The date upon which the financial year of the scheme ends.
- 7 A copy of the most recent annual report on, or accounts of, the scheme (if any).
- 8 A copy of the explanatory material that has been, or is intended to be, issued to members or potential members.
- 9 A statement of the fees that will be charged in the period prior to the next annual report or the basis on which those fees will be calculated.

Part 1—*continued*

- 10 A certificate signed by the Commissioner that the provider has entered into a scheme provider agreement with the Commissioner that deals with any matters specified in regulations made under section 228(k) to the satisfaction of the Commissioner.
- 11 A certificate by the trustees or the trustees' solicitor stating that the trust deed—
- (a) complies with section 7 of the Superannuation Schemes Act 1989 (as applied by section 119); and
 - (b) does not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by sections 120 and 121); and
 - (c) does not contain any provision that is contrary to the KiwiSaver scheme rules (as implied by section 126 and Schedule 1).

Part 2

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

- 1 The name of the proposed KiwiSaver scheme (the **scheme**).
- 2 The proposed commencement date of the scheme as a KiwiSaver scheme.
- 3 Confirmation of the status quo as previously advised to the Government Actuary or advice as to any changes in—
 - (a) the names of the trustees of the scheme and, if a trustee is a corporate trustee, the directors of that corporate trustee:
 - (b) the names of every administration manager, investment manager, and insurer of the scheme:
 - (c) the names of any actuaries, auditors, and solicitors acting for the scheme (or the names of their firms):
 - (d) the name and address for service of all of the trustees who are New Zealand residents and, in a case in which any of the trustees is a corporate trustee, the name and contact address of at least 1 of the directors of that trustee who is a New Zealand resident:

Part 2—*continued*

- (e) the name and address of the person to whom all correspondence from the Government Actuary should be sent:
 - (f) the date upon which the financial year of the scheme ends:
 - (g) a statement of the fees that will be charged in the period prior to the next annual report or the basis on which those fees will be calculated.
- 4 The name of 1 or more independent trustees except in cases in which section 116(2) applies.
- 5 A certificate signed by the Commissioner that the provider has entered into a scheme provider agreement with the Commissioner that deals with any matters specified in regulations made under section 228(k) to the satisfaction of the Commissioner.
- 6 A certificate by the trustees or the trustees' solicitor stating that the trust deed in its proposed amended form complies with the matters in clause 7.
- 7 The matters to be certified under clause 6 are that the trust deed in its proposed amended form—
- (a) complies with section 7 of the Superannuation Schemes Act 1989 (as applied by section 119); and
 - (b) does not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by sections 120 and 121); and
 - (c) does not contain any provision that is contrary to the KiwiSaver scheme rules (as implied by section 126 and Schedule 1).

Part 3

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

- 1 The name of the proposed KiwiSaver scheme and whether it is proposed to change the name of the existing registered superannuation scheme.
- 2 The proposed commencement date of the KiwiSaver scheme.

Part 3—*continued*

- 3 Confirmation of the status quo as previously advised to the Government Actuary or advice as to any changes in—
- (a) the names of the trustees of the scheme and, if a trustee is a company, the directors of that company:
 - (b) the names of every administration manager, investment manager, and insurer of the scheme:
 - (c) the names of any actuaries, auditors, and solicitors acting for the scheme (or the names of their firms):
 - (d) the name and address for service of all of the trustees who are New Zealand residents and, in a case in which any of the trustees is a corporate trustee, the name and contact address of at least 1 of the directors of that trustee who is a New Zealand resident:
 - (e) the name and address of the person to whom all correspondence from the Government Actuary should be sent:
 - (f) the date upon which the financial year of the scheme ends:
 - (g) a statement of the fees that will be charged in the period prior to the next annual report or the basis on which those fees will be calculated.
- 4 The name of 1 or more independent trustees except in cases in which section 116(2) applies.
- 5 A certificate signed by the Commissioner that the provider has entered into a scheme provider agreement with the Commissioner that deals with any matters specified in regulations made under section 228(k) to the satisfaction of the Commissioner.
- 6 A certificate by the trustees, the administration manager, or a solicitor stating that the trust deed in its proposed amended form, in so far as it relates to the proposed KiwiSaver scheme,—
- (a) complies with section 7 of the Superannuation Schemes Act 1989 (as applied by section 119); and
 - (b) does not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by sections 120 and 121); and

Part 3—*continued*

- (c) does not contain any provision that is contrary to the KiwiSaver scheme rules (as implied by section 126 and Schedule 1).
- 7 A certificate by the trustees, the administration manager, or a solicitor stating that—
- (a) the proposed amendments to the trust deed are not in breach of the provision implied by section 9 of the Superannuation Schemes Act 1989; and
 - (b) the trust deed in its proposed amended form, in so far as it relates to the existing registered superannuation scheme,—
 - (i) will comply with section 7 of the Superannuation Schemes Act 1989; and
 - (ii) will not contain any provision that is contrary to those implied by sections 8 to 10 of the Superannuation Schemes Act 1989 in so far as the provisions of the trust deed relate to the registered superannuation scheme.
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Schedule 3 Amendments to other Acts

s 231

Accident Compensation Act 1982 (1982 No 181)

Section 89(5) (as continued in effect by Part 8 of the Accident Rehabilitation and Compensation Insurance Act 1992): add:

“(g) subpart 1 of Part 3 of the KiwiSaver Act 2006.”

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

Section 86(2): insert after paragraph (ga):

“(gb) subpart 1 of Part 3 of the KiwiSaver Act 2006; or”.

Companies Act 1993 (1993 No 105)

Clause 2 of Schedule 7: insert after paragraph (e):

“(ea) all amounts payable to the Commissioner of Inland Revenue in accordance with section 167(2) of the Tax Administration Act 1994 as applied by section 67 of the KiwiSaver Act 2006:”.

Financial Transactions Reporting Act 1996 (1996 No 9)

New section 55A: insert after section 55:

“**55A This Act subject to section 203 of KiwiSaver Act 2006**

This Act is subject to section 203 of the KiwiSaver Act 2006.”

Income Tax Act 2004 (2004 No 35)

Section CS 2: insert after subsection (4):

“Withdrawals from KiwiSaver schemes for purpose of purchase of first home

“(4B) Section CS 1 does not apply to a withdrawal from a KiwiSaver scheme under clause 8 of the KiwiSaver scheme rules in the KiwiSaver Act 2006.”

New section CW 49B: insert after section CW 49:

“**CW 49B Interest paid under KiwiSaver Act 2006**

Interest paid by the Commissioner under section 84 of the KiwiSaver Act 2006 is exempt income.”

Section DV 4: insert after subsection (1):

“(1A) For the avoidance of doubt, section 144 of the KiwiSaver Act 2006 applies to a registered superannuation scheme that converts to a KiwiSaver scheme for the purpose of determining if subsection (1)(c) applies.”

Section NE 2(2)(a): insert “or, in the case of a contribution paid to the Commissioner under the KiwiSaver Act 2006, received by the

Income Tax Act 2004 (2004 No 35)—*continued*

Commissioner for payment to the superannuation fund” after “superannuation fund”.

Section NE 3: add:

- (2) Subsection (1), and whichever is applicable of sections NE 2(1), NE 2AA(2), NE 2AB, and NE 2A(2), do not apply to the specified superannuation contribution (the **current specified superannuation contribution**) to the extent to which it is—
- (a) a contribution to the employee’s KiwiSaver scheme; and
 - (b) not more than the lesser of—
 - (i) an amount calculated under subsection (3):
 - (ii) an amount calculated under subsection (4).
- (3) In subsection (2)(b)(i) the amount is calculated using the formula—
- $$0.04 \times \text{total salary or wages} - \text{previous exempt contributions.}$$
- (4) In subsection (2)(b)(ii) the amount is calculated using the formula—
- $$\text{total KiwiSaver contributions} - \text{previous exempt contributions.}$$
- (5) In the formulas,—
- (a) **total salary or wages** means the total salary or wages paid to the employee in the KiwiSaver calculation period, but excluding salary or wages for which there are no KiwiSaver contributions:
 - (b) **previous exempt contributions** means the total specified superannuation contributions for the employee, to the extent to which—
 - (i) those contributions are made in the KiwiSaver calculation period, but excluding the current specified superannuation contribution; and
 - (ii) subsection (2) applied to those contributions (excluding the current one):
 - (c) **total KiwiSaver contributions** means the total KiwiSaver contributions deducted from the salary or wages paid to the employee in the KiwiSaver calculation period.
- (6) In this section,—
- KiwiSaver calculation period** means, for the current specified superannuation contribution, a period—

Income Tax Act 2004 (2004 No 35)—*continued*

- (a) beginning with the later of—
 - (i) 1 year before when the employer makes the current specified superannuation contribution;
 - (ii) when the employer is first required to deduct KiwiSaver contributions from the employee's salary or wages; and
- (b) ending with when the employer makes the current specified superannuation contribution

KiwiSaver contributions means contributions required to be deducted under Part 3, subpart 1 of the KiwiSaver Act 2006

KiwiSaver scheme means a KiwiSaver scheme, as defined in section 4 of the KiwiSaver Act 2006

salary or wages means salary or wages, as defined in section 4 of the KiwiSaver Act 2006.

Definition of **employer monthly schedule** in section OB 1: insert after paragraph (f):

“(fb) for each employee in the month to which the schedule relates, if applicable, the amount of total KiwiSaver contribution deductions made under subpart 1 of Part 3 of the KiwiSaver Act 2006; and

“(fc) for each employee in the month to which the schedule relates, if applicable, the amount of employer contributions made under the KiwiSaver Act 2006 (net of any specified superannuation contribution withholding tax payable under the SSCWT rules); and”.

Paragraph (f) of the definition of **exempt interest** in section OB 1: add “; or”.

Definition of **exempt interest** in section OB 1: add:

“(g) payable by the Commissioner under section 84 of the KiwiSaver Act 2006”.

New definitions: insert, after the definition of **joint venture agreement** in section OB 1 the following definitions:

KiwiSaver calculation period is defined in section NE 3(6) (Specified superannuation contribution withholding tax to be deducted) for the purposes of that section

KiwiSaver contributions is defined in section NE 3(6) (Specified superannuation contribution withholding tax to be deducted) for the purposes of that section

Income Tax Act 2004 (2004 No 35)—*continued*

KiwiSaver scheme is defined in section NE 3(6) (Specified superannuation contribution withholding tax to be deducted) for the purposes of that section

Definition of **remittance certificate** in section OB 1: insert after paragraph (f):

“(fb) the total KiwiSaver contribution deductions made under subpart 1 of Part 3 of the KiwiSaver Act 2006; and

“(fc) the amount of specified superannuation contribution paid under the KiwiSaver Act 2006 and the amount of specified superannuation contribution withholding tax deducted; and”.

Paragraph (g) of the definition of **remittance certificate** in section OB 1: insert “(other than that shown in paragraph (fc))” after “tax deducted”.

Add to the definition of **salary or wages** in section OB 1 as paragraph (d):

(d) is defined in section NE 3(6) (Specified superannuation contribution withholding tax to be deducted) for the purposes of that section

Paragraph (c) of the definition of **specified superannuation contribution** in section OB 1: add “or, in the case of a contribution under the KiwiSaver Act 2006, is paid to the Commissioner for payment to the superannuation fund”.

Paragraph (a) of the definition of **superannuation fund** in section OB 1: insert “or a KiwiSaver scheme that is registered under the KiwiSaver Act 2006” after “Superannuation Schemes Act 1989”.

Paragraph (a) of the definition of **superannuation scheme** in section OB 1: insert after paragraph (a)(i):

“(ib) a KiwiSaver scheme that is registered under the KiwiSaver Act 2006; or”.

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

Section 123(2): insert after paragraph (i):

“(ia) subpart 1 of Part 3 of the KiwiSaver Act 2006; or”.

Insolvency Act 1967 (1967 No 54)

Section 104(1)(d): insert after subparagraph (vi):

“(via) all amounts payable to the Commissioner of Inland Revenue in accordance with section

Insolvency Act 1967 (1967 No 54)—continued

167(2) of the Tax Administration Act 1994 as applied by section 67 of the KiwiSaver Act 2006.”.

Social Security Act 1964 (1964 No 136)

Paragraph (a) of the definition of **cash assets** in section 61E: insert after subparagraph (ii):

“(ia) money withdrawn from a KiwiSaver scheme registered under the KiwiSaver Act 2006.”.

Definition of **cash assets** in section 61E: insert after paragraph (a):

“(ab) does not include any contributions to, or any member’s interest in, any KiwiSaver scheme that is registered under the KiwiSaver Act 2006; and”.

Definition of **exempt assets** in clause 4 of Part 2 of Schedule 27: insert after paragraph (e):

“(ea) any contributions to, or any member’s interest in, any KiwiSaver scheme that is registered under the KiwiSaver Act 2006, except the following:

“(i) money withdrawn from such a scheme:

“(ii) money that the member is entitled to withdraw from the scheme under clause 4(3) of the KiwiSaver scheme rules under that Act:

“(iii) money that the member has applied to withdraw and that would be a permitted withdrawal under those rules:”.

Superannuation Schemes Act 1989 (1989 No 10)

Definition of **superannuation scheme** or **scheme** in section 2(1): repeal and substitute:

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

Section 2(1): insert in its appropriate alphabetical order:

“**KiwiSaver scheme** has the meaning given to it in the KiwiSaver Act 2006”.

Insert after section 2:

“2A Definition of superannuation scheme

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

“(a) means—

Superannuation Schemes Act 1989 (1989 No 10)—*continued*

“(i) any trust established by its trust deed principally for the purpose of providing retirement benefits to beneficiaries who are natural persons or paying benefits to persons who are the trustees of a registered superannuation scheme or a KiwiSaver scheme; or

“(ii) any arrangement constituted under an Act of the Parliament of New Zealand, other than the Social Security Act 1964, principally for the purpose of providing retirement benefits to natural persons; but

“(b) does not include any scheme that is registered as a KiwiSaver scheme.

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

Section 9B: insert after subsection (1):

“(1A) This section is subject to section 9BAA.”

Insert after section 9B:

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

“(1) The requirement in section 9B to obtain the written consent of all the members and beneficiaries of a scheme does not apply if the Government Actuary approves the transfer under this section.

“(2) The Government Actuary may approve the transfer if, and only if, the Government Actuary is satisfied that—

“(a) the terms and conditions of the scheme to which the members or beneficiaries are to be transferred (**new scheme**) are no less favourable to members or beneficiaries than the terms and conditions of the scheme from which they are being transferred (**old scheme**); and

“(b) the transfer is otherwise reasonable in all the circumstances (including having regard to the value of the assets transferred from the old scheme to the new scheme); and

“(c) the procedure in section 9BAB has been followed.

Superannuation Schemes Act 1989 (1989 No 10)—*continued*

- “(3) The Government Actuary may decline to approve a transfer if the Government Actuary considers that the transfer would adversely affect the interests of all or any of the members and beneficiaries of the old scheme in any material way.
- “(4) In determining whether subsection (2) or (3) applies, the Government Actuary may—
- “(a) have regard to the likely effect of the new scheme on benefits to members and beneficiaries as a whole; and
 - “(b) have regard to any other matter that the Government Actuary considers relevant.
- “(5) The Government Actuary may publish, in any form that the Government Actuary considers fit, guidance as to matters that the Government Actuary considers relevant under this section (including principles that the Government Actuary may use to decide whether to approve the transfer).

“9BAB How approval under section 9BAA may be granted

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

Superannuation Schemes Act 1989 (1989 No 10)—*continued*

“(a) that the applicant has applied for approval to transfer the members and beneficiaries without their written consent; and

“(b) that the member or beneficiary may make submissions to the Government Actuary about the transfer.

“(4) The Government Actuary must have regard to any submission before deciding whether or not to give approval.

“(5) The Government Actuary may give approval subject to any terms and conditions that the Government Actuary may specify in the notice of approval, and the approval is effective only if the transfer is carried out in accordance with those terms and conditions.

“(6) To avoid doubt, any approval given under this section is subject to section 23.”

Insert after section 14(3):

“(4) This section is subject to section 124 of the KiwiSaver Act 2006.”

Tax Administration Act 1994 (1994 No 166)

Definition of **civil penalty** in section 3: repeal paragraph (d) and substitute:

“(d) a non-electronic filing penalty; or

“(e) a civil penalty under section 215 or 216 of the KiwiSaver Act 2006.”.

Paragraph (a)(iii) of the definition of **tax** in section 3: insert after subsubparagraph (C):

“(CB)an amount required to be deducted under subpart 1 of Part 3 of the KiwiSaver Act 2006.”.

Paragraph (c) of the definition of **tax** in section 3: add “and any contributions administered by the Commissioner under the KiwiSaver Act 2006”.

Section 4A(2): insert after paragraph (b):

“(bb) a contribution deduction under the KiwiSaver Act 2006 is deemed to be made when payment is made of the net amount of any source deduction payment.”.

Section 4A(2)(c) and (d): insert “or paragraph (bb)” after “or paragraph (b)”.

Insert in section 4A(3), after paragraph (b):

Tax Administration Act 1994 (1994 No 166)—*continued*

“(bb) deductions under the KiwiSaver Act 2006; or”.

Section 81(4): add:

- “(r) communicating to any person, being the Government Actuary or any person to whom the Government Actuary has delegated any of his or her functions, duties, or powers under this Act, any information, being information—
 - “(i) that the person is authorised by the Government Actuary to receive; and
 - “(ii) that the Commissioner considers is not undesirable to disclose and is reasonably necessary to enable the Government Actuary to perform any duty or function, or exercise any power, lawfully conferred by the KiwiSaver Act 2006.”

Insert, after section 85G:

**“85GB Government Actuary to provide information to
Commissioner for purpose of administration of
KiwiSaver Act 2006**

- “(1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the Government Actuary for the purpose of administration of the KiwiSaver Act 2006.
- “(2) For the purposes of this section, the Government Actuary or any person to whom the functions, duties, or powers of the Government Actuary are delegated, must, as soon as reasonably practicable after a request by the Commissioner, provide the Commissioner with the information that is requested by the Commissioner that the Government Actuary considers is not undesirable to disclose and is reasonably necessary to enable the Commissioner to exercise or perform any function, duty, or power lawfully conferred by the KiwiSaver Act 2006.
- “(3) The information referred to in subsection (2) must be provided to the best of the knowledge and belief of the person who provides the information, if the person does not have certain knowledge of the relevant matters.

Tax Administration Act 1994 (1994 No 166)—*continued***“85GC Use of information supplied under section 85GA**

“(1) If information is supplied to the Commissioner under section 85GB, the Commissioner may use the information in connection with the exercise or performance of any of the Commissioner’s duties, functions, or powers under the KiwiSaver Act 2006.

“(2) Section 85GB and this section apply despite any other provision of this Act.”

Section 138E(1)(e): insert after subparagraph (iv):

“(ivb) any of Parts 1 to 3 of the KiwiSaver Act 2006; or”.

Section 138L(2): insert after paragraph (a):

“(ab) a civil penalty imposed under section 215 or 216 of the KiwiSaver Act 2006; or”.

Section 143A(5): add:

“(f) a deduction of contribution that was payable under subpart 1 of Part 3 of the KiwiSaver Act 2006.”

Definition of **income tax** in section 157(10): add:

“(g) an amount of unpaid contribution that was payable under subpart 1 of Part 3 of the KiwiSaver Act 2006.”

Section 183A(1): add:

“(h) a civil penalty imposed under section 215 or 216 of the KiwiSaver Act 2006.”

Section 183ABA: insert, after subsection (3):

“(3A) If this section applies and a civil penalty has been imposed under section 215 or 216 of the KiwiSaver Act 2006, the affected person may request the Commissioner to remit the penalty imposed.

“(3B) The Commissioner may remit the penalty referred to in subsection (3A) if the Commissioner is satisfied that—

“(a) the effect on the person of the occurrence of the qualifying event makes it equitable that the penalty be remitted; and

“(b) the person applied for the remission as soon as practicable.”

Section 183D(1): insert after paragraph (bb):

“(bc) a civil penalty imposed under section 215 or 216 of the KiwiSaver Act 2006; and”.

Section 183D(2): repeal and substitute:

Tax Administration Act 1994 (1994 No 166)—*continued*

“(2) In the application of this section, the Commissioner must have regard to the importance of the penalty, and interest under Part 7, in promoting compliance, especially voluntary compliance, by all taxpayers and other persons with the Inland Revenue Acts.”

Schedule: add the item “KiwiSaver Act 2006”.

Legislative history

27 February 2006	Introduction (Bill 21–1)
2 March 2006	First reading and referral to Finance and Expenditure Committee
21 August 2006	Reported from Finance and Expenditure Committee (Bill 21–2)
24 August 2006	Second reading
29 August 2006	Committee of the whole House (Bill 21–3)
30 August 2006	Third reading
