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as at 28 October 2021

National Provident Fund Restructuring Act 1990

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Treasury.

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An Act to provide for—

(a) the continuation of the National Provident Fund Board as the Board of Trustees of the National Provident Fund; and

(b) the restructuring of the National Provident Fund and its superannuation schemes and investment arrangements; and

(c) other incidental matters; and

(d) the repeal of the National Provident Fund Act 1950

1 Short Title and commencement

(1) This Act may be cited as the National Provident Fund Restructuring Act 1990.

(2) Except as provided in subsection (3), this Act shall come into force on the date on which it receives the Royal assent.

(3) Parts 2, 3, 5, and 6 (except sections 18, 19, 78, and 82) and Schedules 3, 4, 6, 7, and 8 shall come into force on 1 April 1991.

2 Interpretation

In this Act, unless the context otherwise requires,—

actuary means—

(a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or

(b) a person whom the Board considers to have an equivalent professional qualification

aircrew superannuation scheme means that part of the Standard Scheme for Local Authorities Superannuation (including Harbourmasters and (Ships') Pilots) which is known as the Aircrew Superannuation Scheme

beneficiary, in relation to a scheme, means a natural person who is eligible to receive a benefit from the scheme

benefit means any lump sum, annuity, pension, allowance, refund, or other payment arising from membership of a superannuation scheme, benefit plan, or other arrangement having a similar purpose (other than any reduction or potential reduction in a contribution rate or any reversion of property on a winding up of a superannuation scheme)

Board means the National Provident Fund Board established by the National Provident Fund Act 1950 and as continued in existence after the transfer day as the Board of Trustees of the National Provident Fund under section 12

corporate contributor, in relation to a scheme, means any person—

(a) who is a contributor to that scheme; and

(b) whose contributions are made solely for the purpose of subsidising the contributions of a natural person or obtaining a benefit for a natural person; and

(c) who does not, as a result of those contributions, personally become eligible to receive a benefit

Crown means the Sovereign in right of New Zealand

DBP annuitants scheme means the scheme to be established under section 41(2)(a)

DBP contributors scheme means the scheme to be established under section 41(2)(b)

debt security has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

dedicated reserves means the amounts (other than amounts that are free reserves) that are shown in the records of the Board as at the beginning of the transfer day as being reserves attributable to a particular scheme or schemes

defined benefit scheme means any existing scheme that is referred to in Part 3 of Schedule 1 and, in relation to any period of time on and after the transfer day, means the DBP annuitants scheme and the DBP contributors scheme

defined contribution scheme means any existing scheme other than—

(a) a defined benefit scheme:

(b) the aircrew superannuation scheme:

(c) an old public scheme

employee includes any person who is engaged to work, or works, under a contract of service or apprenticeship or a contract for services

employer means any person who pays, or is liable to pay, to any person (being an employee within the meaning of this section) any earnings as an employee

equity security has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

existing investment arrangement means any investment arrangement that is referred to in Part 2 of Schedule 1

existing scheme or **scheme**—

(a) means any superannuation scheme, benefit plan, or other arrangement having a similar purpose that is referred to in Part 1 of Schedule 1; and

(b) includes any such scheme, plan, or other arrangement after it has, from time to time, been reconstituted, amended, amalgamated, or divided in accordance with its trust deed or this Act or any other Act; and

(c) includes, on and after the transfer day, the DBP annuitants scheme, the DBP contributors scheme, and the aircrew superannuation scheme; and

(d) includes any trust fund or property held in respect of any scheme, plan, or arrangement referred to in this definition

free reserve means each amount that is shown in the records of the Board as at the beginning of the transfer day as being the share of the Fund attributable to—

(a) each of the old public schemes, less an amount certified by an actuary as equating as at that time with the value of the liabilities of that scheme (including any reasonable expectation of future increases in benefits based on past practice); or

(b) the accumulated reserves of the arrangement known as the additional benefit plan

Fund means the National Provident Fund established by the National Provident Fund Act 1950

GAT subsidiary—

(a) means a body identified as such in the proposal; and

(b) includes, where the body is a unit trust—

(i) which has more than 1 pool of property, each such pool; and

(ii) the Board as trustee of that unit trust or pool

global asset trust means the trust referred to in clause 2 of Schedule 2 which is to be established in accordance with the proposal

instrument includes—

(a) any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it, or a copy of it, were lodged, filed, or registered under any enactment; and

(b) any judgment, order, or process of a court

liabilities means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere)

local authority—

(a) means a local authority within the meaning of the Local Government Act 2002; and

(b) includes any body that, immediately before the repeal of the Local Authorities Loans Act 1956 on 1 July 1998, was a local authority within the meaning of Part 1 of that Act, whether by virtue of section 2 of that Act, or of any Order in Council under that Act, or by virtue of any other Act; and

(c) includes any body that is declared by an enactment to be a local authority for the purposes of the National Provident Fund Act 1950 or this Act

managed investment product has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

management,—

(a) in relation to any existing scheme, includes administration, and management of the investments, of the scheme:

(b) in relation to the global asset trust, includes administration, and management of the investments, of the global asset trust:

(c) in relation to any GAT subsidiary that is a unit trust, includes administration, and management of the investments, of that unit trust,—

and **manage** and **manager** have corresponding meanings

market value means—

(a) for the purpose of Schedule 2, the market value calculated according to the accounting policies applied by the Board in the 1989–1990 financial period, or such other criteria as may be agreed between the Minister and the Board:

(b) for any other purpose, the market value calculated according to the same criteria as those applied by the Board in the preparation of the most recent annual reports for the existing schemes, or such other criteria as may be agreed between the Minister and the Board at the time that the calculation is made

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

Minister means the Minister of Finance

NPF group company means any company that, at any time before the date on which this Act receives the Royal assent, was a subsidiary of the Board within the meaning of section 158 of the Companies Act 1955, or would have been so if subsection (3)(a) of that section did not apply

old public scheme means any of the following schemes:

(a) the Level Premium Scheme; or

(b) the Annual Single Premium Scheme; or

(c) the Post-60 Scheme; or

(d) the Staff Pension Scheme; or

(e) the National Superannuation Scheme for Farm Workers

participatory security has the same meaning as in section 2 of the Securities Act 1978

pool, in relation to the global asset trust or a GAT subsidiary which is a unit trust, means a pool of property and liabilities forming, subject to section 25(1)(b), a separate and distinct fund of the global asset trust or unit trust

property means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and includes, without limiting the generality of the foregoing,—

(a) units in the global asset trust and any GAT subsidiary which is a unit trust:

(b) choses in action and money:

(c) goodwill:

(d) rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject

of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

proposal means the proposal approved by the Governor-General by Order in Council under section 9, as amended in accordance with section 10 or section 10A, but does not include the proposed trust deeds referred to in section 7(1)

registered scheme has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

rights means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective

solicitor means a person enrolled as a barrister and solicitor of the court under or by virtue of the Law Practitioners Act 1982

superannuation scheme means a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013), and includes each existing scheme

transfer day means 1 April 1991

trust deed means any trust deed in respect of any scheme, and includes any amendment, replacement, or consolidation of any trust deed

trust fund means a trust fund for an existing scheme that is established as a result of the proposal

unclaimed money means any money—

(a) that is or was payable to any person out of the Fund or any trust fund; and

(b) for which no claim or demand has been made by or on behalf of that person; and

(c) that remains as part of the Fund or any trust fund in case any person establishes a lawful claim to the money.

Compare: 1986 No 129 s 2; 1989 No 10 s 2

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

Section 2 **debt security**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2 **equity security**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2 **Crown**: editorial change made by the PCO, on 14 August 2024 under sections 86(1) and 87(a) of the Legislation Act 2019 (2019 No 58).

Section 2 **existing scheme** or **scheme** paragraph (b): amended, on 29 October 1997, by section 3 of the National Provident Fund Restructuring Amendment Act 1997 (1997 No 83).

Section 2 **Government Actuary**: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 2 **local authority**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2 **managed investment product**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2 **market value** paragraph (b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2 **proposal**: amended, on 8 May 1992, by section 2 of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

Section 2 **registered scheme**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2 **superannuation scheme**: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

3 Act to bind the Crown

This Act shall bind the Crown.

Part 1
Restructuring of National Provident Fund

Proposal for restructuring of Fund

4 Preparation of proposal for restructuring of Fund

The Board shall, not later than the date that is 4 months before the transfer day (or such other date as the Minister and Board may agree), submit to the Minister—

(a) a draft proposal for the restructuring of the Fund which complies with sections 5 to 7; and

(b) a certificate from an actuary—

(i) confirming that the requirements of section 6 have been satisfied; and

(ii) setting out the basis for calculating the interest in the Fund that is attributable to any existing scheme or investment arrangement.

5 Matters to be provided for in proposal

(1) The proposal—

(a) shall specify or provide for each of the matters specified in Schedule 2 in the manner specified in that schedule, except to the extent (if any) otherwise agreed in writing by the Board and the Minister:

(b) shall include such other matters relating to the restructuring of the Fund as the Board and the Minister may agree.

(2) Nothing in subsection (1) shall limit the matters that may be included in the proposal.

6 Principles governing restructuring of Fund

In preparing a draft proposal, the Board shall—

(a) comply with section 5; and

(b) subject to paragraph (a), ensure that the restructuring of the Fund is fair and equitable to all members and other beneficiaries of the existing schemes and to all persons who have deposited or invested money pursuant to the existing investment arrangements.

7 Matters to accompany draft proposal, etc

(1) The draft proposal shall be accompanied by—

(a) the proposed trust deed for the global asset trust; and

(b) the proposed trust deed for any GAT subsidiary that is a unit trust; and

(c) the proposed trust deeds to be prepared in respect of the DBP annuitants scheme, the DBP contributors scheme, and the aircrew superannuation scheme.

(2) The Board shall supply to the Minister such additional information relating to the draft proposal as the Minister may from time to time require at any time before the date which is 1 month before the transfer day.

8 Changes to draft proposal by Minister

(1) The Minister shall,—

(a) not later than the date that is 2 months after the day on which the Minister receives the draft proposal referred to in section 4 (or such other date as the Minister and Board may agree); and

(b) after consulting the Government Actuary and, where the Minister proposes to require changes to be made to the draft proposal, the Board,—

give written advice to the Board as to whether the Minister requires changes to be made to the draft proposal and, if so, the nature of those changes.

(2) The Minister shall not require any changes to be made to the draft proposal that would be inconsistent with sections 5 and 6.

(3) The Board shall, not later than the date that is 35 days before the transfer day (or such other date as the Minister and Board may agree) submit to the Minister a final draft proposal consisting of the draft proposal submitted by it under section 4, any changes required by the Minister under subsection (1) of this section (except to the extent, if any, that the Minister has agreed to waive those changes), and any other changes agreed by the Minister and the Board.

9 Approval of proposal by Order in Council

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve any draft proposal prepared in accordance with this Part.

(2) The Minister shall not make a recommendation for the purpose of this section unless he or she is satisfied that sections 5 to 8 have been complied with.

(3) The Order in Council under this section—

(a) shall identify the draft proposal approved, but need not incorporate it in the order; and

(b) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 9(3)(b): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

10 Amendment of proposal by Order in Council

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve any amendment to the proposal at any time or times after it has been approved under section 9 and before the transfer day.

(2) The Minister shall not make a recommendation for the purposes of this section—

(a) unless he or she is satisfied that the proposal as amended complies with sections 5 and 6; and

(b) unless the amendment is approved in writing by the Board.

(3) Any Order in Council under this section—

(a) shall identify the amendment approved, but need not incorporate it in the order; and

(b) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 10(3)(b): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

10A Amendment of proposal after transfer day

(1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, approve any amendment to the proposal at any time or times after the transfer day.

(2) The Minister shall not make a recommendation for the purposes of this section unless—

(a) he or she is satisfied that the amendment is necessary for the purposes of correcting any error in the proposal as approved under section 9 or is of a purely technical nature; and

(b) he or she is satisfied that the proposal as amended complies with sections 5 and 6; and

(c) the amendment is approved in writing by the Board.

(3) Any Order in Council under this section—

(a) shall identify the amendment approved, but need not incorporate it in the order; and

(b) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); but

(c) comes into effect in accordance with subsection (4), even if it is not yet published.

(4) Every amendment approved under this section shall be deemed to have effect on and from the transfer day and the provisions of this Act shall apply to the proposal as so amended accordingly.

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 10A: inserted, on 7 November 1991, by section 2 of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Section 10A(3)(b): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 10A(3)(c): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Implementation of proposal for restructuring of Fund

11 Implementation of proposal

(1) The Board shall, as soon as practicable after the proposal has been approved by Order in Council, arrange for the implementation of the proposal.

(2) Any documents executed, and all other arrangements made, for the purpose of implementing the proposal shall become effective as at the transfer day.

Part 2
Continuation and renaming of National Provident Fund Board

12 Continuation of Board

(1) There shall continue to be a body corporate which shall be the same body corporate as that existing under the name of the National Provident Fund Board immediately before the commencement of this Part.

(2) Upon the transfer day the Board shall be renamed the Board of Trustees of the National Provident Fund.

(3) The Board is a body corporate with perpetual succession and a common seal and shall have and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

13 Membership of Board

(1) The Board shall consist of no fewer than 4 members appointed from time to time by the Minister.

(2) One member of the Board shall be appointed by the Minister as the chairperson of the Board.

14 Continuation in office of existing members of Board

(1) The chairman and members of the Board established under the National Provident Fund Act 1950 holding office immediately before the transfer day shall, subject to subsection (2), continue to be the chairperson and members respectively of the Board on and after the transfer day.

(2) The chairperson and members of the Board who continue to hold office under this section shall hold office during the pleasure of the Minister.

15 Members of Board appointed after transfer day

(1) Any appointment to the Board on or after the transfer day (other than in accordance with section 14) shall be made only after—

(a) consultation by the Minister with the groups identified in Schedule 3 and with such other groups or persons as the Minister determines; and

(b) consideration by the Minister of any recommendations that any such groups or persons may make.

(2) Any member of the Board who is appointed under this section shall be appointed for such term not exceeding 3 years as the Minister shall specify in the instrument appointing that member.

(3) Any such member may, at any time during his or her term of office, be removed from office by the Minister by notice in writing.

(4) Any such member shall be eligible for reappointment from time to time.

(5) Where the term for which any such member has been appointed expires, that member, unless sooner removed from office under subsection (3) or vacating office under clause 1 of Schedule 4, shall continue to hold office, by virtue of the appointment for the term that has expired, until—

(a) that member is reappointed; or

(b) a successor to that member is appointed; or

(c) that member is informed in writing by the Minister that the member is not to be reappointed and that a successor to that member is not to be appointed.

16 Board to be restricted to existing schemes and existing investment arrangements

(1) The Board shall not establish or offer any superannuation scheme, benefit plan, or other arrangement having a similar purpose other than—

(a) an existing scheme:

(b) an existing investment arrangement:

(c) the global asset trust.

(2) The Board shall not carry on any business other than—

(a) through or in respect of an existing scheme, an existing investment arrangement, the global asset trust, a GAT subsidiary, or a company that is wholly owned by the Board as trustee of the global asset trust or as trustee of a pool; or

(b) providing life reinsurance to any existing scheme; or

(c) as permitted by section 83 or any other provision of, or any regulations made under, this Act.

(3) The Board may, in addition, provide services in respect of any fund or superannuation scheme that is managed by the Crown or a Crown entity or an entity whose board is appointed by the Crown and approved by the Minister for that purpose, on any terms and conditions that the Board thinks fit.

Section 16(2)(a): amended (with effect on 1 April 1991), on 7 November 1991, by section 3 of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Section 16(3): added, on 22 August 2001, by section 38(1) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

17 Further provisions applying in respect of Board

The provisions set out in Schedule 4 shall apply in respect of the Board.

18 Board's power to settle claims

Without limiting any other powers that the Board may have, the Board shall have—

(a) the power to settle any claim by or against the Board, whether the claim is actual or prospective and whether or not any proceedings have been commenced in respect of the claim; and

(b) the power to meet out of the Fund, or any appropriate trust fund, pool, or GAT subsidiary, any liability arising out of or in connection with a settlement of any such claim against the Board; and

(c) the power to enter into any commitments, obligations, or arrangements for the purpose of settlement of any such claim.

19 Board's power to invest

For the avoidance of doubt, it is hereby declared that, on and after 1 October 1988, the Board's power to invest in property any money belonging to the Fund shall include, or have incidental to it, the power to enter into a commitment, obligation, or arrangement under which the Board (or a nominee of the Board) may acquire, or be obliged to acquire, that property.

20 Existing appointments, etc, of Board

(1) On and from the transfer day, the Board shall—

(a) be deemed to have been appointed as the trustee of each of the existing schemes; and

(b) continue as the person responsible for honouring the existing investment arrangements in the capacity specified in the proposal; and

(c) continue as a sinking fund commissioner and depreciation fund commissioner for any local authority or other person, in any case where the Board held appointment as such immediately before the transfer day; and

(d) continue in any other position held by the Board in any other official capacity immediately before the transfer day.

(2) Except as expressly provided by this Act or the proposal, the continuity and operation of the Board shall in no way be affected, nor shall any property, powers, authorities, or liabilities of the Board, or any legal or other proceedings instituted or to be instituted by or against the Board, be affected by this Act or the proposal.

(3) Subject to the provisions of this Act, and to the terms of any trust deed in respect of an existing scheme, the Board shall have the same responsibilities regarding that scheme as a trustee of a registered scheme that is a restricted scheme under the Financial Markets Conduct Act 2013.

Section 20(3): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Part 3
Provisions relating to implementation of restructuring of Fund and Board

21 Vesting of property

(1) The property held by the Board in the course of its administration of the existing schemes and existing investment arrangements and the performance of its functions under the National Provident Fund Act 1950 shall, on the transfer day, by virtue of this Act be deemed to be held by the Board or a GAT subsidiary, as the case may be, in the capacity and manner provided for by the proposal.

(2) Where any property is vested on the transfer day in the Board as trustee of any existing scheme or pool, that property shall be property only of that existing scheme or pool and shall not be property of any other scheme or pool.

(3) This section shall have effect notwithstanding any other enactment or rule of law.

22 Vesting of liabilities

(1) The liabilities incurred by the Board in the course of its administration of the existing schemes and the existing investment arrangements and the performance of its functions under the National Provident Fund Act 1950 and any other liabilities of the Board or the Fund of whatever nature and howsoever arising, shall, on the transfer day, vest by virtue of this Act in the Board or a GAT subsidiary, as the case may be, in the capacity and manner provided for by the proposal.

(2) Where any liabilities are vested on the transfer day in the Board as trustee of any existing scheme or pool, those liabilities shall be liabilities only of that scheme or pool, as the case may be, and shall not be liabilities of any other scheme or pool.

(3) This section shall have effect notwithstanding any other enactment or rule of law.

23 Certain matters not affected by restructuring

Nothing effected or authorised by any Part of this Act—

(a) shall be regarded as placing the Crown or the Board (or any member of the Board) or any other person in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or as otherwise making any of them guilty of a civil wrong; or

(b) shall be regarded as giving rise to any cause of action against the Fund; or

(c) shall be regarded as giving rise to a right for any person to—

(i) terminate or 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) shall be regarded as placing the Crown or the Board (or any member of the Board) or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer or issue of any property or the disclosure of any information; or

(e) shall release any surety wholly or in part from all or any obligation; or

(f) shall invalidate or discharge any contract or security.

Compare: 1986 No 129 s 6(g)

Provisions relating to global asset trust

24 Interests in global asset trust

(1) The global asset trust established in accordance with the proposal—

(a) shall have the Board as its trustee; and

(b) shall be deemed, on the transfer day, to have issued participatory securities to the Board as trustee of each of the existing schemes.

(2) The trust deed for the global asset trust shall be in a form approved by the Minister.

(3) The participatory securities referred to in subsection (1)(b)—

(a) shall be of such class and number as is determined in accordance with the proposal; and

(b) shall be deemed to be participatory securities for the purpose of section 3 of the Goods and Services Tax Act 1985; and

(c) to avoid doubt, are managed investment products on and after the global asset trust is treated as a registered scheme under section 59A.

Section 24(3)(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 24(3)(c): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

25 Status of global asset trust

(1) The global asset trust established in accordance with the proposal shall—

(a) be treated as a registered scheme under section 59A; and

(b) for the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge, be one superannuation

scheme notwithstanding that it may have separate pools and different classes of units; and

(c) be deemed to be a superannuation scheme for the purposes of section EW 5(14) or paragraph (b) of the definition of excepted financial arrangement in section EZ 48 of the Income Tax Act 2007.

(2) Nothing in subsection (1)(b) shall limit section 73.

Section 25(1)(a): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 25(1)(b): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 25(1)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(1)(c): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

26 Interim management of global asset trust

(1) The Crown (acting through the National Provident Fund Department) shall be deemed to have been appointed by the Board as manager of all of the administration of the global asset trust, and of the investment of each of the pools of the global asset trust, for the period commencing on the transfer day and ending with the day that is 3 months after the day on which either the Crown or the Board gives written notice to the other of termination of such management, or 31 March 1992, whichever is the earlier.

(2) The terms and conditions of such appointment (other than the period), including as to fees and expenses, shall be those agreed from time to time between the Crown and the Board.

Provisions relating to GAT subsidiaries

27 Interests in GAT subsidiaries

(1) Every GAT subsidiary which is a unit trust shall have the Board as its trustee.

(2) The trust deed for any such GAT subsidiary shall be in a form approved by the Minister.

(3) Every GAT subsidiary shall be deemed, on the transfer day, to have issued equity securities, debt securities, or participatory securities, or any combination of any of those types of securities, to the Board as trustee of the global asset trust as specified, and on the terms set out, in the proposal.

(4) Any participatory securities referred to in subsection (3) shall be deemed to be participatory securities for the purposes of section 3 of the Goods and Services Tax Act 1985.

(5) Nothing in section 60(1)(b) or section 60(2) of the Companies Act 1955 shall apply in respect of any issue of equity securities to which this section applies.

28 Status of GAT subsidiaries

(1) Any GAT subsidiary may, in accordance with the proposal, be either a company incorporated under the Companies Act 1955 or a unit trust.

(2) All of the shares or units in, or other equity securities or participatory securities issued by, a GAT subsidiary shall be held beneficially by the Board as trustee of the global asset trust.

29 Interim management of GAT subsidiaries which are unit trusts

(1) The Crown (acting through the National Provident Fund Department) shall be deemed to have been appointed by the Board as manager of all of the administration of each GAT subsidiary which is a unit trust, and of the investments of each such GAT subsidiary, for the period commencing on the transfer day and ending with the day that is 3 months after the day on which either the Crown or the Board gives written notice to the other of termination of such management, or 31 March 1992, whichever is the earlier.

(2) The terms and conditions of such appointment (other than the period), including as to fees and expenses, shall be those agreed from time to time between the Crown and the Board.

Use of property

30 Use of pools

No property forming part of any pool of the global asset trust shall be used for any purpose other than—

(a) meeting any liabilities (including liabilities in respect of management fees and expenses) that arise in respect of the pool or pursuant to the trust deed that constitutes the pool:

(b) meeting any liabilities arising out of any existing investment arrangement that has become a liability of the pool:

(c) meeting any other liability vested as a result of the proposal in the global asset trust in respect of the pool, or which becomes a liability of the global asset trust in respect of the pool on or after the transfer day.

31 Use of trust funds

(1) No property forming part of any trust fund shall be used for any purpose other than—

(a) meeting any liabilities (including liabilities in respect of management fees and expenses) that arise in respect of the existing scheme to which the trust fund relates or pursuant to the trust deed of that scheme:

(b) meeting any liabilities arising out of any existing investment arrangement that has become a liability of the existing scheme to which the trust fund relates:

(c) meeting any other liability vested as a result of the proposal in the existing scheme to which the trust fund relates, or which becomes a liability of that scheme on or after the transfer day.

(2) Where any existing scheme has a surplus on any winding up of the scheme, the surplus or any part of the surplus may, notwithstanding subsection (1), be applied or distributed as provided for in the trust deed of that scheme.

32 Unclaimed money

Where any property forming part of any pool or trust fund includes unclaimed money, that property may be applied in payment of any claims in respect of that money.

Miscellaneous provisions

33 Registers

(1) No Registrar of Deeds or Registrar-General of Land or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the foregoing provisions of this Act to change the name of the Board from "National Provident Fund Board" to the "Board of Trustees of the National Provident Fund" in those books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, executed or purporting to be executed by the Board or a GAT subsidiary and relating to any property held immediately before the transfer day by the Board and—

(a) in the case of an instrument executed by the Board, containing a recital that the name of the Board has been changed from the "National Provident Fund Board" to the "Board of Trustees of the National Provident Fund" by virtue of the provisions of this Act shall, in the absence of evidence to the contrary, be sufficient proof that the property is vested in the Board:

(b) in the case of an instrument executed by a GAT subsidiary, containing a recital that the property is vested in the GAT subsidiary by virtue of the provisions of this Act shall, in the absence of evidence to the contrary, be sufficient proof that the property is vested in the GAT subsidiary.

Compare: 1986 No 129 s 11

Section 33(1): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

34 References in other enactments or instruments

On and after the transfer day, every reference in any enactment (other than this Act) or in any regulation, order, or notice made or given under any such enactment, or in any instrument—

(a) to the Board, shall be read and construed as a reference to the Board as continued under this Act and as renamed the Board of Trustees of the National Provident Fund or to the appropriate GAT subsidiary, as the case may be; or

(b) to the National Provident Fund, shall be read and construed as a reference to the global asset trust or any pool of the global asset trust or any existing scheme as appropriate in the context; or

(c) to a scheme under the National Provident Fund Act 1950, shall be read and construed as a reference to an existing scheme.

Compare: 1986 No 129 s 12

35 Taxes and duties

(1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge—

(a) any existing scheme which is continued in existence after the transfer day, without any amalgamation or division, shall be deemed to be the same scheme which was in existence immediately before the transfer day; and

(b) in relation to property held immediately before the transfer day by the Board that is vested under the proposal in the Board as trustee of the global asset trust, the Board established under the National Provident Fund Act 1950 and the Board as trustee of the global asset trust shall be deemed to be the same person with effect on and from the transfer day; and

(c) in relation to property held immediately before the transfer day by the Board that is vested under the proposal in any GAT subsidiary, the Board established under the National Provident Fund Act 1950 and that GAT subsidiary shall be deemed to be the same person with effect on and from the transfer day; and

(d) in respect of the liability for and the assessment, determination, or imposition of taxes, duties, levies, or other charges accruing on and from the transfer day under any such enactment, all transactions entered into by, and acts of, the Board before the transfer day shall be deemed to have been entered into by, or to be those of—

(i) the Board as trustee of the global asset trust (in relation to property that is vested in the Board in that capacity under the proposal); or

(ii) a GAT subsidiary (in relation to property that is vested in that GAT subsidiary under the proposal)—

and to have been entered into or performed by the Board as trustee of the global asset trust or the GAT subsidiary (as appropriate) at the time

when they were entered into by the Board established under the National Provident Fund Act 1950; and

(e) any liability for, or credit or other benefit in respect of, taxes, duties, levies, or other charges arising before the transfer day in respect of any defined benefit scheme shall with effect on and from the transfer day be deemed to be a liability or credit or other benefit of the DBP annuitants scheme or the DBP contributors scheme, as specified in the proposal.

(2) Where any property which is vested under the proposal in the Board as trustee of the global asset trust or a GAT subsidiary consists of shares or an interest in shares, those shares shall not, by reason of that vesting, be treated as having ceased to be held by or on behalf of the same persons for the purposes of determining whether—

(a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007; or

(b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007; or

(c) any debit arises to be recorded in a taxpayer's imputation credit account, FDP account, or branch equivalent tax account under section OA 6(2), (3), or (5), as described in table O2, table O4, or table O8 of the Income Tax Act 2007—

and, for the purposes of determining the application of those sections in relation to any subsequent dealings in those shares, the shares (or interest therein) shall be treated as having been acquired by the Board as trustee of the global asset trust or the GAT subsidiary at the time they were acquired by the Board established under the National Provident Fund Act 1950.

(3) The vesting in accordance with the proposal of any property or liabilities of the Board established under the National Provident Fund Act 1950 in the Board as trustee of the global asset trust or in any GAT subsidiary, and any other steps taken to implement the proposal,—

(a) shall not for the purposes of the Income Tax Act 1976 be treated as or giving rise to a sale or other disposition, distribution, transfer, or a receipt of any property or any liability of the Board or of any property or liability of any existing scheme:

(b) shall not, for the purposes of the Goods and Services Tax Act 1985 be treated as a supply of any goods and services:

(c) shall not, for the purposes of the Stamp and Cheque Duties Act 1971, be treated as a conveyance of any property:

(d) shall not, for the purposes of the Estate and Gift Duties Act 1968, be treated as a dutiable gift.

(4) Nothing in subsection (2) or subsection (3) shall limit the generality of subsection (1).

Compare: 1986 No 129 s 17

Section 35(1): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 35(2): amended (with effect on 1 April 1991), on 7 November 1991, by section 4 of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Section 35(2)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 35(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 35(2)(b): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 35(2)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

36 Protection of name National Provident Fund

(1) No company or other body shall be incorporated or registered under a name that contains the words "National Provident Fund" or under any other name that, in the opinion of the Registrar of Companies, or the appropriate registering authority within the meaning of section 2 of the Flags, Emblems, and Names Protection Act 1981, so resembles such a name as to be likely to deceive.

(2) Nothing in this section applies to the Board or to any GAT subsidiary or to any other person who is associated with the Board.

37 Final report and accounts

(1) As soon as practicable after the transfer day, the Board shall arrange for a final report to be sent to the Minister showing the Board's proceedings and operations for the financial period ending immediately before the transfer day, and shall attach the revenue account for that period, and the statement of financial position as at the day before the transfer day, certified by the Auditor-General.

(2) The Minister shall lay a copy of the report and accounts before the House of Representatives as soon as practicable after receiving it.

Section 37(1): amended, on 1 July 2001, pursuant to section 52 of the Public Audit Act 2001 (2001 No 10).

Section 37(1): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).

Part 4
Restructuring of National Provident schemes

Existing schemes closed to new members as at transfer day

38 Contributors to existing schemes

(1) No person is entitled to be a contributor to any existing scheme unless that person—

(a) was a contributor to that scheme immediately before the transfer day; or

(b) was a contributor to another existing scheme immediately before the transfer day and is a person, or a person of a kind, whom the Board, in its discretion and after consultation with the Minister, has agreed may contribute to that scheme.

(2) Any person—

(a) who has, before the transfer day, contributed to an existing scheme; and

(b) whose contributions, or part of whose contributions, remain in the scheme on the transfer day—

shall, for the purposes of this section, be deemed to have been a contributor to that existing scheme immediately before the transfer day.

(3) Any employer—

(a) who was not a contributor to an existing scheme immediately before the transfer day; and

(b) who, after the transfer day, is or becomes the employer of an employee who was a contributor to an existing scheme immediately before the transfer day—

may, notwithstanding subsection (1) but subject to the terms of the existing scheme, contribute to any existing scheme to which that employee contributes, as a corporate contributor, for the purpose of subsidising that employee's contributions or obtaining a benefit for that employee.

(4) Nothing in this section limits—

(a) the terms of any existing scheme; or

(b) any other provision of this Act.

Section 38: substituted, on 8 May 1992, by section 3 of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

Terms and conditions of existing schemes

39 Terms and conditions upon which existing schemes are to continue

Except as otherwise expressly provided by this Act,—

(a) every existing scheme shall continue in existence on and after the transfer day on the same terms and conditions as applied in respect of that scheme immediately before the transfer day; and

(b) every provision of the National Provident Fund Act 1950 that constitutes a term or condition of any existing scheme, and every term and condition set out in any existing document authorised or executed by or on behalf of the Board, shall continue to be a term or condition of that scheme.

Position of corporate contributors to existing schemes

40 Position of corporate contributors to existing schemes

(1) Every person who is a corporate contributor to an existing scheme—

(a) shall continue to be bound by the terms and conditions of that existing scheme; and

(b) shall continue to be liable to pay contributions to the Board in respect of that scheme; and

(c) is hereby empowered to make the necessary deductions from the wages or salary of each person in respect of whom those contributions are made,—

in all respects as would have been required or authorised under the National Provident Fund Act 1950.

(2) This section shall apply to every corporate contributor until such time as that person would, in accordance with the terms and conditions of the scheme or the provisions of the National Provident Fund Act 1950, have been entitled to cease contributing to the existing scheme.

(3) Any person, whether currently required to contribute or not, who—

(a) is or becomes the employer of an employee who is entitled to contribute to an existing scheme after the transfer day; and

(b) would, if the National Provident Fund Act 1950 had not been repealed by this Act, have been required by section 44 of that Act to contribute in respect of that employee,—

shall also be a corporate contributor for the purposes of this section, and section 38(3) shall apply to any such person as if they were required, rather than authorised, to so contribute.

Information to be provided to Board

Heading: inserted, on 29 October 1997, by section 4 of the National Provident Fund Restructuring Amendment Act 1997 (1997 No 83).

40A Information to be provided to Board

(1) Every corporate contributor or other person who is paying or has paid contributions to the Board in respect of an existing scheme, whether on its own behalf or on behalf of its employees or other persons, must ensure that there is provided to the Board (or to such person as the Board may from time to time nominate) at such time or times as are reasonably specified by the Board, such information as the Board may reasonably require of that corporate contributor or other person for the purpose of administering an existing scheme.

(2) The information that the Board may require under subsection (1) may include any or all of the following:

(a) reconciliations showing how much has been contributed to that scheme by each employee of the person, and how much has been contributed by the person for each employee:

(b) confirmations from the person that the correct amounts required to be paid to the Board by the person (whether on its own behalf or on behalf of its employees or other persons) have been so paid:

(c) where the scheme is a defined benefit scheme, salary and employment information relating to the employees of the person who are members of that scheme.

(3) The Board must not require a corporate contributor or other person to provide information under this section unless the Board has first advised the person in writing of—

(a) the provisions of subsection (1); and

(b) if a person has been nominated by the Board under subsection (1), the name of that person.

Compare: 1956 No 47 s 95D; 1995 No 28 s 17

Section 40A: inserted, on 29 October 1997, by section 4 of the National Provident Fund Restructuring Amendment Act 1997 (1997 No 83).

Payments to existing schemes

Heading: inserted, on 29 October 1997, by section 5 of the National Provident Fund Restructuring Amendment Act 1997 (1997 No 83).

40B Timing of payment of contributions to schemes

Every person who is liable to pay contributions to the Board in respect of an existing scheme (including contributions deducted from remuneration or other money payable to another person, or held on behalf of another person) must pay those contributions to the Board (or to such person as the Board may from

time to time nominate) by such time or times as are reasonably specified by the Board in a written notice to the person.

Compare: 1956 No 47 s 95A; 1995 No 28 s 17

Section 40B: inserted, on 29 October 1997, by section 5 of the National Provident Fund Restructuring Amendment Act 1997 (1997 No 83).

40C Interest payable on overdue amounts

(1) Every person who is required to pay an amount to the Board in respect of an existing scheme under any law or legally enforceable document or arrangement, and who fails to pay that amount to the Board at the time required by that law, document, or arrangement, must pay, on demand by the Board, interest on that amount at the bill rate for the period from the time payment was due (or the date of commencement of the National Provident Fund Restructuring Amendment Act 1997, whichever is the later) until the time at which the amount is paid.

(2) In this section, the **bill rate** means the rate (expressed as a percentage rate per annum) that is the 3-month bank bill mid rate as determined by the Board from time to time.

(3) The interest must be paid to the Board or, if specified in the demand, to a person nominated by the Board.

(4) The interest must be paid in addition to the overdue amount.

Compare: 1956 No 47 s 95B; 1995 No 28 s 17

Section 40C: inserted, on 29 October 1997, by section 5 of the National Provident Fund Restructuring Amendment Act 1997 (1997 No 83).

40D Recovery of debts

Every amount payable by a person to the Board in respect of an existing scheme under any law or legally enforceable document or arrangement constitutes a debt due by the person to the Board and—

(a) may be recovered accordingly by the Board; and

(b) following recovery, must be paid into the scheme.

Compare: 1956 No 47 s 95C; 1995 No 28 s 17

Section 40D: inserted, on 29 October 1997, by section 5 of the National Provident Fund Restructuring Amendment Act 1997 (1997 No 83).

Provisions relating to defined benefit schemes

41 Amalgamation and subsequent division of defined benefit schemes

(1) The defined benefit schemes shall, on the transfer day, be deemed to have been amalgamated into 1 superannuation scheme.

(2) Immediately after the amalgamation referred to in subsection (1), the amalgamated defined benefit schemes shall be deemed to have been divided into 2 separate superannuation schemes as follows:

(a) first, the DBP annuitants scheme, which shall have only annuitants as members; and

(b) secondly, the DBP contributors scheme, which shall have only contributors as members; and

(c) *[Repealed]*

(3) For the purposes of this section, the term **annuitants** means—

(a) persons who were, immediately before the transfer day, members or other beneficiaries of a defined benefit scheme, or who subsequently become members or other beneficiaries of the DBP annuitants scheme, who are in receipt of a pension or who on leaving employment elected to receive a deferred pension; and

(b) such other persons as the Minister may determine to be annuitants for the purposes of this section.

(4) For the purposes of this section, the term **contributors** means all persons (other than annuitants) who were, immediately before the transfer day, members of a defined benefit scheme.

Section 41(2)(c): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

42 Provisions in trust deeds for DBP annuitants scheme and DBP contributors scheme

(1) The trust deeds to be prepared for the DBP annuitants scheme and the DBP contributors scheme pursuant to section 45 shall contain, unless the Minister and the Board otherwise agree, provisions to the effect of the provisions set out in Schedule 5.

(2) Despite sections 178 to 182 of the Financial Markets Conduct Act 2013, members or other beneficiaries of the DBP contributors scheme may be transferred to the DBP annuitants scheme in accordance with the provisions of the trust deeds for those schemes.

(3) The Minister may require any provision included in the trust deeds for the DBP annuitants scheme or the DBP contributors scheme pursuant to section 56 to be in such form as the Minister directs.

(4) Where a provision that is included in a trust deed pursuant to subsection (1) or any other section of this Act imposes obligations or restrictions on the Crown, the Crown shall comply with that provision as if it were a party to the trust deed.

Section 42(2): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

43 Aircrew superannuation scheme

On the transfer day the aircrew superannuation scheme shall be deemed to—

(a) have become a separate superannuation scheme; and

(b) *[Repealed]*

Section 43(b): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

44 Increased or decreased contributions by corporate contributors to certain existing schemes

(1) If the Board becomes aware that the level of contributions being made to either the DBP contributors scheme or the aircrew superannuation scheme is, on the information available to the Board,—

(a) unlikely to be sufficient to provide for the liabilities of that scheme; or

(b) likely to be in excess of the level of contributions required to provide for the liabilities of the scheme,—

the Board shall give notice to that effect to the Minister, with a statement of the Board's view as to what action would be required to rectify the position.

(2) The Minister may, by notice, direct the Board to increase or decrease the contributions required to be made by any corporate contributor to the DBP contributors scheme or the aircrew superannuation scheme, and the Board shall take all such steps as are reasonably necessary to implement any such increase or decrease.

(3) The Minister may give such notice whether or not the Board has recommended that there be any change to those contributions but shall not do so without prior consultation with the Board.

(4) Neither the Minister nor the Board may give a notice under this section unless reasonably satisfied, after due enquiry and having regard only to the financial position of the DBP contributors scheme (and not that of the DBP annuitants scheme) or the aircrew superannuation scheme, as the case may be, that the increases or decreases—

(a) are necessary in order to ensure that any trust fund in respect of the DBP contributors scheme or aircrew superannuation scheme is not in a deficit or surplus position, or to reduce such deficit or surplus position, taking account of the scheme's projected liabilities, the value of its property, and the projected level of future contributions to the scheme; and

(b) will result in contributions being at a level which, on reasonable assumptions, is likely to achieve neither a surplus nor a deficit in the trust fund of the DBP contributors scheme or aircrew superannuation scheme at the time that the last contributor to that scheme ceases to so contribute.

(5) Any notice under subsection (2) shall specify the date on which such increases or decreases are to be implemented, but that date shall not be less than 3 months after the date on which the notice is published under the Legislation Act 2019.

(6) A notice under subsection (2) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must notify the Board in writing	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 44(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 44(4): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44(5): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 44(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

44A Additional payments for period 1 October 2010 to 27 April 2011

(1) Every person entitled to receive any allowance, annuity, or pension under a specified scheme is entitled to be paid by the Board, from any money paid to the Board by the Crown for the purpose, an additional amount equal to 2.02% of any amount of the allowance, annuity, or pension payable to him or her under the specified scheme in respect of the period commencing on 1 October 2010 and ending on the close of 27 April 2011.

(2) An additional amount payable to a person under subsection (1)—

(a) must be paid by the Board on the date or dates the Board in its discretion decides; and

(b) must be disregarded for the purpose of calculating any adjustment for increases in the New Zealand Consumers Price Index under the specified scheme; but

(c) must for all other purposes be treated as a payment of the person's allowance, annuity, or pension under the specified scheme.

(3) In this section, **specified scheme** means a defined benefit scheme whose trust deed requires adjustment of the amounts of the allowances, annuities, or pensions payable under it for increases in the New Zealand Consumers Price Index.

Section 44A: inserted, on 20 May 2010, by section 3 of the National Provident Fund Restructuring Amendment Act 2010 (2010 No 29).

New trust deeds

45 Board to prepare trust deed for certain existing schemes

(1) The Board shall, as soon as practicable after the commencement of this Act, prepare a trust deed—

(a) for every existing scheme other than the old public schemes and the defined benefit schemes; and

(b) for the DBP annuitants scheme, the DBP contributors scheme, and the aircrew superannuation scheme.

(1A) The Board shall, as soon as practicable after the commencement of the National Provident Fund Restructuring Amendment Act 1991, prepare a trust deed for every old public scheme.

(2) *[Repealed]*

Section 45(1A): inserted, on 7 November 1991, by section 5 of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Section 45(2): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

46 Board to be bound by existing terms and conditions in preparing trust deed

Where any of the matters required to be specified in the trust deed of an existing scheme are provided for by the terms and conditions governing the scheme as at the date of execution of the trust deed, the Board shall, except as otherwise provided by this Act, ensure that the trust deed of that scheme incorporates those terms and conditions, either in the body of the trust deed itself or by reference.

47 Power to make amendments to existing terms and conditions

The Board may, in incorporating the existing terms and conditions of a scheme in any trust deed prepared under section 45, make such amendments to those terms and conditions as are necessary—

(a) in order to reflect the restructuring of the Board or the Fund or the existing schemes that is carried out in accordance with the provisions of this Act; or

(b) in order to ensure consistency with any new provisions that are included in the trust deed pursuant to section 48; or

(ba) in the case of an old public scheme, in order to reflect the practice of the Board in relation to that scheme immediately before the transfer day (whether or not the practice was authorised by those terms and conditions or by any Act or rule of law); or

(c) in order to ensure consistency with any provisions that are implied in the trust deed of a registered superannuation scheme by sections 9, 9A, and 10 of the Superannuation Schemes Act 1989.

Section 47(ba): inserted, on 7 November 1991, by section 6(1) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Section 47(c): amended (with effect on 7 September 1990), on 7 November 1991, by section 6(2) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

48 New terms and conditions may be included in trust deed

(1) Notwithstanding any Act or rule of law or the provisions of any existing terms and conditions governing a scheme, any trust deed prepared in accordance with section 45—

(a) shall include any terms and conditions required by any provision of this Act to be so included; and

(b) may include any other terms and conditions expressly authorised by any provision of this Act.

(2) Subject to subsection (3), nothing in this Act shall authorise any reduction in benefits provided under an existing scheme.

(3) Nothing in subsection (2) limits—

(a) sections 47(ba), 50, and 54(d); or

(b) sections 15 and 16 of the National Provident Fund Restructuring Amendment Act 1991; or

(c) section 12 of the National Provident Fund Restructuring Amendment Act 1992.

Section 48(2): substituted, on 8 May 1992, by section 4 of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

Section 48(3): added, on 8 May 1992, by section 4 of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

49 Trust deed to be approved by Minister before execution

(1) No trust deed prepared in accordance with section 45 shall be executed until the Minister has approved the trust deed.

(2) The Minister shall not approve a trust deed in respect of an existing scheme unless—

(a) the Board has supplied to the Minister a certificate confirming that the trust deed—

(i) incorporates any terms and conditions required by section 46 to be incorporated in the trust deed; and

(ii) does not include any provision that is additional to the existing terms and conditions, or that is different from the existing terms and conditions, other than as authorised by this Act; and

(iii) complies with section 7 of the Superannuation Schemes Act 1989, and does not contain any provision that is contrary to those implied by sections 9, 9A, and 10 of that Act; and

(b) the Minister is satisfied—

(i) that, subject to sections 5, 41, 42, 44, 50 to 56, 60 to 66, and 69, the trust deed is fair and equitable to all members and other beneficiaries of the scheme; and

(ii) that any provision included in accordance with any of sections 41, 42, 44, 50 to 56, 60 to 66, and 69 complies with any requirement specified in those sections.

(3) Any certificate required by this section may be given by the Board or a solicitor.

Section 49(2)(a)(iii): amended (with effect on 7 September 1990), on 7 November 1991, by section 7 of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

50 Transfer to other superannuation schemes

(1) Any trust deed prepared in respect of an existing scheme may—

(a) enable any member or other beneficiary to transfer from the scheme to any other superannuation scheme upon such terms and conditions as are set out in the trust deed or as the Board otherwise determines; and

(b) provide for the transfer of property from the existing scheme to the superannuation scheme to which the member or other beneficiary transfers upon such terms and conditions as are set out in the trust deed, or as the Board otherwise determines.

(2) Except as otherwise approved in writing by the Minister, any such terms and conditions set out in the trust deed or determined by the Board shall include terms and conditions to the effect that—

(a) subject to paragraph (c), the property to be transferred is to represent the share of the property of the scheme (including for the avoidance of doubt, that representing contributions received or due from corporate contributors) that is attributable to the transferring member or other beneficiary, plus a corresponding share of any reserves of the scheme; and

(b) for the purpose of calculating the property of the scheme, no account is to be taken of any property that represents unclaimed money or of any contingent or prospective rights to require corporate contributors or other persons to make future contributions to the scheme; and

(c) the transfer of property is to be fair and equitable to all members and other beneficiaries of the existing schemes affected, after taking into account the interests of any corporate contributor to those schemes and the Crown as guarantor of any liabilities of those schemes.

(3) No such provision in a trust deed shall limit any right contained in the existing terms and conditions of the scheme to transfer to any other superannuation scheme.

(4) For the purposes of subsection (2)(a), **reserves** means amounts that are shown in the accounts of the Board as being reserves attributable to a particular scheme whether or not forming part of any reserve account of the scheme.

(5) This section is subject to section 42.

Section 50: substituted, on 8 May 1992, by section 5(1) of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

51 Management of existing schemes

(1) Every trust deed prepared in respect of an existing scheme shall provide for the appointment by the Board, on such terms and conditions as the Board thinks fit, of any person (including the Crown) to manage all or any part of the administration of the scheme or the investment of the trust fund of the scheme, or both.

(2) All fees and expenses payable to a manager appointed pursuant to a trust deed for an existing scheme shall be paid out of the trust fund of the scheme.

52 Interim management of existing schemes

(1) The Crown (acting through the National Provident Fund Department) shall, in respect of each existing scheme, be deemed to have been appointed by the Board as manager of all of the administration of the scheme and of the investment of all of the trust fund of the scheme for the period commencing on the transfer day and ending with the day that is 3 months after the day on which either the Crown or the Board gives written notice to the other of termination of such management, or 31 March 1992, whichever is the earlier.

(2) The terms and conditions of such appointment (other than the period), including as to fees and expenses, shall be those agreed from time to time between the Crown and the Board.

53 Investments of existing schemes

(1) The trust deed for each existing scheme shall provide that the property of the scheme may be invested only in the global asset trust, whether by way of debt securities or managed investment products or otherwise.

(2) The property of an old public scheme may be invested only in the global asset trust, whether by way of debt securities or managed investment products or otherwise.

(3) This section does not prevent the Board as trustee of an existing scheme depositing money of that scheme into a bank account (which may be a bank account for 1 or more existing schemes) to the extent necessary or desirable for the operation of the scheme.

(4) Nothing in the provisions of the Trusts Act 2019 relating to the investment of trust funds shall apply in respect of the trust deed for an existing scheme or the investment of the property of the scheme.

Section 53: substituted (with effect on 1 April 1991), on 7 November 1991 (subsection (2) applying in relation to an old public scheme only until a trust deed is executed for that scheme), by section 8(1) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Section 53(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 53(2): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 53(4): amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Section 53(4): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

54 Board's powers and authorities

Notwithstanding any other Act, any trust deed prepared in respect of an existing scheme may confer on the Board—

(a) power to give guarantees, undertakings, and indemnities and incur all such obligations relating to the scheme as the Board in its discretion thinks fit; and

(b) power to borrow money for the purposes of making any investment or paying any benefit or meeting any liability or for the purpose of management of the scheme; and

(c) power to enter into any insurance or reinsurance contract relating to the payment pursuant to the scheme of any pensions or other benefits contingent on the death or survival of human life; and

(d) power to restrict any option of members to temporarily suspend contributions to a scheme to situations where a member temporarily is not receiving his or her salary or wages.

55 Limitation of liability of Board

(1) Any trust deed prepared in respect of an existing scheme may contain a provision limiting the liability of the Board.

(2) *[Repealed]*

Section 55(2): repealed (with effect on 7 September 1990), on 7 November 1991, by section 9 of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

56 Termination of scheme

(1) Any trust deed prepared in respect of an existing scheme may contain a provision—

(a) entitling the Minister or a proportion of the members or other beneficiaries of the scheme to determine that the scheme be totally or partially wound up, and authorising the Minister or any other person to determine the manner of such winding up:

(b) restricting or prohibiting the winding up of the scheme.

(2) Every provision under subsection (1)(a) shall provide for the distribution of the property of the scheme on a winding up.

Section 56(1)(a): substituted (with effect on 7 September 1990), on 8 May 1992, by section 6 of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

57 Consequences of executing trust deed in respect of existing scheme

(1) Where a trust deed is executed in respect of an existing scheme,—

(a) *[Repealed]*

(b) the existing scheme shall be treated, for the purposes of that Act, as a trust established by its trust deed, rather than an arrangement constituted under an Act of the Parliament of New Zealand; and

(c) from the date of execution of that trust deed, the terms and conditions of that scheme shall be those contained or implied in that trust deed, as amended from time to time.

(2) *[Repealed]*

Section 57: substituted (with effect on 7 September 1990), on 8 May 1992, by section 7(1) of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

Section 57(1)(a): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 57(2): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

58 Members to be notified of execution of trust deed

(1) The Board shall, as soon as practicable after executing a trust deed in respect of an existing scheme, send each member a notice explaining that a trust deed has been executed.

(2) Every such notice shall contain a summary of the main differences between the provisions that are included in the trust deed and the terms and conditions of the scheme existing before the trust deed was executed.

Miscellaneous provision in respect of notices

59 Notices

(1) Where any notice is required to be given under this Act, or under any other enactment, or under any trust deed executed under this Act, to any member or other beneficiary of an existing scheme, the notice shall be sufficiently given—

(a) if it is posted to the last known address of the member or other beneficiary that appears in the Board's records; or

(b) if, in a case where the Board has reason to believe that any member or other beneficiary of an existing scheme no longer lives at the address that appears in the Board's records, it is posted to any other address through which the Board has reason to believe that the notice may reach that person.

(2) Notwithstanding any provision of this Act or any other enactment or of any trust deed of an existing scheme, if the Board knows of no reasonable means of contacting any member or other beneficiary of an existing scheme, the Board—

(a) shall be relieved of any obligation to give the notice; and

(b) shall be under no liability arising from the notice not having been given.

Application of Financial Markets Conduct Act 2013

Heading: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

59A Application of Financial Markets Conduct Act 2013

(1) The Financial Markets Conduct Act 2013 applies to the global asset trust, an existing scheme, and any other scheme established under this Act (each called a **scheme** in this section) on and after the effective date for the scheme in accordance with clause 19 of Schedule 4 of that Act (or any later date on which the scheme is established) as follows:

(a) the scheme must be treated, for the purposes of that Act, as a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law, rather than under this Act; and

(b) the scheme must be treated for the purposes of that Act and any other enactment as if it is registered on the register of managed investment schemes under the Financial Markets Conduct Act 2013 as a restricted scheme that is a superannuation scheme; and

(c) the Board is the manager of the scheme for the purposes of that Act; and

(d) the following provisions of Part 4 of that Act, but no other provisions of that Part, apply in respect of the scheme:

(i) section 133, but only in respect of the requirement under section 127 that its governing document comply with the provisions of sections 135 to 137 that apply to it:

(ii) sections 135 (other than subsection (1)(a), (d), (g), (j), and (k)) to 141 (governing documents), except that the documents referred to in section 141 must be lodged with the FMA rather than the Registrar:

(iii) sections 142 to 147, and 151 (manager functions and duties), but subject to paragraphs (e) and (f):

(iv) section 169 (actuarial examinations):

(v) section 171 (limits on reversion of scheme property in certain schemes to non-scheme participant contributor):

(vi) sections 178 to 181 (transfer of scheme participants):

(vii) section 183 (deferred benefits):

(viii) sections 205, 206, and 212 to 214 (intervention in debt securities offered under regulated offer or registered schemes):

(ix) subpart 4 (registers and keeping copies of documents):

(x) section 228, in respect of the provisions of Part 4 that apply to it; and

(e) the duty on the manager under section 143(1)(b) of that Act applies only after taking account of the Crown's interest as guarantor of the benefits and liabilities under the existing scheme and investment arrangements; and

(f) the duty under section 144 of that Act is subject to section 53 of this Act.

(2) On and after the effective date for an existing scheme, every reference in the trust deed of the scheme to—

(a) participatory securities must be read as a reference to managed investment products; and

(b) a registered superannuation scheme or a superannuation scheme registered under the Superannuation Schemes Act 1989 must be read as a reference to a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).

(3) This Act continues to apply to a scheme, as if it had not been amended by the Financial Markets (Repeals and Amendments) Act 2013 (except in respect of this subsection and subsection (4)), until the effective date for the scheme.

(4) Schedule 4 of the Financial Markets Conduct Act 2013 applies to the global asset trust and an existing scheme (other than clauses 21 to 25, 27 and 28, 30, and 31 of that schedule).

Section 59A: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Part 5
Guarantees and subsidies

Crown guarantee of existing schemes and investment arrangements

60 Crown guarantee continued in respect of existing schemes

The Crown hereby guarantees to every member and other beneficiary payment of the benefits payable to that person under any existing scheme.

Compare: 1950 No 55 s 71(1)

61 Crown guarantee continued in respect of existing investment arrangements

The Crown hereby guarantees—

(a) the repayment of money that is deposited with the Board before the transfer day in accordance with any existing investment arrangement; and

(b) the payment of all interest payable on that money by the Board.

Compare: 1950 No 55 s 3C(4)

62 Crown guarantee continued in respect of provident advantage account

[Repealed]

Section 62: repealed, on 8 May 1992, by section 8(1) of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

63 Application of withdrawals

For the purposes of section 61, where any person has deposited money with the Board in accordance with any existing investment arrangement, any withdrawal or other dealing with such money shall be deemed to be—

(a) first, a withdrawal of, or other dealing with, such money so deposited before the transfer day, together with interest thereon; and

(b) secondly, a withdrawal of, or other dealing with, such money so deposited on or after the transfer day together with interest thereon.

Section 63: amended, on 8 May 1992, by section 8(2)(a) of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

Section 63: amended, on 8 May 1992, by section 8(2)(b) of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

64 Minister may direct Board in respect of matters relating to Crown guarantees

(1) Notwithstanding any other enactment or rule of law, the Minister may, after such consultation with the Board as the Minister considers appropriate, by notice in writing direct the Board in respect of such matters relating to any existing scheme or the global asset trust or any GAT subsidiary as the Minister considers necessary for the purpose of protecting the Crown's interest as guarantor of the benefits under the existing schemes and investment arrangements, and the Board shall be bound to act in accordance with such directions.

(2) Without limiting subsection (1), directions may be given under that subsection in respect of—

(a) the investments and management of the trust fund of any existing scheme, or of any pool, or of any GAT subsidiary:

(b) the incurring or entering into of any liabilities, obligations, or expenses by the Board or any GAT subsidiary:

(c) any increase in or augmentation of benefits payable pursuant to an existing scheme:

(d) any increase or decrease in the level of contributions pursuant to section 44:

(e) any use of free reserves:

(f) the entitlement of any member to transfer from any existing scheme his or her interest in that scheme.

(3) No direction that is inconsistent with the provisions of Schedule 5 may be given under this section.

(4) No liability of any kind shall attach to the Board or any member of the Board for any action or omission of the Board consequent upon a direction given under subsection (1).

65 Additional obligations of Board and powers of Minister

(1) The Board shall—

(a) forthwith upon becoming aware of a breach of this Act or any trust deed or any direction under section 64, give written notice to the Minister of that breach; and

(b) forthwith notify the Minister in writing of any proposal by the Board to vary any contributions or benefits or in respect of the transfer to another superannuation scheme of all or part of the interest of members or other beneficiaries in an existing scheme; and

(c) provide reports or any other information to the Minister from time to time as the Minister requires in respect of any existing scheme or the global asset trust or a GAT subsidiary, including—

(i) the management of any existing scheme, pool, or GAT subsidiary:

(ii) the investment performance of any pool or any GAT subsidiary:

(iii) the compliance with the provisions of any trust deed and any directions under section 64:

(iv) transfers out of any existing scheme; and

(d) give notice to the Minister of all meetings of the Board.

(2) The Minister may—

(a) direct the Board at any time to provide the Minister with an audited report of any existing scheme, pool, or GAT subsidiary:

(b) attend any meeting of the Board or of any committee of the Board:

(c) obtain or inspect any information held by or on behalf of the Board or in relation to any existing scheme, pool, or GAT subsidiary:

(d) delegate to any person or persons any power of the Minister under this section.

66 Additional provisions relating to Crown guarantees

(1) Any money required to be paid by the Crown by virtue of section 60 or section 61 or section 62 shall, without further appropriation than this section, be paid out of public money.

(2) Any money paid under this section—

(a) shall be held on behalf of the persons entitled to the benefit of the guarantee; and

(b) shall be applied in payment of the benefits or repayment of the deposits, as the case may be, for which the money was paid; and

(c) shall not be available to meet any other liabilities; and

(d) shall not in the case of money paid to the Board be subject to, or give rise, directly or indirectly, to any liability or increased liability for, any taxes, duties, levies, or similar charges.

67 Annual reports to Minister

(1) As soon as practicable and in any event within 6 months after the end of each financial year, the Board shall send to the Minister such reports for each existing scheme, pool, and GAT subsidiary, and such financial statements, as the Minister may require.

(1A) As soon as practicable after the end of each financial year, the Board shall send to the Minister an annual report on its performance in carrying out its responsibilities under this Act and as trustee of the existing schemes.

(1B) Without limiting the contents of the annual report required by subsection (1A), that report shall, in respect of existing schemes, cover the following matters:

(a) scheme asset allocations and scheme investment performance:

(b) the investment performance of the separate classes of assets:

(c) the allocation of costs to existing schemes:

(d) any changes in the actuarial basis for valuing scheme liabilities.

(2) The Minister shall lay a copy of each such report and financial statements before the House of Representatives as soon as practicable after receiving them.

Section 67(1A): inserted, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

Section 67(1B): inserted, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

67A Other reports to Minister

In addition to the duties imposed on the Board by section 67, the Board shall report to the Minister on the matters set out in section 67(1B) at such times as are agreed between the Minister and the Board.

Section 67A: inserted, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

68 Actuarial examination

(1) The Board shall arrange for the actuary of each existing scheme to examine and report to the Board and the Minister on the existing scheme, and the existing and prospective property and liabilities of that scheme, as at dates that are no more than 3 years apart.

(2) Notwithstanding the provisions of subsection (1), the Minister may nominate from time to time (but not at intervals of less than 6 months) an actuary (who may be the actuary of the scheme) to examine and report to the Minister on an

existing scheme and the existing and prospective property and liabilities of that scheme.

(3) Any such examination shall be carried out at the expense of the scheme concerned.

(4) The Minister shall lay a copy of any report prepared as a result of any such examination before the House of Representatives as soon as practicable after receiving it.

Subsidies

69 Consequences of removal of Crown subsidy of existing schemes on and after transfer day

(1) The Board shall, if required to do so by the Minister, require any employer to increase the contributions payable to any existing scheme by that employer to take account of the fact that the Minister is not required, except as provided in section 70, to subsidise any existing scheme on and after the transfer day.

(2) Every employer whose contributions are increased in accordance with subsection (1) shall be liable to pay the increased contributions in all respects as if the terms and conditions of the scheme required the increased contributions to be paid instead of the existing contributions.

(3) Nothing in subsection (1) shall limit any right contained in the terms and conditions of the scheme to increase contributions to the scheme.

70 Continuation of Crown subsidy of existing schemes in certain cases where employer is a charity

(1) The Minister shall, in respect of each year commencing on or after the transfer day, pay a subsidy equal to one-fourth of the total contributions paid during the year in respect of each contributor to an existing scheme who is employed by a charity.

(2) Any such subsidy shall be paid only in respect of the contributions that would, but for the repeal of the National Provident Fund Act 1950, have been subsidised by the Minister under that Act.

(3) Any such subsidy shall be paid annually out of public money, without further appropriation than this section.

(4) The subsidy shall be paid to the Board as trustee of the existing scheme concerned.

(5) A statement of the amount so paid shall be included in the annual report supplied to the Minister pursuant to section 67.

(6) For the purposes of this section, **charity** means any society or institution established exclusively for charitable purposes (whether relating to the relief of poverty, the advancement of education or religion, or any other matter

beneficial to the community) and not carried on for the private pecuniary profit of any individual.

71 Contributions by government departments

Where contributions are made by a government department on behalf of the employees of the department, the contributions shall be paid by the department out of money appropriated by Parliament.

Section 71: substituted, on 8 May 1992, by section 9 of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

72 Crown payments to meet deficiencies

(1) Where any deficiency in the accounts of any superannuation scheme established pursuant to section 38A(6) of the National Provident Fund Act 1950 arises from the application of paragraph (b) of that subsection in respect of persons who were contributing employees (within the meaning of that subsection) before the transfer day, the Minister shall, at the request of the Board, without further appropriation than this section, pay to the Board as trustee of the existing scheme concerned, by way of subsidy out of public money, such amount as may be required to meet the deficiency.

(2) Where any deficiency arises under any agreement entered into before the transfer day which implements the provisions of section 60(4)(d) of the National Provident Fund Act 1950, the Minister shall, at the request of the Board, without further appropriation than this section, pay to the Board as trustee of the existing scheme concerned, by way of subsidy out of public money, such amount as may be required to meet the deficiency.

(3) The annual report sent to the Minister pursuant to section 67 in respect of each financial year shall state the amounts paid during that year pursuant to this section.

Compare: 1950 No 55 ss 38A(8), 60(5)

72A No Crown subsidy

(1) For the avoidance of doubt, it is hereby declared that the Crown's liability to pay subsidies under section 71 of the National Provident Fund Act 1950 ceased to have effect with the repeal of that Act.

(2) Nothing in this section limits sections 69 to 72.

Section 72A: inserted, on 8 May 1992, by section 10 of the National Provident Fund Restructuring Amendment Act 1992 (1992 No 38).

Part 6
Amendments, repeals, and revocations with effect on and after transfer day

Amendments in relation to Income Tax Act 1976

73 Position of Board in relation to income tax

(1) For the purposes of sections 225A and 232B of the Income Tax Act 1976—

(a) the Board in its capacity as trustee of the global asset trust, in relation to property held immediately before the transfer day by the Board that is vested under the proposal in the Board as trustee of the global asset trust, shall be treated as the trustee of a superannuation scheme and that scheme shall be treated as having been in force on 1 April 1988; and

(b) any property held by the global asset trust which was an investment made or acquired by the Board before, or held by the Board on, 1 April 1988 shall be treated as an investment of the global asset trust made or acquired before, or held on, 1 April 1988 (as the case may be); and

(c) to the extent that any participatory securities issued by the Board as trustee of the global asset trust are held by any superannuation scheme which was or was deemed to be a category 1 scheme on 1 April 1988, the global asset trust shall be deemed to have been a category 1 scheme on 1 April 1988; and

(d) to the extent that any participatory securities issued by the Board as trustee of the global asset trust are held by any superannuation scheme which was or was deemed to be a category 2 scheme on 1 April 1988, the global asset trust shall be deemed to have been a category 2 scheme on 1 April 1988; and

(e) for the purposes of this section, participatory securities issued by the Board as trustee of the global asset trust which are held by the DBP annuitants scheme, the DBP contributors scheme, or the aircrew superannuation scheme shall be deemed to be held by a superannuation scheme which was a category 1 scheme on 1 April 1988; and

(f) for any tax year when the Board in its capacity as trustee of the global asset trust derives a profit or incurs a loss as the result of a sale or disposition to which either section 225A or section 232B applies, (being a profit or loss which is to be taken into account in calculating the taxable income of the Board as trustee of the global asset trust), and that income is treated as taxable income of more than 1 category of a superannuation scheme, that income shall be attributed to those schemes respectively on a basis consistent with the previous provisions of this section; and

(g) in relation to any property which under the proposal is vested in a GAT subsidiary, being property which was held immediately before the transfer day by the Board and was an investment made or acquired by the Board before, or held by the Board on, 1 April 1988, the previous provisions of this section shall apply to assess the amount of profit or loss on any sale or other disposition of that property that is to be taken into account in calculating the taxable income of the GAT subsidiary as if that property had been vested under the proposal in the Board as trustee of the global asset trust.

(2) Nothing in this section limits section 35.

Section 73(1)(f): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 73(1)(f): amended, on 26 July 1996 (applying to the 1997–98 and subsequent income years), by section 484 of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 73(1)(g): amended, on 26 July 1996 (applying to the 1997–98 and subsequent income years), by section 484 of the Taxation (Core Provisions) Act 1996 (1996 No 67).

74 Amendment to Income Tax Act 1976 in respect of National Provident Fund Board

[Repealed]

Section 74: repealed, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

75 Approval and classification of old public schemes

[Repealed]

Section 75: repealed, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Amendment in relation to Superannuation Schemes Act 1989

76 Old public schemes deemed to be registered superannuation schemes

The old public schemes shall, on and after 1 April 1990, be deemed to be superannuation schemes which are registered under the Superannuation Schemes Act 1989 for the purposes of that and any other Act, and shall be treated in all respects as if they had, on that date, been registered as such by the Government Actuary.

Amendment to Unit Trusts Act 1960

77 Exclusion from definition of term unit trust

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

General

78 Regulations

(1) The Governor-General may from time to time, by Order in Council,—

(a) amend Schedule 3 for the purpose of substituting any name of a group identified in the schedule with—

(i) any new name of the group; or

(ii) a reference to any group with which the group has amalgamated, or by which the group has been taken over; or

(iii) a reference to any other group that has substantially similar responsibilities to the group identified in that schedule:

(b) make regulations providing for such matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to the restructuring of the Fund or of the existing schemes, or for giving full effect to any of the provisions of this Act.

(2) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):

(a) an order under subsection (1)(a):

(b) regulations under subsection (1)(b).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 78(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

79 Repeal of local authority monopoly

The following enactments are hereby repealed:

(a) *Amendment(s) incorporated in the Act(s)*:

(b) *Amendment(s) incorporated in the Act(s)*:

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

80 Consequential amendments to other Acts

The enactments specified in Schedule 6 are hereby consequentially amended in the manner indicated in that schedule.

81 Repeals and revocations

(1) The enactments specified in Schedule 7 are hereby repealed.

(2) The regulations and the notice specified in Schedule 8 are hereby revoked.

82 Power to determine earning rates of schemes for periods up to transfer day

(1) Notwithstanding any enactment or rule of law or the provisions of any existing scheme, the Board may from time to time, with the consent of the Crown and in respect of any period ending before the transfer day,—

(a) determine a specific earning rate for any existing scheme in existence during that period, which rate may be the same or different from the rate determined in respect of any other existing scheme; and

(b) pay, or credit, the accounts of contributors to that scheme in respect of that period accordingly.

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

(3) All determinations, payments, and credits made or purported to be made by the Board under section 67A of the National Provident Fund Act 1950 before the date on which this section comes into force are hereby validated and deemed to have been lawfully made.

(4) A determination under subsection (1)(a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	It is not required to be published	LA19 s 73(2)
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 82(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Savings

83 Board may be appointed Sinking Fund Commissioner or Depreciation Fund Commissioner

(1) Notwithstanding any other enactment, it shall be competent for any local authority to appoint the Board, and the Board to accept appointment, on such terms and conditions, including those as to fees and charges, as may be agreed, as the sole Commissioner of the sinking fund of any loan raised by the local authority or as the sole Commissioner of any Depreciation Fund of a local authority.

(2) Where a local authority has appointed the Board as sole Commissioner of any Depreciation Fund of the local authority, the Board shall invest the money, together with all interest and profits accruing from the money, in such manner as may be agreed by the local authority and the Board, and the investment

of any money under this subsection shall, for the purposes of any enactment authorising or directing the investment of the money, be deemed to be an investment authorised or directed by that enactment.

(3) For the purposes of this section, the expression **Depreciation Fund** means any fund which a local authority is authorised to establish for the purpose of providing for depreciation, whether or not the fund is authorised to be established for any additional purpose.

Compare: 1950 No 55 s 6(6), (7), (9)

Section 83(1): amended, on 7 November 1991, by section 11 of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

84 Saving in respect of validation of certain lump sum schemes

(1) The repeal of section 6 of the National Provident Fund Amendment Act 1988 by section 81 of this Act shall not affect any validation effected by that section, and the Board may continue to operate any scheme referred to in that section.

(2) All contributions by any local authority in respect of any lump sum superannuation scheme under the provisions of Part 2 of the National Provident Fund Act 1950 are hereby validated and deemed to be and always to have been valid and lawful and authorised, but the Crown and the Minister shall not be liable to pay by way of subsidy any amount in respect of such contributions.

Schedule 1

s 2

Part 1
Existing superannuation schemes

Annual Single Premium Scheme

Defined Benefit Plan

Fire Services Superannuation Scheme

Level Premium Scheme

Lump Sum Cash Accumulation Schemes

Lump Sum National Scheme

Marlborough Electric Power Board Scheme

Meat Industry—Related Trades Scheme

Meat Industry Scheme

National Superannuation Scheme for Farm Workers

NPF Permanent Representatives' Scheme

Nursing Services Superannuation Scheme

Pension Cash Accumulation Scheme

Pension National Scheme

Post-60 Scheme

Scheme for the Mediation Service

Ships Officers' Scheme

Staff Pension Schemes

Standard Scheme for Local Authorities Superannuation (including Harbourmasters and (Ships') Pilots), which includes the Aircrew Superannuation Scheme

Schedule 1 Part 1: amended (with effect on 7 September 1990), on 7 November 1991, by section 12 of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Part 2
Existing investment arrangements

Deposits under sections 3A, 3B, and 3D of the National Provident Fund Act 1950

Deposits under section 3C of the National Provident Fund Act 1950

Part 3
Defined benefit schemes

Defined Benefit Plan

Fire Services Superannuation Scheme

NPF Permanent Representatives Scheme

Nursing Services Superannuation Scheme

Standard Scheme for Local Authorities Superannuation (including Harbourmasters and (Ships') Pilots but excluding the Aircrew Superannuation Scheme)

Schedule 2
Matters to be provided for in proposal

s 5

1 Separate trust funds for existing schemes

(1) The establishment of a separate trust fund for each existing scheme that is to exist on and after the transfer day.

(2) The change in the nature of the interest in the Fund held by each member of an existing scheme to be an interest in the trust fund relating to that scheme and for the property of that trust fund to consist initially of participatory securities issued by the Board as trustee of the global asset trust.

(3) The change in the nature of the interest held by a person who has invested or deposited money pursuant to an existing investment arrangement from being an interest in the Fund to being an interest as a creditor of the Board with rights against 1 or more of the existing schemes and pools of the global asset trust.

2 Global asset trust

The establishment of a trust in which certain property of the Fund will, and certain liabilities of the Fund may, be vested in accordance with clause 5 and which will—

(a) issue participatory securities to the Board as trustee of each of the existing schemes; and

(b) be in the nature of a unit trust, but not be a unit trust within the meaning of section 2(1) of the Unit Trusts Act 1960 or section 211(1) of the Income Tax Act 1976; and

(c) have a number of pools of property, each comprising property of a particular type or types; and

(d) be permitted to issue participatory securities of different classes and having different terms, including to reflect interests in different pools of property; and

(e) provide for the appointment by the Board, on such terms and conditions as the Board thinks fit, of any person (including the Crown) to manage all or any part of the administration of the trust or the investment of all or any of the trust's pools of property, or both; and

(f) have such powers as are given to it by its trust deed, which shall include power to borrow from any person including any existing scheme.

3 GAT subsidiaries

The identification of companies or unit trusts, or both, (if any) that are to be GAT subsidiaries for the purposes of this Act.

4 Division of Fund

(1) The determinations and allocations referred to in this clause shall be made as at the beginning of the transfer day.

(2) The determination of the liabilities to pay benefits under the existing schemes and to meet the existing investment arrangements.

(3) The determination of the liabilities of the Board other than the liabilities referred to in subclause (2), and the allocation of the liabilities so determined among any of the existing schemes, the pools of the global asset trust, and the GAT subsidiaries (so that the liabilities allocated to a particular existing scheme or pool become liabilities of the Board as trustee of that scheme or pool only and not that of the Board in any other capacity or of any other person, and the liabilities allocated to a GAT subsidiary become liabilities of that GAT subsidiary only).

(4) The determination of the dedicated reserves (if any) in respect of each existing scheme.

(5) The determination of the free reserves.

(6) The allocation of property to meet the liabilities referred to in subclauses (2) and (3) (other than the liabilities referred to in subclause (11), for which no property shall be allocated) on the basis of—

(a) the market valuation of the property; and

(b) the appropriateness of particular types of property to fund particular types of liabilities.

(7) The market value of the property allocated—

(a) to each of the defined contribution schemes; and

(b) to meet existing investment arrangements—

shall equate with the value of the liabilities (including, in the case of a defined contribution scheme, an amount equal to the dedicated reserves of that scheme) of that scheme or existing investment arrangement.

(8) The market value of the property allocated to each of the old public schemes shall equate with the value of the liabilities of that scheme (including any reasonable expectation of future increases in benefits based on past practice).

(9) The market value of the property allocated to the aircrew superannuation scheme shall equate with the amount shown in the records of the Board as being that scheme's share of the Fund plus an amount equal to the liabilities (other than liabilities in respect of benefits) of that scheme.

(10) The market value of the property allocated to the DBP annuitants scheme shall equate with the amount arrived at by deducting the sum of $230 million (or such other amount as may be agreed between the Crown and the Board) from the liabilities of the scheme (excluding the liabilities referred to in subclause (11)), taking into account estimates of future investment earnings, taxation,

inflation, and mortality rates, that are based on reasonable expectations over the appropriate term of the liabilities of the scheme assuming that the scheme is fully funded with an asset mix based on the investments that a trustee would make in respect of the scheme if fully funded taking into account the term and nature of the liabilities.

(11) There shall be allocated to the DBP annuitants scheme all liabilities, and responsibilities to discharge liabilities, of the Board or the Fund—

(a) arising out of or in connection with any agreement to settle claims (being an agreement to which the Board is a party) which is or becomes unconditional and which relates to any NPF group company; or

(b) arising out of any act, matter, or thing to which any such agreement relates or refers or which gave rise to any such claims,—

and which exist on or before the transfer day, or arise on or after the transfer day out of events, actions, or circumstances occurring, or statements made, on or before the transfer day.

(12) The market value of the property allocated to the DBP contributors scheme shall equate with the amount shown in the records of the Board as being the defined benefit schemes' share of the Fund—

(a) less the market value of the property allocated to the DBP annuitants scheme determined under subclause (10):

(b) plus an amount equal to the liabilities (other than liabilities in respect of benefits) of the DBP contributors scheme.

(13) Property having a market value equal to the free reserves of the Fund shall be allocated to the Board to be used as the Board considers appropriate.

5 Vesting of property in global asset trust and GAT subsidiaries

(1) The property and liabilities to be vested in the Board on the transfer day, and the capacities in which the Board holds the property and liabilities (namely, as trustee of an existing scheme, or trustee of a pool, or on its own account).

(2) The property and liabilities (if any) to be vested in each of the GAT subsidiaries on the transfer day.

(3) The number or amount, and terms of issue, of any equity securities, debt securities, or participatory securities or any combination of any of those types of securities, of each GAT subsidiary to be issued to the Board as trustee of the global asset trust in consideration of the vesting of property in that GAT subsidiary pursuant to subclause (2).

Schedule 3
Groups to be consulted before appointment of members of Board

s 15(1)(a)

Air New Zealand Limited

Electricity Supply Association of New Zealand Incorporated

Health Boards New Zealand Incorporated

Meat Industry Association Incorporated

New Zealand Association of Local Government Officers' Unions Incorporated

New Zealand Local Government Association Incorporated

New Zealand Nurses Association Incorporated

Public Service Association New Zealand Incorporated

Schedule 4
Provisions applying in respect of Board

s 17

1 Vacation of office

(1) Any member of the Board may at any time resign his or her office as a member of the Board by notice in writing addressed to the Minister.

(2) The powers of the Board shall not be affected by any vacancy in its membership.

2 Remuneration, allowances, and expenses of members of Board

There shall be paid to or in respect of the members of the Board out of such of the pools of the global asset trust or the property of such of the existing schemes as the Board considers appropriate, such remuneration for services as members of the Board and such expenses incurred in carrying on the affairs of the Board as may be determined from time to time by the Board and approved by the Minister.

Schedule 4 clause 2: substituted (with effect on 1 April 1991), on 7 November 1991, by section 13(1) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

3 Other provisions relating to Board

(1) The Board may appoint any or all of the following:

(a) a secretary to the Board and any officers, employees, and advisers that the Board considers necessary:

(b) a company or other person to provide to the Board secretariat or other services that the Board considers necessary.

(1A) There may be paid to, or in respect of, any secretary, officer, employee, adviser, company, or other person referred to in subclause (1), out of any of the pools of the global asset trust or the property of the existing schemes that the Board considers appropriate, remuneration, fees, or expenses as the Board determines.

(1B) The Board may, on any terms and conditions that the Board considers appropriate, subscribe for or acquire, and hold, shares or other securities issued by a company that provides (or is to provide or has provided) secretariat or other services to the Board.

(1C) Subclause (1B) applies whether or not—

(a) the company has shareholders other than the Board; and

(b) the company also provides services to other persons.

(1D) Any money payable by the Board in respect of shares or other securities under subclause (1B) is to be paid out of any of the pools of the global asset trust or the property of any of the existing schemes or otherwise as the Board considers appropriate.

(1E) Sections 16, 31, and 53 do not limit or negate subclause (1B).

(2) The common seal of the Board shall not be affixed to any document or instrument except by the authority of the Board and in the presence of any 2 of the following persons, namely, the members of the Board, the secretary to the Board, and such other persons as the Board may appoint for the purposes of this subclause, and those 2 persons shall sign every document or instrument to which the seal is affixed in their presence.

(3) The Board may, by instrument in writing, appoint an attorney or attorneys of the Board to exercise any or all of the powers of the Board and for such period and on such other terms and conditions as the Board shall determine.

Schedule 4 clause 3(1): substituted, on 22 August 2001, by section 38(2) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Schedule 4 clause 3(1A): substituted, on 22 August 2001, by section 38(2) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Schedule 4 clause 3(1B): inserted, on 22 August 2001, by section 38(2) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Schedule 4 clause 3(1C): inserted, on 22 August 2001, by section 38(2) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Schedule 4 clause 3(1D): inserted, on 22 August 2001, by section 38(2) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Schedule 4 clause 3(1E): inserted, on 22 August 2001, by section 38(2) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

4 Meetings

(1) Meetings of the Board shall be held at such times and places as the Board or its chairperson from time to time appoints.

(2) The chairperson, or any 2 members, may at any time call a special meeting of the Board.

(3) The quorum necessary for the transaction of business at any meeting of the Board shall be 3 members.

(4) At all meetings of the Board the chairperson shall preside if he or she is present. If the chairperson is absent, the members present shall appoint one of their number to be chairperson of that meeting.

(5) All questions arising at any meeting of the Board shall be decided by a majority of the votes recorded thereon.

(6) At any meeting of the Board the chairperson or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(7) A resolution in writing signed, or assented to by letter, telegram, telex, facsimile, or other electronic means by all the members of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

(8) Subject to the provisions of this Act, the Board may regulate its procedure in such manner as it thinks fit.

5 Committees of Board

(1) The Board may establish 1 or more committees, each of which may comprise 1 or more members of the Board or other persons as the Board thinks fit.

(1A) A member of the Board may be counted in the quorum, and vote, in respect of a proposal to—

(a) establish a committee to consider and determine a matter; or

(b) delegate to a committee any of the Board's powers in respect of a matter,—

whether or not the member has a conflict of interest in relation to that matter.

(2) There may be paid to or in respect of the members of any committee established under this clause out of such of the pools of the global asset trust or the property of such of the existing schemes as the Board considers appropriate, such remuneration for services and such expenses as may be determined from time to time by the Board and approved by the Minister.

(3) The procedure of a committee established under this clause shall be determined by the Board by notice in writing.

Schedule 4 clause 5(1): substituted, on 22 August 2001, by section 38(3) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Schedule 4 clause 5(1A): inserted, on 22 August 2001, by section 38(3) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Schedule 4 clause 5(2): substituted (with effect on 1 April 1991), on 7 November 1991, by section 13(3) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Schedule 4 clause 5(3): added (with effect on 1 April 1991), on 7 November 1991, by section 13(3) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

6 Delegation of Board's powers

(1) The Board may from time to time, by writing either generally or particularly, delegate to any committee established under this Act, or to any person, all or any of its powers including, in respect of any power of the Board to appoint investment managers, administration managers, or custodians under the trust deed for the global asset trust or a trust deed for an existing scheme, the power to further delegate that power.

(2) Subject to any general or special directions given or conditions attached by the Board, the delegate may exercise any powers delegated to it in the same manner and with the same effect as if they had been conferred directly by this clause and not by delegation.

(3) A delegation continues in force (unless and until it is revoked) according to its tenor despite the fact that all or any of the members of the Board at the time when the delegation was made have ceased to hold office, and continues to have effect as if made by their successors in office.

(4) In the event of any member of a committee to whom a delegation has been made ceasing to hold office, the delegation continues to have effect as if made to the persons for the time being holding office as members of the committee.

(5) A delegate who purports to act pursuant to a delegation under this clause is presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(6) The delegation is revocable at will, and does not prevent the exercise of any power by the Board.

Schedule 4 clause 6: substituted, on 22 August 2001, by section 38(4) of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Schedule 5
Provisions to be included in trust deeds for DBP annuitants scheme and DBP contributors scheme

s 42

1 Winding up

(1) Neither the DBP annuitants scheme nor the DBP contributors scheme may (to the extent that the winding up of the scheme is permitted by legislation and the terms of its trust deed) be wound up unless the other of those schemes is being wound up at the same time. When the DBP contributors scheme is wound up, the interests of all members in that scheme at that time shall be transferred to the DBP annuitants scheme immediately before the DBP annuitants scheme is wound up.

(2) Upon a winding up of the DBP annuitants scheme, the Crown shall pay into that scheme the amount necessary to increase the market value of the property of that scheme to the value it would have had if—

(a) property had been allocated to that scheme by the proposal in accordance with clause 4(10) of Schedule 2 but without the deduction of the amount of $230 million (or such other amount as may have been agreed between the Crown and the Board for the purposes of that subclause); and

(b) the investment of the property of the scheme had been appropriate to its liabilities; and

(c) subparagraphs (ii) and (iii) of clause 2(1)(a) applied,—

such assessment to be made by an actuary appointed by the Board and approved by the Crown.

2 Changes in benefits and transfer values

(1) To the extent that the terms of the DBP annuitants scheme and DBP contributors scheme may permit improvements or other changes in benefits (including in each case increases to benefits of either or both such schemes but not including transfers to other superannuation schemes) then, without limiting considerations other than the financial position that may be taken into account, any person (including the Board and the Crown) shall either—

(a) take into account the combined financial position of the DBP annuitants scheme and the DBP contributors scheme as if—

(i) those schemes had not been divided; and

(ii) no settlement of claims in relation to any NPF group company had been entered into by the Board; and

(iii) all property and liabilities of the Board that existed immediately before the transfer day in relation to an NPF group company had

been allocated among the existing schemes by the proposal in a fair and equitable manner; and

(iv) the investment of the property of those schemes had been appropriate to their liabilities; and

(v) all powers, directions, actions, and obligations had been exercised, made, taken, or complied with as if subparagraphs (i) to (iv) had applied; or

(b) take into account only the financial position of the DBP contributors scheme.

(2) In the event that a change in benefits is implemented under subclause (1)(a), there shall be a transfer between the DBP contributors scheme and the DBP annuitants scheme of such property as is necessary to ensure that the resulting financial position of each scheme is fair and equitable to the members and other beneficiaries of the scheme, the corporate contributors, and the Crown as guarantor.

(3) In the event that a change in benefits under the DBP annuitants scheme is implemented under subclause (1)(b), there shall be a transfer from the DBP contributors scheme to the DBP annuitants scheme of property having a market value equal to the consequential increase in the actuarial liability of the DBP annuitants scheme.

(4) Any person (including the Board and the Crown) considering, determining, or directing a change in benefits in terms of subclause (1)—

(a) shall, in deciding which of the paragraphs (a) and (b) of subclause (1) to apply, take into account the position which is most favourable to members and other beneficiaries of the DBP contributors scheme and DBP annuitants scheme; and

(b) shall regard as the paramount objective the need to ensure that members and other beneficiaries of the DBP annuitants scheme are not in any way disadvantaged by the implementation of any settlement of claims in relation to any NPF group company; and

(c) shall have regard to the practice of not improving benefits from a superannuation scheme unless there is an actuarial surplus in that scheme.

(5) To the extent that the terms of the DBP contributors scheme and DBP annuitants scheme provide for the payment of any amounts on transfer of a member or other beneficiary to another superannuation scheme (**transfer values**) then, without limiting any existing rights of any members or other beneficiaries or the considerations other than the financial position that may be taken into account, any person (including the Board and the Crown) considering, determining, or directing any matter in respect of transfer values shall take into account the combined financial position of the DBP annuitants scheme and DBP contributors scheme as if subparagraphs (i) to (v) of subclause (1)(a) applied.

(6) Following the payment of any transfer values determined in accordance with subclause (5), there shall be a transfer between the DBP contributors scheme and DBP annuitants scheme of such property as is necessary to ensure that the resulting financial position of each scheme is fair and equitable to the members and other beneficiaries of the scheme, the corporate contributors, and the Crown as guarantor.

(7) Any person (including the Board and the Crown) considering, determining, or directing any matter in respect of transfer values in terms of subclause (5) shall have as an objective the need to ensure that members and other beneficiaries of the DBP contributors scheme and DBP annuitants scheme are not in any way—

(a) affected by the division resulting in those schemes; or

(b) disadvantaged by the implementation of any settlement of claims in relation to any NPF group company.

Schedule 5 clause 2(5): amended, on 7 November 1991, by section 14(1) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Schedule 5 clause 2(6): amended, on 7 November 1991, by section 14(2) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Schedule 5 clause 2(7): amended, on 7 November 1991, by section 14(3) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

3 Transfer from DBP contributors scheme to DBP annuitants scheme

Upon any member of the DBP contributors scheme ceasing to be a contributor but retaining a right, actual or contingent, to a benefit, the Board as trustee of the DBP contributors scheme shall transfer to the DBP annuitants scheme property having a market value equal to the liability of the DBP annuitants scheme to pay the benefit attributable to that person's membership, taking into account estimates of future investment earnings, taxation, inflation, and mortality rates, that are based on reasonable expectations over the appropriate term of the liability in respect of that benefit assuming that the scheme is fully funded with an asset mix based on the investments that a trustee would make in respect of the scheme if fully funded taking into account the term and nature of its liabilities.

Schedule 5 clause 3: amended, on 7 November 1991, by section 14(4) of the National Provident Fund Restructuring Amendment Act 1991 (1991 No 114).

Schedule 6
Enactments consequentially amended

s 80

Accident Compensation Act 1982 (1982 No 181)
Amendment(s) incorporated in the Act(s).

Alcoholic Liquor Advisory Council Act 1976 (1976 No 143)
Amendment(s) incorporated in the Act(s).

Armed Forces Canteens Act 1948 (1948 No 51) (RS Vol 1, p 143)
Amendment(s) incorporated in the Act(s).

Auckland Regional Authority Act 1963 (1963 No 18 (L)) (RS Vol 22, p 17)
Amendment(s) incorporated in the Act(s).

Commerce Act 1986 (1986 No 5)
Amendment(s) incorporated in the Act(s).

Dairy Board Act 1961 (1961 No 5) (Reprinted 1976, Vol 4, p 3337)
Amendment(s) incorporated in the Act(s).

Government Superannuation Fund Act 1956 (1956 No 47) (RS Vol 21, p 209)
Amendment(s) incorporated in the Act(s).

Government Superannuation Fund Amendment Act 1985 (1985 No 62) (RS Vol 21, p 486)
Amendment(s) incorporated in the Act(s).

Hospitals Act 1957 (1957 No 40) (RS Vol 19, p 665)
Amendment(s) incorporated in the Act(s).

Human Rights Commission Act 1977 (1977 No 49) (RS Vol 18, p 227)
Amendment(s) incorporated in the Act(s).

Invercargill Licensing Trust Act 1950 (1950 No 33) (RS Vol 3, p 19)
Amendment(s) incorporated in the Act(s).

Licensing Trusts Act 1949 (1949 No 43) (RS Vol 3, p 289)
Amendment(s) incorporated in the Act(s).

Masterton Licensing Trust Act 1947 (1947 No 35) (RS Vol 3, p 445)
Amendment(s) incorporated in the Act(s).

Medical Research Council Act 1950 (1950 No 20) (RS Vol 10, p 75)

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

New Zealand Council for Educational Research Act 1972 (1972 No 35) (RS Vol 23, p 755)

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

New Zealand Export-Import Corporation Act 1974 (1974 No 2)

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

New Zealand Film Commission Act 1978 (1978 No 61)

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

New Zealand Horticulture Export Authority Act 1987 (1987 No 93)

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

New Zealand Maori Arts and Crafts Institute Act 1963 (1963 No 51) (RS Vol 8, p 835)

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

New Zealand Planning Act 1982 (1982 No 17)

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

New Zealand Trade Development Board Act 1988 (1988 No 160)

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

Patriotic and Canteen Funds Act 1947 (1947 No 63) (RS Vol 4, p 19)

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

Queen Elizabeth the Second Arts Council of New Zealand Act 1974 (1974 No 67)

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

Race Relations Act 1971 (1971 No 150) (RS Vol 14, p 479)

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

Royal New Zealand Foundation for the Blind Act 1963 (1963 No 26) (RS Vol 4, p 251)

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

Securities Act 1978 (1978 No 103) (RS Vol 15, p 533)

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

Social Security Act 1964 (1964 No 136) (RS Vol 13, p 403)

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

Taranaki Scholarships Trust Board Act 1957 (1957 No 108) (RS Vol 13, p 705)

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

Testing Laboratory Registration Act 1972 (1972 No 36) (RS Vol 23, p 847)

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

Vocational Training Council Act 1982 (1982 No 54)

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

Winston Churchill Memorial Trust Act 1965 (1965 No 39) (RS Vol 18, p 943)

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

Schedule 7
Enactments repealed

s 81(1)

Fees and Travelling Allowances Act 1951 (1951 No 79) (RS Vol 6, p 403)
Amendment(s) incorporated in the Act(s).

Income Tax Amendment Act 1989 (1989 No 7)
Amendment(s) incorporated in the Act(s).

National Provident Fund Act 1950 (1950 No 55) (RS Vol 3, p 723)

National Provident Fund Amendment Act 1954 (1954 No 68) (RS Vol 3, p 785)

National Provident Fund Amendment Act 1955 (1955 No 62) (RS Vol 3, p 785)

National Provident Fund Amendment Act 1956 (1956 No 90) (RS Vol 3, p 787)

National Provident Fund Amendment Act 1957 (1957 No 94) (RS Vol 3, p 787)

National Provident Fund Amendment Act 1958 (1958 No 105) (RS Vol 3, p 788)

National Provident Fund Amendment Act 1959 (1959 No 44) (RS Vol 3, p 789)

National Provident Fund Amendment Act 1960 (1960 No 75) (RS Vol 3, p 790)

National Provident Fund Amendment Act 1961 (1961 No 110) (RS Vol 3, p 790)

National Provident Fund Amendment Act 1962 (1962 No 122) (RS Vol 3, p 791)

National Provident Fund Amendment Act 1963 (1963 No 122) (RS Vol 3, p 792)

National Provident Fund Amendment Act 1964 (1964 No 26) (RS Vol 3, p 792)

National Provident Fund Amendment Act 1965 (1965 No 99) (RS Vol 3, p 793)

National Provident Fund Amendment Act 1966 (1966 No 77) (RS Vol 3, p 793)

National Provident Fund Amendment Act 1967 (1967 No 99) (RS Vol 3, p 794)

National Provident Fund Amendment Act 1971 (1971 No 116) (RS Vol 3, p 794)

National Provident Fund Amendment Act 1972 (1972 No 88) (RS Vol 3, p 795)

National Provident Fund Amendment Act 1976 (1976 No 28) (RS Vol 3, p 795)

National Provident Fund Amendment Act 1977 (1977 No 165) (RS Vol 3, p 799)

National Provident Fund Amendment Act 1982 (1982 No 114)

National Provident Fund Amendment Act 1983 (1983 No 118)

National Provident Fund Amendment Act 1988 (1988 No 136)

Schedule 8
Regulations and notice revoked

s 81(2)

National Provident Fund Regulations 1943 (SR 1943/115)

National Provident Fund Regulations 1943, Amendment No 2 (SR 1953/172)

National Provident Fund (Scale of Contributions) Notice 1957 (*Gazette* Vol III 1957, p 2225)

National Provident Fund Restructuring Amendment Act 1991

Public Act	1991 No 114
Date of assent	7 November 1991
Commencement	see section 1

1 Short Title and commencement

(1) This Act may be cited as the National Provident Fund Restructuring Amendment Act 1991, and shall be read together with and deemed part of the National Provident Fund Restructuring Act 1990 (hereinafter referred to as "the principal Act").

(2) Except as provided in subsections (3) and (4), this Act shall come into force on the day on which it receives the Royal assent.

(3) Sections 6(2), 7, 9, 10, and 12 shall be deemed to have come into force on 7 September 1990.

(4) Sections 3, 4, 8(1), and 13 shall be deemed to have come into force on 1 April 1991.

Part 1
Amendments to principal Act

8 Investments of existing schemes

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

(2) Subsection (2) of section 53 of the principal Act (as substituted by subsection (1)) shall apply in relation to an old public scheme only until a trust deed is executed for that scheme.

(3) The Board is hereby authorised to amend the trust deed for any existing scheme for the purpose of ensuring that it is consistent with section 53 of the principal Act (as substituted by subsection (1)) and any such amendment shall be deemed to have effect on and from the transfer day.

(4) Nothing in the trust deed for an existing scheme or the Superannuation Schemes Act 1989 relating to the consent of any person or organisation to the making of amendments to the trust deed applies to an amendment made under subsection (3).

14 Amendments to Schedule 5

(1)–(4) *Amendment(s) incorporated in the Act(s).*

(5) The Board is hereby authorised to amend the trust deeds for the DBP annuitants scheme and the DBP contributors scheme for the purpose of giving effect to the amendments to Schedule 5 of the principal Act made by this section.

(6) Nothing in the trust deed for the DBP annuitants scheme or the DBP contributors scheme or the Superannuation Schemes Act 1989 relating to the consent of any person or organisation to the making of amendments to those trust deeds applies to any amendments made under subsection (5).

Part 2
Amendments to existing schemes and validations

15 Board authorised to amend trust deeds for certain existing schemes

(1) Notwithstanding anything contained in the principal Act or any other Act or rule of law or the provisions of the trust deeds for the schemes,—

(a) the Board is hereby authorised to make such amendments to the trust deeds for the Meat Industry Scheme and the Meat Industry-Related Trades Scheme as are necessary to empower the Board to—

(i) pay to any member who becomes redundant the amount standing to the total credit of the account of the member in the scheme in respect of contributions of the member and his or her employer plus earnings to a date that is not later than the date of payment at a rate determined by the Board, irrespective of the length of time that that person has been a member of the scheme:

(ii) include in any amount paid to a member who withdraws from the scheme earnings on the amount withdrawn to a date that is not later than the date of payment at a rate determined by the Board:

(iii) include in any amount transferred to another superannuation scheme on account of a member of the scheme earnings on the amount transferred to a date that is not later than the date of transfer at a rate determined by the Board:

(b) the Board is hereby authorised to make such amendments to the trust deed for the Pension National Scheme as are necessary—

(i) to empower the Board to pay to any member who becomes redundant a benefit not exceeding the amount standing to the total credit of the member in the scheme:

(ii) in the event of a member electing to leave his or her total credit in the scheme on ceasing to be engaged by an employer, to authorise the full total credit of the member to be left in the scheme and attract interest in accordance with the provisions of the scheme until a benefit becomes payable under the terms of the scheme.

(2) No amendment may be made by the Board under subsection (1) unless an actuary appointed by the Board for the purpose has given a certificate in writing stating that the financial resources of the scheme are likely to be sufficient to meet the liabilities of the scheme as so amended.

(3) Where the Board amends the trust deed for such a scheme in accordance with this section—

(a) the trust deed shall be deemed to have been amended on the date on which it was executed; and

(b) the terms and conditions of the scheme as it existed on 1 June 1981 shall be deemed to have been amended to the same effect on 1 June 1981—

and any payments made by the Board and any action taken by the Board in accordance with the trust deed or the terms and conditions of the scheme as so deemed to have been amended shall be deemed to be and always to have been valid.

(4) Without limiting subsection (3) and notwithstanding anything contained in the principal Act or any rule of law or the provisions of the terms and conditions at any time governing the scheme or the trust deed for the scheme, no payment made by the Board to any person who was a member of the Meat Industry Scheme during the period commencing on 1 June 1981 and ending on the close of 30 September 1991 shall be treated as invalid or unauthorised by reason only of the fact that the person had not, at the time the payment was made, been a member of the scheme for 5 years or attained the age of 55 years.

Section 15(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

16 Validation in relation to old public schemes

Where the Board has prepared and executed a trust deed for an old public scheme in accordance with Part 4 of the principal Act (as amended by this Act) any payments made by the Board and any action taken by the Board before the execution of the trust deed that would, if the terms and conditions applying to the scheme at the time it was made or taken were the same as those contained in the trust deed, have been valid, shall be deemed to have been and always to have been valid.

National Provident Fund Restructuring Amendment Act 1992

Public Act	1992 No 38
Date of assent	8 May 1992
Commencement	see section 1

1 Short Title and commencement

(1) This Act may be cited as the National Provident Fund Restructuring Amendment Act 1992, and shall be read together with and deemed part of the National Provident Fund Restructuring Act 1990 (hereinafter referred to as "the principal Act").

(2) Except as provided in subsections (3) and (4), this Act shall come into force on the day on which it receives the Royal assent.

(3) Sections 6 and 7 shall be deemed to have come into force on 7 September 1990.

(4) Section 11 shall be deemed to have come into force on 1 April 1991.

5 Transfer to other superannuation schemes

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

(2) Subject to section 64 of the principal Act but notwithstanding any other enactment or rule of law, the Board is hereby authorised to amend the trust deed for every existing scheme for the purpose of:

(a) giving effect to section 50 of the principal Act as substituted by subsection (1); and

(b) specifying in the trust deed the terms and conditions on which any member or other beneficiary of any existing scheme may transfer to the scheme; and

(c) otherwise facilitating the transfer of members and property.

(3) Nothing in the trust deed for an existing scheme or the Superannuation Schemes Act 1989 relating to the consent of any person or organisation to the making of amendments to the trust deed applies to an amendment made under this section.

7 Consequences of executing trust deed in respect of existing scheme

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

(2) Nothing in section 57(1)(c) of the principal Act (as substituted by subsection (1)) shall limit or affect any judgment, order, or determination of a court in proceedings commenced on or before 31 March 1993.

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

8 Provisions relating to Lump Sum Cash Accumulation Scheme

(1), (2) *Amendment(s) incorporated in the Act(s)*.

(3) For the avoidance of doubt, it is hereby declared that the Crown guarantees pursuant to section 60 of the principal Act—

(a) the repayment of contributions to the Lump Sum Cash Accumulation Scheme (whether before or after the transfer day) by any person who at the time the contributions were made had not attained the age of 65 years; and

(b) the payment of interest payable on those contributions by the Board.

(4) Notwithstanding any other enactment or rule of law, the Board is hereby authorised to amend the trust deed for the Lump Sum Cash Accumulation Scheme to permit contributors to contribute until they attain the age of 65 years.

(5) Nothing in the trust deed for the Lump Sum Cash Accumulation Scheme or the Superannuation Schemes Act 1989 relating to the consent of any person or organisation to the making of amendments to the trust deed applies to an amendment made under this section.

12 Board authorised to make further amendments to trust deeds

(1) Notwithstanding any enactment or rule of law but subject to this section, the Board is hereby authorised to amend, on or before 31 March 1993, any trust deed in respect of any existing scheme in order to:

(a) reflect the practice of the Board in relation to that scheme immediately before 1 April 1991 (whether or not the practice was authorised by the terms and conditions of the scheme or by any Act or rule of law); or

(b) correct any errors in the trust deed (whether or not those errors were also in any terms and conditions of the scheme immediately before the date of execution of the trust deed); or

(c) clarify any provisions in the trust deed which are ambiguous or unclear (whether or not those provisions were ambiguous or unclear in any terms and conditions of the scheme immediately before the date of execution of the trust deed).

(2) No amendment to a trust deed in accordance with subsection (1) shall—

(a) be made or be of any force or effect unless the Minister has first approved the proposed amendment:

(b) limit or affect any judgment, order, or determination of a court in proceedings commenced before the amendment is made.

(3) Nothing in the trust deed for an existing scheme or the Superannuation Schemes Act 1989 relating to the consent of any person or organisation to the making of amendments to a trust deed applies to an amendment made under this section.

(4) Subject to subsection (2), where a trust deed has been amended in accordance with this section, any payments made by the Board and any action taken by the Board before the amendment was made that would, if the terms and conditions applying to the scheme or the terms and conditions of the trust deed for the scheme, as the case may be, were the same as those contained in the trust deed as amended, have been valid, shall be deemed to be and always to have been valid.

National Provident Fund Restructuring Amendment Act 1997

Public Act	1997 No 83
Date of assent	28 October 1997
Commencement	see section 1(2)

1 Short Title and commencement

(1) This Act may be cited as the National Provident Fund Restructuring Amendment Act 1997, and is part of the National Provident Fund Restructuring Act 1990 ("the principal Act").

(2) This Act comes into force on the day after the date on which this Act receives the Royal assent.

Part 2
Alterations to existing schemes

Minimum contributions, pensions, and balances

6 Board may require minimum contributions

(1) The Board may amend the trust deed for an existing scheme to require contributions made to the scheme by a member to be of a minimum amount specified by the Board from time to time.

(2) The amendment applies only to contributions in respect of any period or periods commencing after the date of the amendment.

(3) This section is subject to section 26 (approval of the Minister).

7 Board may set minimum pensions

(1) The Board may amend the trust deed for an existing scheme to provide that—

(a) no pension of less than an amount specified by the Board from time to time is payable from the scheme from a date specified by the Board; and

(b) where a pension would be less than that specified amount, the value of the pension entitlement, as determined by the appointed actuary, will be paid as a lump sum to the person entitled to the pension, who will cease to be a member or beneficiary of the scheme from the date of that payment.

(2) The amendment applies only in relation to persons who become entitled to a pension on or after the date of the amendment (or who would have become so entitled were it not for the amendment authorised by this section).

(3) This section is subject to section 26 (approval of the Minister).

8 Existing pensions below minimum level

(1) The Board may amend the trust deed for an existing scheme to provide that members or beneficiaries who became entitled to a pension before the date of the amendment have the option, where their pension entitlement is less than an amount specified by the Board from time to time, of either continuing with their pension or having the value of their pension entitlement, as determined by the appointed actuary, paid to them as a lump sum and ceasing to be a member or beneficiary of the scheme from the date of payment.

(2) This section is subject to section 26 (approval of the Minister).

9 Board may set minimum total credit in defined contribution schemes

(1) The Board may amend the trust deed for a defined contribution scheme to provide that—

(a) the total credit of a member may not be less than an amount specified by the Board from time to time; and

(b) where the total credit of a member is less than that specified amount, and the member's total credit is not increased to at least the specified amount within 6 months (or such longer period as may be determined by the Board in any 1 or more cases) of written notification by the Board to the member of the specified amount, the Board may pay the amount of that total credit to the member who will cease to be a member of the scheme from the date of that payment.

(2) This section is subject to section 26 (approval of the Minister).

Missing persons

10 Board may amend trust deeds in relation to missing persons

(1) The Board may amend the trust deed for an existing scheme to enable the Board—

(a) to deduct the expenses of endeavouring to locate a missing person from a benefit or entitlement, or earnings credited to the person under the scheme, to which the person is entitled:

(b) to allocate to any missing persons in the scheme—

(i) property of the scheme equivalent to their share in the scheme; and

(ii) future investment returns from that property received after the date of the allocation of that property:

(c) to transfer missing persons in the scheme (and property of the scheme allocated to those persons) to any other existing scheme without the need to obtain consents from members or beneficiaries or any other person.

(2) In this section and section 11, **missing person** means any member or beneficiary of an existing scheme from or in respect of whom no contributions are being received, and for whom the Board has no current address.

(3) The expenses that may be deducted under an amendment to a trust deed made under this section are a reasonable amount to cover the costs incurred by the Board in endeavouring to locate the missing person, and confirming and satisfying the liability of the scheme to the person.

(4) For the purposes of subsection (1)(b)(i), and except as otherwise approved in writing by the Minister, a share in the scheme is to be calculated as—

(a) the value of the liabilities (as determined by the appointed actuary) of the scheme to those persons:

(b) plus, in the case of a scheme with positive reserves or an actuarial surplus, an equitable share of the reserves or surplus (as determined by the Board after receiving advice from the appointed actuary):

(c) less, in the case of a scheme with negative reserves or an actuarial deficit, an equitable share of the reserves or deficit (as determined by the Board after receiving advice from the appointed actuary).

(5) An applicable promise or guarantee of a particular or minimum earnings rate for an existing defined contribution scheme is subject, in the case of missing persons, to any power of the Board to deduct the expenses of endeavouring to locate missing persons.

(6) This section does not limit the Board's power to charge other expenses against an existing scheme, member, or beneficiary.

(7) This section is subject to section 26 (approval of the Minister).

11 Board may amend trust deeds to extinguish liabilities to missing persons

(1) The Board may amend the trust deed for an existing scheme for the purpose of enabling the Board, subject to subsections (2) and (3), to extinguish the liabilities of an existing scheme to a person who has been a missing person for a period of at least 5 years before the extinguishment of the liabilities.

(2) No liability may be extinguished under subsection (1)—

(a) until the expiry of 2 years from the date of commencement of this Act; and

(b) unless the Board has used reasonable endeavours to find the current address of the missing person concerned.

(3) If any person establishes to the satisfaction of the Board that a liability of an existing scheme to him or her has been extinguished during the previous 15 years on the ground that he or she was a missing person, the liability is reinstated as if it had never been extinguished.

(4) This section is subject to section 26 (approval of the Minister).

4% minimum earnings rates

12 Board may amend trust deeds in relation to 4% minimum earnings rates

(1) The Board may amend the trust deed for a defined contribution scheme to—

(a) remove the Board's obligation to apply on a per annum basis the minimum earnings rate that is required to be credited to a member's account and that is specified in the trust deed; and

(b) replace that obligation with an obligation to the effect that the average per annum earnings rate credited to a member's account over the specified period is no less than that minimum earnings rate.

(2) In subsection (1)(b), **specified period** means the period from a date determined by the Board (not being earlier than the date of commencement of this Act) to the date of determination of the member's total credit for the purpose of paying 1 or more of the benefits payable under the scheme.

(3) This section is subject to section 26 (approval of the Minister).

Charging of fees for additional administration

13 Board may amend trust deeds to enable charging of fees for significant additional administration

(1) The Board may amend the trust deed for an existing scheme to enable the Board to charge the expenses of any significant additional administration (including legal and actuarial expenses) to an individual member or beneficiary, or group of members or beneficiaries, where—

(a) that member or beneficiary, or those members or beneficiaries, have involved the Board in significant additional administration; and

(b) it would be, in the Board's opinion, unfair or inequitable to impose the cost of that administration on all members of that scheme.

(2) The amendment must require the Board, before charging the expense,—

(a) to give written notice to each member or beneficiary concerned that it intends to charge the expense to that member or beneficiary; and

(b) to give the member or beneficiary an opportunity to provide written submissions on the matter to the Board.

(3) A notice under subsection (2) must state an officer or agent of the Board to whom enquiries and complaints about the charging of expenses may be made.

(4) An amendment under subsection (1) may provide that the Board may deduct the expenses from the benefits or entitlements, or from earnings credited to the person or persons under the scheme, to which the person or persons are entitled.

(5) An applicable promise or guarantee of a particular or minimum earnings rate for an existing defined contribution scheme is subject to any power of the Board to deduct expenses under this section.

(6) This section is subject to section 26 (approval of the Minister).

Share of reserves on payment of benefit

14 Board may amend trust deeds to provide share of reserves on payment of benefit

(1) The Board may amend the trust deed for a defined contribution scheme to provide that a share of any positive reserves of the scheme will be added to the total credit of a member of the scheme at the date of determination of the member's total credit for the purpose of paying 1 or more of the benefits payable under the scheme.

(2) The Board may determine, at the time the amendment is made, the class or classes of benefit to which the amendment will apply.

(3) The amendment must provide that the share of reserves to be added to the total credit will be calculated in the same manner as if the member had elected (under the provisions inserted into the trust deed under section 50 of the principal Act) to transfer out of the scheme on the date of determination of the total credit.

(4) This section is subject to section 26 (approval of the Minister).

Miscellaneous provisions

15 Other amendments to trust deeds

(1) The Board may amend the trust deed of an existing scheme if it is necessary or desirable to give effect to, or is consequential upon, amendments authorised by any of sections 6 to 14.

(2) This section is subject to section 26 (approval of the Minister).

16 Existing proceedings not affected

No amendment to a trust deed authorised by this Part limits or affects a judgment, order, or determination of a court in proceedings commenced before the amendment is made.

Part 3
Restructuring of existing schemes

Transfer of pensioners to new pension schemes

17 Establishment of new pension schemes

(1) The Board may establish by trust deed 1 or more schemes for the purpose of paying pensions arising from membership of such of the existing schemes as the Board may determine from time to time.

(2) The trust deed for a pension scheme may contain different terms for different classes of beneficiaries.

(3) *[Repealed]*

(4) This section is subject to section 26 (approval of the Minister).

Section 17(3): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

18 Board authorised to amend existing schemes to provide for transfer to pension schemes

(1) The Board may amend the trust deed for an existing scheme in order to—

(a) provide for the Board to transfer to a pension scheme any person receiving, or about to receive, a pension from the existing scheme, and the person's pension entitlement; and

(b) provide for the Board to transfer from the existing scheme to a pension scheme assets to meet the pension entitlements that are so transferred.

(2) The Board must not transfer a person and his or her pension entitlement from an existing scheme to a pension scheme unless the Board is satisfied, after considering the advice of the appointed actuary, that—

(a) the terms of that person's pension under the pension scheme are not materially and adversely different from the terms on which that person's pension would have been paid under the existing scheme; and

(b) the transfer of assets from the existing scheme to the pension scheme is fair and equitable to that person, all members and beneficiaries of the existing scheme materially affected by the transfer, and all members and beneficiaries of the pension scheme.

(3) Subsection (1) is subject to section 26 (approval of the Minister).

19 Provisions applying to new pension schemes

The provisions set out in Schedule 1 apply to a new pension scheme.

Amalgamation of 2 or more existing schemes

20 Board may submit proposal for amalgamation of schemes

(1) The Board may submit to the Minister—

(a) a draft amalgamation proposal for the amalgamation of 2 or more existing schemes; and

(b) the proposed trust deed for the new scheme that will result from the amalgamation; and

(c) a certificate by the Board stating that, in its opinion, subsections (3) and (4) have been complied with in relation to the amalgamation proposal.

(2) The Board must supply to the Minister such additional information relating to a draft amalgamation proposal as the Minister may require at any time.

(3) Each draft amalgamation proposal must—

(a) provide for the Board to be the trustee of the new scheme that will result from the amalgamation; and

(b) except to the extent (if any) otherwise agreed in writing by the Board and the Minister, specify or provide for each of the following matters:

(i) the establishment of a new scheme that is to exist on and after the appointed day in place of the existing schemes to be amalgamated under the amalgamation proposal:

(ii) the transfer on the appointed day of all members and beneficiaries from the existing schemes to be amalgamated under the proposal, to the new scheme:

(iii) the transfer on the appointed day of all assets and liabilities of the existing schemes to be amalgamated under the proposal, to the new scheme:

(iv) if considered appropriate by the Board, the continuation on and after the appointed day, in respect of all or particular members or beneficiaries of an existing scheme, of 1 or more specific terms of that scheme indefinitely or for a specified period:

(v) such matters, if any, as are required by regulations; and

(c) include such other matters (if any) relating to the amalgamation as the Board and the Minister agree should be included in the proposal.

(4) In preparing a draft amalgamation proposal, the Board must ensure that, as far as practicable, the trust deed for the new scheme to be established as a result of the amalgamation proposal—

(a) has terms that are not materially and adversely different from the terms in the trust deeds for the existing schemes concerned in so far as those terms affect any member or beneficiary of those schemes; and

(b) *[Repealed]*

(5) Subsection (4) is subject to subsection (3).

Section 20(4)(b): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

21 Approval of proposal by Minister

(1) The Minister may, by notice, approve a draft amalgamation proposal submitted in accordance with section 20.

(2) Section 26 applies to the giving of approval.

(3) The notice must—

(a) identify the draft amalgamation proposal approved, but need not incorporate it in the notice; and

(b) state the appointed day for that proposal.

(4) A notice under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Section 21(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 21(4): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

22 Amendment of proposal

(1) The Minister may, by notice, approve an amendment to an amalgamation proposal at any time or times after it has been approved under section 21 (whether before or after the appointed day).

(2) Section 26 applies to the giving of approval.

(3) The Board must submit to the Minister a certificate confirming that, in its opinion, the amendment to the amalgamation proposal does not contravene section 20(3) or (4).

(4) The notice must—

(a) identify the amendment approved, but need not incorporate it in the notice; and

(b) state the day on and from which the amendment has effect, which may be the appointed day or any later day.

(5) A notice under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Section 22(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 22(5): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

23 Implementation of proposal

(1) The Board must arrange for the implementation of an amalgamation proposal, or of an amendment of a proposal, as soon as practicable after the proposal or amendment has been approved by the Minister.

(2) Any documents executed, and all other arrangements made, for the purpose of implementing an amalgamation proposal, become effective as at the appointed day for that proposal.

(3) Any documents executed, and all other arrangements made, for the purpose of implementing an amendment to an amalgamation proposal become effective as at the day stated under section 22(4)(b).

Section 23(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

24 Effect of implementation of amalgamation proposal

The provisions set out in Schedule 2 apply to the implementation of an amalgamation proposal.

Part 4
Miscellaneous provisions

Procedural safeguards

25 Members to be notified of trust deed amendments and restructuring

(1) The Board must send to each member of an existing scheme in respect of which—

(a) an amendment to a trust deed is proposed under Part 2 or Part 3; or

(b) an amalgamation proposal is proposed under Part 3,—

and for whom it has a current address, a notice that explains the amendment or proposal, including a summary of the main differences (if any) between the terms of the trust deed for the existing scheme and the terms of the trust deed as proposed to be amended or for the new scheme, as the case may be.

(2) The notice must be sent at least 28 days before the amendment or proposal is submitted to the Minister under section 26.

26 Trust deed amendments and restructuring to be approved by Minister

(1) This section applies to—

(a) an amendment to a trust deed prepared under Part 2 or Part 3; and

(b) a trust deed for a new scheme prepared under Part 3; and

(c) an amalgamation proposal under Part 3; and

(d) an amendment to an amalgamation proposal under Part 3.

(2) No amendment, deed, or proposal to which this section applies has effect until it has been approved by the Minister.

(3) The Minister must not give approval under subsection (2) unless—

(a) the Board has supplied to the Minister a certificate stating that, in its opinion, and where appropriate after taking into account the advice of the appointed actuary, the terms of the amendment, deed, or proposal are fair and equitable to the members and beneficiaries of the relevant scheme or schemes taken as a whole; and

(b) the Minister is satisfied that the terms of the amendment, deed, or proposal are fair and equitable to the members and beneficiaries of the relevant scheme or schemes taken as a whole; and

(c) the Minister is satisfied that the requirements of the section or sections under which the amendment, deed, or proposal is being made have been complied with.

(4) The fair and equitable requirement in subsection (3)(a) and (b) is subject to the provisions of the relevant section or sections under which the amendment, deed, or proposal is made.

(5) The Minister must not approve an amendment to an amalgamation proposal made after the appointed day unless the Minister is satisfied that the amendment is necessary for the purpose of correcting an error in the amalgamation proposal as approved under section 21 or is of a purely technical nature.

Miscellaneous provisions

27 Consents not required

(1) No consents from a member or beneficiary of an existing scheme, or from any other person or organisation, are required in relation to the making of amendments to a trust deed under Part 2 or Part 3.

(2) No consents from a member or beneficiary of an existing scheme, or from any other person or organisation, are required in relation to an amalgamation proposal or the transfer of a member or beneficiary from an existing scheme to another scheme as provided for in this Act.

(3) This section applies notwithstanding any enactment or rule of law or a provision of a trust deed for an existing scheme.

Section 27(3): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

28 Powers may be exercised from time to time

A power given to the Board under this Act to do any act or thing is capable of being exercised from time to time, as occasion may require.

Compare: 1924 No 11 s 25(g)

29 Certificates given by Board

A certificate required by this Act to be given by the Board to the Minister on a matter on which the Board must obtain the advice of the appointed actuary must be accompanied by a copy of the appointed actuary's advice.

30 Act to prevail over other laws

(1) This Act has effect notwithstanding any provision of the principal Act or any other enactment or rule of law.

(2) A provision included in a trust deed or in an amalgamation proposal under this Act has effect, and may be implemented at any time by the Board, notwithstanding any provision of the principal Act or any other enactment or rule of law.

Section 30(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 30(2): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

31 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) providing for the transfer of pensioners to a new pension scheme under Part 3; or

(b) providing for the amalgamation of existing schemes under Part 3; or

(c) providing for such other matters as are contemplated by or necessary for giving full effect to this Act, and for its due administration.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Section 31(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Schedule 1
Provisions applying to new pension schemes

s 19

1 Notwithstanding any other enactment or rule of law, the provisions of sections 51, 53, 54, 55, 56, and 57 of the principal Act (which relate to management, investment, the Board's powers and authorities, the Board's liability, termination, and trust deeds) apply to the trust deed for a pension scheme as if that deed were a trust deed prepared in respect of an existing scheme.

2 A pension scheme is deemed to be an existing scheme for the purposes of sections 16, 31, 38, 59, 60, 64, 65, 67, and 68 and Schedule 4 of the principal Act, and for the purposes of this Act.

3 A pension scheme is deemed to consist of a trust fund for the purposes of—

(a) the definition of unclaimed money in section 2 of the principal Act; and

(b) sections 18, 31, 32, 51, and 64 of the principal Act; and

(c) *[Repealed]*

Schedule 1 clause 3(c): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

4 The trust deed for a pension scheme is deemed to be a trust deed to which section 59 and section 65(1) of the principal Act apply.

Schedule 2
Effect of implementation of amalgamation proposal

s 24

General provisions

1 In this schedule, in relation to an amalgamation proposal,—

existing scheme means an existing scheme to be amalgamated under the amalgamation proposal

new scheme means a new scheme established as the result of the amalgamation proposal under this Act.

2 All members and beneficiaries of an existing scheme will, on the appointed day, be transferred to and become members and beneficiaries of the new scheme.

3 All assets and liabilities of the existing scheme will, on the appointed day, vest in the new scheme.

4 Without limiting clause 3, on and from the appointed day in relation to an amalgamation proposal,—

(a) a reference (whether express or implied) to any of the existing schemes in any Act, or in any regulation, order, or notice made or given under any Act, or in any instrument, register, record, notice, security, document, or communication made, given, passed, registered, or executed before or after the appointed day must be read and construed as a reference to the new scheme:

(b) every contract, agreement, conveyance, deed, lease, licence, security, instrument, undertaking, and notice (whether or not in writing) entered into by, made with, given to or by, or addressed to the Board as trustee of any of the existing schemes (whether alone or with any other person) before the appointed day and subsisting immediately before the appointed day is, to the extent that it was previously binding on and enforceable

by, against, or in favour of the Board as such trustee, binding on and enforceable by, against, or in favour of the Board as trustee of the new scheme as fully and effectually in every respect as if, instead of the Board as trustee of the existing scheme, the Board as trustee of the new scheme had been the person by whom it was entered into, with whom it was made, or to or by whom it was given or addressed, as the case may be:

(c) any action, arbitration, proceedings, or cause of action that immediately before the appointed day is pending or existing by, against, or in favour of the Board as trustee of any existing scheme or to which the Board as such trustee is a party may be prosecuted, and without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of the Board as trustee of the new scheme:

(d) without limiting sections 40 to 40D of the principal Act and paragraph (b), every person (if any) who is a corporate contributor to an existing scheme is, on and after the appointed day,—

(i) bound by the terms and conditions of the new scheme; and

(ii) liable to pay contributions to the Board in relation to and in accordance with the terms of the new scheme.

5 Nothing effected or authorised by an amalgamation proposal—

(a) places the Board in any of its capacities (or a member of the Board) 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 Board in any of its capacities (or a member of the Board); or

(c) gives rise to a right for a person to—

(i) terminate or 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 Board in any of its capacities (or a member of the Board) or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or 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.

6 A new scheme is deemed to be an existing scheme for the purposes of the principal Act, and for the purposes of this Act.

Provisions relating to taxes and duties

7 For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge—

(a) in relation to property that is—

(i) held by the Board immediately before the appointed day as trustee of an existing scheme; and

(ii) vested under the amalgamation proposal in the Board as trustee of a new scheme,—

the Board as trustee of the existing scheme and the Board as trustee of the new scheme is deemed to be the same person with effect on and from the appointed day; and

(b) in respect of the liability for and the assessment, determination, or imposition of taxes, duties, levies, or other charges under any such enactment, accruing on and from the appointed day, all transactions entered into by, and acts of, the Board as trustee of an existing scheme before that day are deemed to have been entered into or performed by the Board as trustee of the new scheme and to have been entered into or performed by the Board as trustee of the new scheme at the time when they were entered into or performed by the Board as trustee of the existing scheme; and

(c) any liability for, or credit or other benefit in respect of, taxes, duties, levies, or other charges arising before the appointed day in respect of any existing scheme is, with effect on and from the appointed day, deemed to be a liability or credit or other benefit of the Board as trustee of the new scheme.

8 Where property which is vested under an amalgamation proposal in the Board as trustee of a new scheme consists of shares or an interest in shares, those shares are not, by reason of that vesting, to be treated as having ceased to be held by or on behalf of the same persons for the purposes of determining whether—

(a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007; or

(b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of that Act; or

(c) any debit arises to be recorded in a taxpayer's imputation credit account, FDP account, or branch equivalent tax account under OA 6(2), (3), or (5), as described in table O2, table O4, or table O8 of that Act;—

and, for the purposes of determining the application of those sections in relation to subsequent dealings in those shares, the shares (or interest in the shares)

are to be treated as having been acquired by the Board as trustee of the new scheme at the time they were acquired by the Board as trustee of the existing scheme.

Schedule 2 clause 8(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Schedule 2 clause 8(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Schedule 2 clause 8(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

9 The vesting in accordance with an amalgamation proposal of property or liabilities of the Board as trustee of an existing scheme in the Board as trustee of a new scheme, and any other steps taken to implement that amalgamation proposal,—

(a) are not for the purposes of the Income Tax Act 2007 to be treated as or as giving rise to a sale or other disposition, distribution, transfer, or a receipt of any property or liability of the Board in any of its capacities:

(b) are not, for the purposes of the Goods and Services Tax Act 1985, to be treated as a supply of any goods and services:

(c) are not, for the purposes of the Stamp and Cheque Duties Act 1971, to be treated as a conveyance of any property:

(d) are not, for the purposes of the Estate and Gift Duties Act 1968, to be treated as a dutiable gift.

Schedule 2 clause 9(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

10 Nothing in clause 8 or clause 9 limits the generality of clause 7.

Notes

1 General

This is a consolidation of the National Provident Fund Restructuring Act 1990 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Secondary Legislation Act 2021 (2021 No 7): section 3

Trusts Act 2019 (2019 No 38): section 161

Land Transfer Act 2017 (2017 No 30): section 250

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Financial Markets Authority Act 2011 (2011 No 5): section 82

National Provident Fund Restructuring Amendment Act 2010 (2010 No 29)

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Income Tax Act 2004 (2004 No 35): section YA 2

Local Government Act 2002 (2002 No 84): section 262

Government Superannuation Fund Amendment Act 2001 (2001 No 47): section 38

Public Audit Act 2001 (2001 No 10): section 52

National Provident Fund Restructuring Amendment Act 1997 (1997 No 83)

Financial Reporting Amendment Act 1997 (1997 No 17): section 6(1)

Taxation (Core Provisions) Act 1996 (1996 No 67): section 484

Income Tax Act 1994 (1994 No 164): section YB 1

Public Finance Amendment Act 1992 (1992 No 142): section 42

National Provident Fund Restructuring Amendment Act 1992 (1992 No 38)

National Provident Fund Restructuring Amendment Act 1991 (1991 No 114)

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