Government Superannuation Fund Amendment Act 2001

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The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Government Superannuation Fund Amendment Act 2001.

(2) In this Act, the Government Superannuation Fund Act 1956 is called "the principal Act".

2 Commencement

(1) Sections 28 (Minister may enter transitional agreements) and 38 (amendments to National Provident Fund Restructuring Act 1990) come into force on the day after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on the **operative date**, which is the day that is 42 days after the date on which this Act receives the Royal assent.

(3) During the period between the date on which this Act receives the Royal assent and the operative date,—

(a) the Minister may appoint the members, chairperson, and deputy chairperson of the Government Superannuation Fund Authority board; and

(b) that board may meet and exercise its powers under the principal Act, but only for the purpose of entering into contracts or other obligations, or making other arrange-

ments, that have effect only on or after the operative date.

(4) Subsection (3) applies as if all the provisions of this Act had come into force on the day after the date on which this Act receives the Royal assent.

(5) Subsection (3) does not limit section 11 of the Interpretation Act 1999.

3 Purpose

The purpose of this Act is—

(a) to establish a Crown entity to manage and administer the Fund and the schemes:

(b) to make other miscellaneous changes in respect of the Fund and the schemes.

Part 1
Amendments to principal Act

4 Interpretation

(1) Section 2(1) of the principal Act is amended by repealing the definitions of the terms **custodian** and **Superintendent**, and inserting, in their appropriate alphabetical order, the following definitions:

"**custodian** means a person appointed under section 19A(1) to act as custodian of the Fund, or any part of the Fund

"**Government Superannuation Fund Authority** or **Authority** means the entity established under section 15A

"**Government Superannuation Fund Authority board** or **board** means the board of that entity as referred to in section 15G

"**invest** means to carry on any activity, do any act, or enter into any transaction that the Authority considers to be for the purpose, directly or indirectly, of—

"(a) enhancing or protecting the value of the Fund:

"(b) managing, or enabling the management of, the Fund

"**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)

"**property** means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal; and includes, without limitation,—

"(a) choses in action and money:

"(b) goodwill:

"(c) 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

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

"**subsidiary** has the same meaning as in sections 5 to 8 of the Companies Act 1993

"**Superintendent** means the Superintendent as referred to in section 2C before the date on which the Government Superannuation Fund Amendment Act 2001 receives the Royal assent".

(2) Section 2(1) of the principal Act is amended by repealing the definition of the term **salary**, and substituting the following definition:

"**salary**—

"(a) means the salary and wages paid regularly in return for services:

"(b) does not include bonus payments, payments for overtime, allowances paid for special work performed, the reimbursement of expenses, lump sum payments in lieu of notice, retiring gratuities, redundancy payments, and contributions paid for or in respect of employer contributions:

"(c) may include a period of paid leave, but only if it is paid before the contributor ceases Government service.".

(3) The principal Act is amended by repealing the definition of the term **Board** in section 2(1), and by—

(a) omitting every reference to the Board that is in the Act immediately before the date on which the Government Superannuation Fund Amendment Act 2001 receives the Royal assent, and substituting in each place (unless the context otherwise requires) a reference to the Appeals Board; and

(b) inserting the following definition in section 2(1):

"**Appeals Board** means the Government Superannuation Appeals Board established under this Act".

5 Repeal of section 2C

The principal Act is amended by repealing section 2C (which relates to the Superintendent of the Government Superannuation Fund).

6 New section 12 substituted

The principal Act is amended by repealing section 12, and substituting the following section:

"**12 Matters to be taken into account on appeal**

"(1) The Appeals Board must—

"(a) act in accordance with the statement of policies, unless the Appeals Board considers that it is inappropriate to do so in the particular circumstances of a case; and

"(b) take into account the interests of any person who has an interest in the matter that is the subject of the appeal (including, without limitation, the interests of the Crown and of any contributor, beneficiary, or controlling authority affected by the matter), to the extent that those interests are known to the Appeals Board.

"(2) In this section, **statement of policies** means the statement published by the Superintendent under section 19F in December 1999 (as that statement may have been, or may be, changed under section 19F(2), whether before or after the substitution of that section by the Government Superannuation Fund Amendment Act 2001)."

7 New headings and sections 14 to 19B substituted

(1) The principal Act is amended by repealing sections 14 to 19D, and substituting the following headings and sections:

"**14 Money payable into Fund**

The following must from time to time be paid into the Fund:

"(a) the contributions from contributors as provided in this Act:

"(b) the amounts payable into the Fund under section 95:

"(c) money accruing from the investment of the Fund:

"(d) any other money that may be lawfully payable into the Fund.

"Compare: 1956 No 47 s 14

"**15 Money payable out of Fund**

The following must from time to time be paid out of the Fund:

"(a) the benefits arising under this Act:

"(b) any other money that may be lawfully payable out of the Fund.

"Compare: 1956 No 47 s 15

"*Government Superannuation Fund Authority*

"**15A Establishment of Government Superannuation Fund Authority**

"(1) This section establishes the Government Superannuation Fund Authority (the **Authority**).

"(2) The Authority is a Crown entity for the purposes of the Public Finance Act 1989.

"**15B Body corporate status and powers**

"(1) The Authority is a body corporate with perpetual succession.

"(2) The Authority has—

"(a) full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction; and

"(b) for the purposes of paragraph (a), full rights, powers, and privileges.

"(3) The Authority may exercise its powers only for the purpose of carrying out its functions.

"(4) There are no restrictions on the Authority's investment powers, other than as provided by sections 15J, 15K, and 15O.

"(5) The Authority may not subscribe for, acquire, or hold any shares or other securities issued by a company unless—

"(a) the company is a subsidiary of the Authority; or

"(b) the shares or other securities are an investment of the Fund; or

"(c) subsection (6) applies to the company.

"(6) The Authority may subscribe for, acquire, or hold any shares or other securities issued by a company if—

"(a) the company provides (or is to provide or has provided) to the Authority any services of a kind referred to in section 19(1)(a) to (c) (whether or not the company also provides services to other persons); and

"(b) every shareholder of the company is a company or other body corporate; and

"(c) the Crown controls the composition of a majority of the governing body of every shareholder.

"(7) This section is subject to section 15C (borrowing).

"Compare: 1993 No 105 s 16(1)

"**15C Borrowing**

"(1) The Authority may not, except with the approval of the Minister of Finance,—

"(a) borrow money (neither on behalf of the Authority nor in respect of the Fund); nor

"(b) mortgage or charge any of the real or personal property of the Fund, whether present or future, as security; nor

"(c) hold any financial instrument that places or may place a liability or a contingent liability on the Authority, the Fund, or the Crown.

"(2) The Minister's approval may be given for any class of transactions in subsection (1)(a) to (c).

"**15D Functions**

"(1) The functions of the Authority are to manage and administer the Fund and the schemes in accordance with this Act.

"(2) The Authority is not a trustee, or a constructive trustee, in relation to the exercise of its functions or to any other matter (except as otherwise provided in section HJ 1 of the Income Tax Act 1994 for tax purposes).

"(3) The functions of the Authority include, if the Minister so directs, the provision of services in respect of any fund or superannuation scheme that is—

"(a) managed by the Crown or a Crown entity or an entity whose board is appointed by the Crown; and

"(b) approved by the Minister for that purpose.

"(4) Those services may be provided on any terms and conditions that the Authority's board thinks fit, but must not place or have the potential to place a liability or a contingent liability on the Fund.

"**15E Funding of administrative expenses of Authority**

"(1) The expenses of the Authority relating to the management and administration of the Fund and the schemes—

"(a) are to be paid out of the Fund; and

"(b) are to be recovered under section 95 in accordance with this section.

"(2) The portion of the expenses attributable to all persons who are currently contributing to the Fund is to be recovered, each financial year, out of the money from which the salaries of those contributors are paid.

"(3) The portion of the expenses attributable to all persons who are currently contributing to the Fund includes estimates of all future expenses attributable to those contributors once they cease to be contributors.

"(4) The portion of the expenses attributable to any other person is to be recovered, each financial year, from the Crown.

"(5) Section 95 applies as if references in that section to benefits included expenses, with any other necessary modifications.

"(6) The Authority may determine the basis on which expenses are apportioned under that section, but the determination has no effect unless the Government Actuary certifies that the apportionment is fair and equitable.

"(7) In this section, **expenses** includes—

"(a) any fees payable under section 19 or section 19A; and

"(b) all remuneration and expenses of board members and employees of the Authority; and

"(c) any other expenses incurred by or on behalf of the Authority.

"**15F Auditor-General to be auditor of Authority**

The Authority is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the

Auditor-General is the auditor of the Authority and any subsidiary of the Authority.

"*Board of Authority*

"**15G Role of board of Authority**

"(1) All decisions relating to the business of the Authority are to be made by or under the authority of a board called the Government Superannuation Fund Authority board (the **board**).

"(2) The board has all the powers necessary for managing, and for directing or supervising the management of, the business of the Authority.

"**15H Membership of board**

The board must consist of at least 4, but not more than 7, board members appointed by the Minister.

"**15I Further provisions applying to board**

"(1) Schedule 4 applies to the board and its members.

"(2) The Governor-General may, by Order in Council, amend any provision of clauses 13 to 53 of Schedule 4.

"*Investment of Fund*

"**15J Investment of Fund**

"(1) The Authority is responsible for investing the Fund.

"(2) The Authority must invest the Fund on a prudent, commercial basis and, in doing so, must manage and administer the Fund in a manner consistent with—

"(a) best-practice portfolio management; and

"(b) maximising return without undue risk to the Fund as a whole; and

"(c) avoiding prejudice to New Zealand's reputation as a responsible member of the world community.

"**15K No controlling interests**

"(1) The Authority must use its best endeavours to ensure that the Fund does not control any other entity or hold a percentage

of the voting rights in any other entity that would require it to seek control of that entity.

"(2) If a contravention of subsection (1) arises (through inadvertence or otherwise), the Authority must take all reasonable steps to remedy the default as soon as practicable.

"(3) For the purposes of this Act, an entity is controlled by the Fund if—

"(a) the entity is a subsidiary of the Fund; or

"(b) the Fund controls the entity within the meaning of any relevant approved financial reporting standard (within the meaning of section 2(1) of the Financial Reporting Act 1993); or

"(c) the Fund can control directly or indirectly the composition of the board of the entity within the meaning of sections 7 and 8 of the Companies Act 1993 (which, for the purposes of this paragraph, are to be read with all necessary modifications).

"(4) This section limits section 15B(5)(b), but does not limit section 15B(5)(a) or (c).

"(5) In this section, **Fund** means the Authority acting in respect of the Fund.

"15L Establishment of investment policies, standards, and procedures

"(1) The Authority must establish, and adhere to, investment policies, standards, and procedures for the Fund that are consistent with its duty to invest the Fund on a prudent, commercial basis, in accordance with section 15J.

"(2) The Authority must review those investment policies, standards, and procedures for the Fund at least annually.

"15M Contents of statements of investment policies, standards, and procedures

A statement of investment policies, standards, and procedures must cover (but is not limited to)—

"(a) the classes of investments in which the Fund is to be invested and the selection criteria for investments within those classes; and

"(b) the determination of benchmarks or standards against which the performance of the Fund as a whole, classes of investment, and individual investments will be assessed; and

"(c) standards for reporting the investment performance of the Fund; and

"(d) ethical investment, including policies, standards, or procedures for avoiding prejudice to New Zealand's reputation as a responsible member of the world community; and

"(e) the balance between risk and return in the overall Fund portfolio; and

"(f) the Fund management structure; and

"(g) the use of options, futures, and other derivative financial instruments; and

"(h) the management of credit, liquidity, operational, currency, market, and other financial risks; and

"(i) the retention, exercise, or delegation of voting rights acquired through investments; and

"(j) the method of, and basis for, valuation of investments that are not regularly traded at a public exchange; and

"(k) prohibited or restricted investments or any investment constraints or limits.

"**15N Statement of intent**

The statement of intent of the Authority prepared each financial year under Part V of the Public Finance Act 1989 must include (in addition to any other requirements)—

"(a) a statement of the board's expectations about the performance of the Fund over the next financial year, in sufficient detail to enable meaningful assessment against those expectations after the end of that financial year; and

"(b) a statement of the key risks to the performance of the Fund over the coming year and the actions being taken by the board to manage those risks; and

"(c) forecast financial statements of the Fund for the next financial year, including a statement of accounting policies.

"**15O Ministerial directions relating to investment of Fund**

"(1) The Minister may, after consultation with the Authority, direct the Authority, in investing the Fund,—

"(a) to meet the Government's expectations as to the Fund's performance, including the Government's expectations as to risk and return:

"(b) not to invest in a specified investment or class of investments to which the Crown already has a direct or indirect exposure, for the purpose of limiting that exposure.

"(2) The Minister must not give a direction that is inconsistent with the Authority's duty to invest the Fund on a prudent, commercial basis, consistent with best-practice portfolio management.

"(3) The Authority must notify the Minister how it proposes to give effect to any direction.

"(4) The Minister must present to the House of Representatives a copy of any direction, as soon as practicable after it is given to the Authority.

"Further provisions relating to Fund

"**16 Reporting by Authority on Fund**

"(1) The Authority must report to the Minister on the Fund at those intervals that the Minister may require.

"(2) The Authority's report must include any information that the Minister may require.

"**17 Property to be held for paying benefits**

"(1) All property comprising the Fund must be held for the purpose of paying the benefits that are payable under this Act.

"(2) This section does not prevent the Authority from making a payment out of the Fund for the purpose of carrying out its functions.

"**18 Interest on money held in error**

"(1) This section applies if the Authority pays interest, out of the Fund, on any money held in error in the Fund.

"(2) The interest must be at a rate calculated using a method that has been determined by the Authority, approved by the Minister, and published in the *Gazette*.

"*Administration managers, investment managers, other service providers, and custodians*

"**19 Administration and investment management and other service providers**

"(1) The Authority may appoint, on any terms and conditions that the Authority thinks fit, 1 or more persons (including any department) to undertake each of the following functions:

"(a) the administration of the schemes:

"(b) the investment of any part of the Fund:

"(c) the provision of secretariat or other services to the Authority.

"(2) Different persons may be appointed in respect of different schemes or different parts of the Fund.

"(3) The Authority must specify, in each instrument of appointment, the powers and rights of the person appointed (including, without limitation, the extent of that person's power to delegate any of those powers and rights).

"(4) This section does not limit section 15B.

"**19A Custodianship of Fund**

"(1) The Authority may appoint a person or persons (including any department) to act as custodian of the Fund, or any part of the Fund.

"(2) A custodian so appointed must hold the property of the Fund, or that part of the property of the Fund in respect of which they have been appointed, in their name or, if the Authority authorises it, in the name of 1 or more nominees.

"(3) An appointment may be on any terms and conditions that the Authority thinks fit.

"(4) The Authority must specify, in each instrument of appointment, the powers and rights of the person or persons appointed (including, without limitation, the extent of that person's powers to delegate any of those powers and rights).

"(5) This section does not limit section 15B.

"*Performance reviews*

"**19B Performance reviews**

"(1) From time to time, there must be conducted a review of how effectively and efficiently the Authority is performing its functions under section 15D.

"(2) The first performance review must be conducted no later than 5 years after the operative date.

"(3) Subsequent performance reviews must be conducted at intervals that are no more than 5 years apart (to be set by the Minister).

"(4) The Minister must set the terms of reference for the review, which must include (without limitation) requirements that the reviewer form an opinion about—

"(a) whether or not the investment policies, standards, and procedures established by the Authority are appropriate to the Fund; and

"(b) whether or not the investment policies, standards, and procedures established by the Authority have been complied with in all material respects; and

"(c) the investment performance of the Fund.

"(5) Every performance review must be conducted by an independent person appointed by the Minister.

"(6) Every person who conducts a performance review must, as soon as practicable after conducting it,—

"(a) prepare a written report on the conclusions reached and recommendations formulated as a result of conducting it; and

"(b) give copies of the report to the Minister and the Authority.

"(7) The Minister must present a copy of the report to the House of Representatives as soon as practicable after receiving it.

"(8) The costs of conducting a performance review must be met out of money appropriated by Parliament for the purpose.

"*Provisions relating to schemes*".

(2) Section 95AA of the principal Act is consequentially amended by repealing subsection (3).

(3) The principal Act is amended by adding the Schedule 4 set out in Schedule 1 of this Act.

8 New section 19F substituted

The principal Act is amended by repealing section 19F, and substituting the following section:

"**19F Statement of policies and exercise of discretionary powers**

"(1) The Authority must, when exercising its discretionary powers in relation to the schemes,—

"(a) act in accordance with the statement of policies, unless the Authority considers that it is inappropriate to do so in the particular circumstances of a case; and

"(b) take into account the interests of any person who has an interest in the matter (including, without limitation, the interests of the Crown and of any contributor, beneficiary, or controlling authority affected by the matter), to the extent that those interests are known to the Authority.

"(2) If the Authority proposes to make any change to the published statement of policies, it must—

"(a) consult with organisations that, in the Authority's view, have or are likely to have, or are representative of persons who have or are likely to have, an interest in the proposed change; and

"(b) republish the statement of policies, or the part of the statement of policies affected by the change, in whatever manner the Authority considers appropriate; and

"(c) send a copy of the republished statement of policies to the Appeals Board.

"(3) In this section, **statement of policies** means the statement published by the Superintendent under this section in December 1999 (as that statement may have been, or may be, changed under subsection (2), whether before or after the substitution of this section by the Government Superannuation Fund Amendment Act 2001)".

9 Repeal of section 19G

The principal Act is amended by repealing section 19G (which relates to the delegation of the Superintendent's functions or powers).

10 Right to cease to be contributor under Part 2

(1) Section 28(1) of the principal Act is amended by omitting the words "on the expiration of 3 months from the date on which the notice is delivered", and substituting the words "on the expiration of the day on which the notice is received by the Authority".

(2) Section 28 of the principal Act is amended by repealing subsections (3) and (4), and substituting the following subsection:

"(4) The contributor ceases to be a contributor to the Fund on the expiration of the day on which the notice is received by the Authority and, if the contributor elected to take a refund, that refund must be paid pursuant to the election as soon as practicable after that."

11 Refund of contributions on retiring before entitled to retiring allowance

(1) Section 42(3) of the principal Act is amended by omitting the words "at such rate as the Minister of Finance from time to time determines", and substituting the words "at a rate calculated using a method that has been determined by the Authority, approved by the Minister, and published in the *Gazette*".

(2) Section 42(6) of the principal Act is amended by omitting the words "at such rate and on such basis as may from time to time be determined by the Minister of Finance", and substituting the words "at a rate, and on a basis, calculated using a method that has been determined by the Authority, approved by the Minister, and published in the *Gazette*".

12 Contributors under Part 2 may become contributors under Part 2A

Section 61E of the principal Act is amended by inserting, after subsection (5), the following subsection:

"(5A) Subsection (5) is subject, in the case of persons to whom section 30 (variable percentage scheme) applies, to section 30(5) and (6) and section 61P.".

13 Computation of retiring allowance

Section 61L of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

"(4) A contributor who is entitled under section 61I(4) to receive a retiring allowance may elect to increase the amount of that retiring allowance to the amount that would have been payable if the contributor had retired at an age stated in the election and not exceeding 65 years subject to—

"(a) the contributor making the election before attaining the age of 60; and

"(b) the contributor complying with any terms and conditions set by the Authority, including making any payments into the Fund that the Authority thinks fit to impose for the purpose of funding the increased benefit which will result from the election; and

"(c) the maximum amount of the retiring allowance being the amount calculated under subsection (1) as if the contributor had retired at the age stated in the election."

14 Right to cease to be contributor

(1) Section 61R(1) of the principal Act is amended by omitting the words "on the expiration of 3 months from the date on which the notice is delivered", and substituting the words "on the expiration of the day on which the notice is received by the Authority".

(2) Section 61R of the principal Act is amended by repealing subsections (3) and (4), and substituting the following subsection:

"(4) The contributor ceases to be a contributor to the Fund on the expiration of the day on which the notice is received by the Authority and, if the contributor elected to take a refund, that refund must be paid pursuant to the election as soon as practicable after that."

15 Benefits where contributor leaves regular forces and is not entitled to retiring allowance

Section 71K(1)(b) of the principal Act is amended by omitting the words "at such rate as the Minister of Finance from time to time determines", and substituting the words "at a rate calculated using a method that has been determined by the Authority, approved by the Minister, and published in the *Gazette*".

16 New section 89B substituted

(1) The principal Act is amended by repealing sections 89B and 89C (which relate to allowances that may be included as salary), and substituting the following section:

"**89B Other contributions**

"(1) This section applies if a contributor has been required (whether before or after the commencement of this section) to pay any sum into the Fund that is other than the standard rate of contribution in respect of the scheme to which the contributor belongs (whether in respect of any period that is included in a period of contributory service, or in respect of contributions not duly paid by deduction from salary, or in respect of contributions repaid after having been refunded to the contributor, or otherwise).

"(2) The Authority may determine whether the whole or any part of that sum is to be treated as contributions for the purpose of this Act, and the amount so determined is to be treated as contributions accordingly.

"(3) Except as provided in this section, the only sums that are to form part of a contributor's contributions for the purpose of this Act are the amounts paid by the contributor by way of standard rate of contribution in respect of the scheme to which the contributor belongs.

"(4) In this section, **standard rate of contribution** means the rates referred to in sections 29, 30, 61B, 61F, 63A, 71F, 74C, 78, 81F, 83, 88C, and 88Q and in section 19 of the Government Superannuation Fund Amendment Act 1962, and any other provisions with like effect."

(2) Section 71A of the principal Act is consequentially amended by omitting from the definition of **salary** the words "together

with such allowances as are specified in Orders in Council made pursuant to section 56 or section 89B of this Act".

17 Annual report

(1) Section 93B(1) of the principal Act is amended by repealing paragraph (b).

(2) Section 93B of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) The annual report must also include (in addition to any other requirements)—

"(a) a statement of responsibility for the financial statements of the Fund, signed by the chairperson of the board and the chief executive of the Authority (if any), and comprising the same statements that are required by section 42(2) of the Public Finance Act 1989 as if the Fund were a Crown entity; and

"(b) an analysis and explanation of the performance of the Fund over that financial year, including a comparison with the Authority's expectations about the performance of the Fund that were set out in the statement of intent relating to that financial year; and

"(c) a statement of the investment policies, standards, and procedures for the Fund established by the Authority under section 15L; and

"(d) a statement, signed by the chairperson of the board and the chief executive of the Authority (if any), certifying whether or not the investment policies, standards, and procedures for the Fund have been complied with throughout that financial year; and

"(e) a schedule of—

"(i) the investment managers, administration managers, and any other service providers used under section 19, and custodians used under section 19A, during that financial year; and

"(ii) the classes of investments for which each investment manager was responsible; and

"(iii) any changes since the last annual report in those persons."

18 Interest payable on overdue amounts

Section 95B of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) at a rate calculated using a method that has been determined by the Authority, approved by the Minister, and published in the *Gazette*."

19 Information to be provided by controlling authorities

Section 95D of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

"(1) Every controlling authority in relation to a contributor must ensure that there is provided to the Authority, at such time or times as are reasonably specified by the Authority, such information as the Authority may reasonably require of that controlling authority for the purpose of administering this Act in relation to that contributor.

"(2) The Authority must not require a controlling authority to provide information under this section unless the Authority has first consulted the controlling authority about the requirement."

20 Regulations

Section 97 of the principal Act is amended by repealing paragraphs (a), (c), and (d), and substituting the following paragraphs:

"(c) prescribing money that may be lawfully payable into the Fund under section 14(d):

"(d) prescribing money that may be lawfully payable out of the Fund under section 15(b):".

21 References to Superintendent in principal Act and regulations

The principal Act, and any regulations made under that Act, are amended by omitting every reference to the Superintendent, and substituting a reference to the Authority.

Part 2
Miscellaneous provisions

Transitional provisions relating to restructuring

22 Vesting of property and liabilities

(1) The following vest in the Authority on the commencement of this Act:

(a) the property and liabilities comprising the Fund held by the custodian under section 19A of the principal Act; and

(b) the property and liabilities of the Superintendent that are connected with the Fund or schemes; and

(c) any other property or liabilities of the Crown, the Superintendent, or a custodian arising from the investment of the Fund; and

(d) any other property of the Crown used principally for the purpose of the Fund or schemes, including the whole of the leasehold interest in 2 floors of the building at 33 Bowen Street held in the name of the Government Superannuation Fund Department.

(2) This section does not apply to any contract referred to in section 23.

23 Transitional provision relating to existing schemes administration contract

(1) Any contract entered into under section 19 of the principal Act by the Minister in relation to the administration of the schemes before the commencement of this Act continues in force according to its terms.

(2) The Authority is appointed to act as the Minister's agent in relation to the contract.

(3) Expenses incurred by the Crown under the contract are to be treated as if they were expenses incurred by the Authority for the purposes of section 15E of the principal Act.

24 Records and registers

(1) Neither the Registrar-General of Lands, nor any other person charged with the keeping of any records or registers, is obliged solely by reason of this Act to change the name of the custo-

dian or the Superintendent or any other person to the Authority in those records or registers or in any document.

(2) It is sufficient proof, in the absence of evidence to the contrary, that property or any liability is vested in the Authority if a person presents to a registrar or any other person an instrument, whether or not comprising an instrument of transfer,—

(a) executed or purporting to be executed by the Authority; and

(b) relating to any property or liability held, immediately before the commencement of this Act, by the custodian or the Superintendent or any other person; and

(c) containing a recital that the property or liability has vested in the Authority by virtue of the provisions of this Act.

25 Taxes and duties

(1) The vesting of property and liabilities in the Authority under section 22 does not give rise to any liability under the Acts specified in the Schedule of the Tax Administration Act 1994.

(2) The Authority is to be treated as if it were—

(a) a trustee substituted, as trustee of the Fund, for the person who was the custodian of the Fund under section 19A of the principal Act immediately before the date on which section 22 comes into force; and

(b) the same person as that custodian.

(3) Subsection (2) applies—

(a) on and from the date on which section 22 comes into force; and

(b) for the purposes of the application in relation to the Fund 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.

26 Certain matters not affected by restructuring

Nothing effected or authorised by this Act—

(a) places the Crown or the Authority (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 otherwise makes any of them guilty of a civil wrong; or

(b) gives rise to a cause of action against the Fund or the Crown or the Authority or any member of the board; or

(c) gives 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) places the Crown or the Authority (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) releases any surety wholly or in part from all or any obligation; or

(f) invalidates or discharges any contract or security.

27 Property or liabilities vested in Authority

The following applies in respect of any property or liabilities vested in the Authority under this Act:

(a) the Crown remains liable to any third party as if the property or liability had not been transferred, but must be indemnified by the Authority in respect of any liability to that third party:

(b) any satisfaction or performance by the Authority in respect of the property or liability is deemed also to be satisfaction or performance by the Crown:

(c) any satisfaction or performance in respect of the property or liability by any third party to the benefit of the Authority is deemed also to be to the benefit of the Crown.

Compare: 1986 No 124 s 23(5)(d)-(f)

28 Minister may enter transitional agreements

(1) The Minister may, before the operative date, enter into any contract, on behalf of the Authority, for the purpose of facilitating the new governance arrangements for the Fund and the schemes under this Act.

(2) Any such contract has effect, on and after the operative date, as if—

(a) the Authority had entered into the contract instead of the Minister; and

(b) any other party to the contract, and the Authority, were bound by the contract in all respects.

29 Final report and accounts

(1) The Ministry of Economic Development must, as soon as practicable after the commencement of this Act, supply to the Minister and the Authority a report on matters affecting the Fund during the period from 1 July 2001 to the operative date.

(2) Section 93B(1) of the principal Act applies to the report as if that subsection had not been amended by this Act.

(3) The report must also include any other information about the performance or operation of the Fund during the period that the Ministry considers relevant.

Employees

30 Transfer of employees

(1) The chief executive of the Ministry of Economic Development and the Authority may, after consulting the employee concerned, agree to the transfer of an employee from the government superannuation fund unit of that Ministry to the Authority.

(2) Sections 31 to 33 apply to the employee (referred to in those sections as the transferred employee).

31 Terms and conditions of employment for transferred employee

(1) The appointment of a transferred employee must be on terms and conditions no less favourable to the transferred employee

than those applying to the employee immediately before the date of the person's transfer to the Authority.

(2) Subsection (1)—

(a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and the Authority; but

(b) does not apply to a transferred employee who receives any subsequent appointment with the Authority.

32 Continuity of employment

(1) Every transferred employee becomes an employee of the Authority on the date of transfer.

(2) However, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of the employee,—

(a) the contract of employment of that employee is deemed to have been unbroken; and

(b) the employee's period of service with the Ministry, and every other period of service of that employee that is recognised by the Ministry as continuous service, is deemed to have been a period of service with the Authority.

33 No compensation for technical redundancy

A transferred employee is not entitled to receive any payment or any other benefit solely on the ground that—

(a) the position held by the person in the Ministry has ceased to exist; or

(b) the person has ceased (as a result of the transfer to the new employer) to be an employee of the Ministry.

34 Employees who choose to transfer to subsidiary or joint venture company

An employee of the Ministry of Economic Development who chooses to transfer to a company referred to in section 15B(5)(a) or (c) on terms and conditions of employment that are no less favourable than the terms and conditions of employment applying to the employee immediately before

the transfer is not entitled to any payment or other benefit solely on the ground that—

(a) the position held by the person in the Ministry has ceased to exist; or

(b) the person has ceased (as a result of the transfer to the new employer) to be an employee of the Ministry.

Past decisions

35 Past decisions

(1) All decisions made by the Government Superannuation Appeals Board or the Superintendent or a former Government Superannuation Board or a Minister in favour of an individual contributor, beneficiary, or potential beneficiary have effect, in so far as they relate to that individual, as if the decision were one that that board or person was entitled to make.

(2) The decision binds the Authority in any dealings after the operative date with the contributor, beneficiary, or potential beneficiary in whose favour the decision was made, unless that person supplied misleading or incorrect information or otherwise acted in bad faith.

(3) However, the decision does not have any precedent effect in favour of any contributor, beneficiary, or potential beneficiary other than the person in whose favour the decision was made.

Amendments to other Acts

36 Amendment to Ombudsmen Act 1975

The Ombudsmen Act 1975 is amended by inserting in Part 2 of Schedule 1, in its appropriate alphabetical order, the item "Government Superannuation Fund Authority and any subsidiary of that Authority."

37 Amendments to Public Finance Act 1989

The Public Finance Act 1989 is amended by inserting in Schedules 4, 5, and 6, in its appropriate alphabetical order, the item "Government Superannuation Fund Authority."

38 Amendments to National Provident Fund Restructuring Act 1990

(1) Section 16 of the National Provident Fund Restructuring Act 1990 is amended by adding the following subsection:

"(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."

(2) Schedule 4 of the National Provident Fund Restructuring Act 1990 is amended by repealing clause 3(1) and (1A), and substituting the following subclauses:

"(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)."

(3) Schedule 4 of the National Provident Fund Restructuring Act 1990 is amended by repealing clause 5(1), and substituting the following subclauses:

"(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."

(4) Schedule 4 of the National Provident Fund Restructuring Act 1990 is amended by repealing clause 6, and substituting the following clause:

"**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."

39 Amendment to Income Tax Act 1994

[Repealed]

Section 39 was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

40 Consequential amendments to other Acts

The Acts specified in Schedule 2 are consequentially amended in the manner set out in that schedule.

Amendments and revocations of regulations and orders

41 Amendments to Government Superannuation Fund (Ceasing Contributions) Regulations 1995

(1) The Government Superannuation Fund (Ceasing Contributions) Regulations 1995 are amended by revoking the definition of the term **effective date** in regulation 2, and substituting the following definition:

"**effective date**, in relation to a cessation election, means the expiration of the day on which the notice is received by the Government Superannuation Fund Authority".

(2) The Government Superannuation Fund (Ceasing Contributions) Regulations 1995 are amended by revoking regulation 5(1)(b).

42 Orders revoked

The orders specified in Schedule 3 are revoked.

Schedule 1

s 7(3)

New Schedule 4 added to principal Act

Schedule 4

s 15I

Further provisions relating to board of Government Superannuation Fund Authority

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1 Interpretation

In this schedule, unless the context otherwise requires,—

board means the Authority board

member means a member of the board

quorum means a majority of board members as provided for in clause 33

transaction means a matter stated in clause 19(2).

Schedule 4—*continued*

Members' appointments

2 Criterion for appointments

The Minister must only appoint a person as a board member who, in the Minister's opinion, has substantial appropriate experience, training, and expertise to enable the Authority to carry out its functions and powers.

3 Method of appointment

(1) The Minister appoints a member by sending written notice to the member and a copy to the Authority.

(2) Promptly after sending the notice, the Minister must publish a copy in the *Gazette*.

4 When appointment takes effect

Every member takes office from the date stated in the notice of appointment.

5 Position where concurrent office

A person appointed as a member may hold that office concurrently with any other office.

Term of office

6 Term of office

Except as otherwise provided in this Act, a member—

(a) holds office for a term not exceeding 3 years; and

(b) may be reappointed; and

(c) continues in office after the expiry of his or her term of office (unless the member resigns or is removed from office) until—

(i) the member is reappointed; or

(ii) the member's successor is appointed; or

(iii) the member is informed in writing by the Minister that the member is not to be reappointed.

Schedule 4—*continued*

Duties of board members

7 Duties of members

(1) A member, when exercising powers or performing duties as a member, must act—

(a) in good faith; and

(b) with reasonable care, diligence, and skill; and

(c) with honesty and integrity.

(2) The board—

(a) must ensure that the Authority, and any subsidiary of the Authority, acts in a manner consistent with the functions and powers of the Authority, and with the Authority's statement of intent and purchase agreement, and any directions given under section 15O; and

(b) must ensure that the activities of the Authority, and those of its subsidiaries, are conducted efficiently and effectively; and

(c) must have regard to the interests of creditors of the Authority, and endeavour to ensure that the Authority operates in a financially responsible manner.

Liability of members

8 Liability of members and committee members

(1) A member is not personally liable, in an action taken against him or her by the Authority, for any liability of the Authority, or for any act done or omitted to be done by the Authority or the board or by any person acting under a delegation of the Authority's functions and powers, provided the member acted in good faith in pursuance or intended pursuance of the functions or powers of the Authority.

(2) Every member is indemnified by the Authority—

(a) for costs and damages for any civil liability arising from any action brought by a third party, provided the member was acting in good faith and in pursuance or intended pursuance of the functions or powers of the Authority; and

Schedule 4—*continued*

(b) for costs arising from any successfully defended criminal action relating to actions or omissions in his or her capacity as a member.

(3) The Crown must meet any costs and damages arising from this indemnity out of money appropriated by Parliament.

(4) References in this clause to members include references to members of any committee of the board and employees.

Resignation and removal of members

9 Resignation

(1) A member may resign from office by sending a written notice to the Minister and a copy to the Authority.

(2) Unless the Minister earlier removes the member from office, the notice takes effect on the later of—

(a) the day the Minister receives it; and

(b) a day the member states in it for the purpose.

10 Removal from office

(1) The Minister may remove a member from office at any time, without compensation, by written notice to the member.

(2) The written notice must state the reason for the removal.

Vacancies in Authority's membership

11 Effect of vacancy in membership

The functions and powers of the Authority are not affected by any vacancy in the board's membership.

Remuneration

12 Remuneration

The members are to be paid, out of the Fund, such remuneration by way of fees, allowances, or expenses as is determined by the Minister.

Schedule 4—*continued*

Chairperson and deputy chairperson

13 Appointment

(1) The Minister may appoint 1 of the members as the chairperson and another member as the deputy chairperson.

(2) However, no person may, at the same time, hold the office both of chairperson and deputy chairperson.

(3) The Minister appoints a chairperson or deputy chairperson by sending written notice to the member and a copy to the Authority.

(4) The person takes office as chairperson or deputy chairperson from the date stated in the notice of appointment.

14 Term of office

Every person appointed as chairperson or deputy chairperson holds that office until the person—

(a) resigns from that office; or

(b) is removed from it by the Minister; or

(c) ceases to be a member.

15 Resignation

(1) A chairperson or deputy chairperson may resign from that office by sending written notice to the Minister and a copy to the Authority stating the date on which the resignation takes effect.

(2) A chairperson or deputy chairperson who resigns from that office continues to be a member of the board unless he or she also resigns from that office under clause 9.

16 Exercise of chairperson's functions, duties, and powers during vacancy, etc

During a vacancy in the office of chairperson, or while the chairperson is for any reason unable to perform the functions, duties, and powers of the chairperson, the deputy chairperson has and may exercise all of the functions, duties, and powers of the chairperson.

Schedule 4—*continued*

Acts not to be called into question

17 Acts not to be called into question

No one may question the following in any proceedings on the grounds that the occasion for the appointment had not arisen or had ceased:

(a) an appointment of a member to act as chairperson or deputy chairperson:

(b) an act done by that member while acting as chairperson or deputy chairperson:

(c) an act done by the board while any member is acting as chairperson or deputy chairperson:

(d) an act done by the board or any member while the member continues to hold office under clause 6(c).

18 Validity of members' acts

The acts of a person as a member are valid even if—

(a) the person's appointment was defective; or

(b) the person was not qualified for appointment.

Disclosure of interest

19 Obligation to disclose interest

(1) A member who (otherwise than as a member) is interested, directly or indirectly, in any of the matters listed in subclause (2) must, as soon as practicable after the member knows about the relevant facts, disclose the nature of the interest in accordance with clause 21.

(2) The matters are—

(a) the Authority's performance of its functions or exercise of a power:

(b) an arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Authority.

Schedule 4—*continued*

20 Meaning of interested

A member is **interested** in a transaction to which the board is a party if, and only if, the member—

(a) is a party to, or will or may derive a material financial benefit from, the transaction; or

(b) has a material financial interest in another party to the transaction; or

(c) is a director, officer, member, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction (other than a subsidiary of the Authority or a company referred to in section 15B(6)); or

(d) is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction; or

(e) is otherwise directly or indirectly materially interested in the transaction.

21 Disclosure of interest

(1) A member must, immediately after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Authority, cause to be entered in an interests register maintained by the Authority, and disclose to the board,—

(a) the nature and monetary value of the member's interest, if the monetary value is able to be quantified; or

(b) the nature and extent of the member's interest, if the monetary value cannot be quantified.

(2) A general notice entered in the interests register or disclosed to the board to the effect that a member is a shareholder, director, officer, member, or trustee of another named company or other person and is to be regarded as interested in any transaction that may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

Schedule 4—*continued*

22 Consequences of disclosure

(1) A member who discloses his or her interest under clause 21—

(a) must not take part in any deliberation or decision of the board relating to the matter; and

(b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board during which a deliberation or decision relating to the matter occurs or is made.

(2) Subclause (1) is subject to clause 24.

23 Matters to be delegated to committee

(1) The board must delegate a deliberation or decision to a committee if the effect of clause 22 is that there is not a quorum of members able to take part in the deliberation or decision, or to form a quorum.

(2) The committee must consist of a majority of persons—

(a) who are not interested in the transaction; and

(b) in the case of members of the committee who are not members of the board, who are appointed by the board with the agreement of the Minister.

(3) Subclause (1) is subject to clause 24.

24 Exceptions

(1) Clause 22 does not apply—

(a) to any deliberation or decision of the board that is made in accordance with any existing contract that governs the way in which the deliberation or decision is to be made; or

(b) to any deliberation or decision of the board to establish a committee, and to delegate the matter to a committee of the board, under clause 23.

(2) **Existing contract** means a contract—

(a) that was entered into by or on behalf of the Authority; and

(b) in respect of which the person, or a majority of the persons, making the decision by or on behalf of the Authority were not interested in the transaction.

Schedule 4—*continued*

25 Effect of non-compliance

The validity of a transaction entered into by the Authority is not affected by the fact that a member fails to comply with the disclosure requirements in clauses 19 to 24.

Use of information

26 Restrictions on disclosure or use of Authority's information

(1) A member must not disclose to any person, or make use of, or act on, any information that is only available to the member in that capacity.

(2) Subclause (1) does not prevent a member—

(a) being required or authorised by this Act or any other Act to disclose, use, or act on, the information; or

(b) disclosing, using, or acting on the information for the purposes of the Authority or the requirements of the law; or

(c) disclosing the information to the Minister.

27 When member may rely on certain information and advice

(1) A member, when exercising powers or performing duties as a member, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the persons listed in subclause (2).

(2) The persons are—

(a) any person who the member believes on reasonable grounds is reliable and competent in relation to the matters concerned; or

(b) any other member or committee on which the member did not serve in relation to matters within the member's or committee's designated authority; or

(c) the Minister.

Schedule 4—*continued*

28 When clause 27 applies

Clause 27 applies to a member only if the member—

(a) acts in good faith; and

(b) makes proper inquiry if the need for inquiry is indicated by the circumstances; and

(c) has no knowledge that the reliance is unwarranted.

Procedure of board: general

29 Procedure generally

Except as otherwise provided in this Act, the board may regulate its own procedure.

Procedure of board: meetings

30 Ordinary meetings

The Authority must appoint the times and places for all its ordinary meetings.

31 Special meetings

(1) The chairperson, or any 2 members, may at any time call a special meeting of the board by giving each member for the time being in New Zealand a written notice stating—

(a) the time and place of the meeting; and

(b) the business to be transacted at it.

(2) The members must be given—

(a) at least 7 days' notice of the meeting; or

(b) if they are satisfied that the business to be transacted is urgent, any shorter period of notice to which all members entitled to be notified agree.

(3) The notice must be either given to a member or sent to the member's last known address in New Zealand.

(4) Only the business stated in the notice may be transacted at that meeting.

Schedule 4—*continued*

32 Methods of holding meetings

A meeting of the board may be held either—

(a) by a number of the members who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, or electronic communication by which all members participating and constituting a quorum can simultaneously communicate with each other throughout the meeting.

33 Quorum

(1) A quorum for a meeting of the board is a majority of the members at the time the meeting is held.

(2) No business may be transacted at a meeting of the board if a quorum is not present.

34 Who presides at meetings

(1) The chairperson must preside at all meetings of the board at which he or she is present.

(2) If the chairperson is not present or, if there is no chairperson, the deputy chairperson, if present, must preside.

(3) The members present must appoint 1 of their number to be the chairperson for the meeting if—

(a) the chairperson and the deputy chairperson are not present; or

(b) there is no chairperson and no deputy chairperson.

(4) The appointed person has and may exercise all the powers, duties, and functions of the chairperson for the purposes of the meeting.

35 Voting at meetings

All resolutions of the board must be decided by a majority of the votes cast.

Schedule 4—*continued*

36 Resolutions

(1) A resolution in writing signed or assented to by letter, facsimile message, or electronic message by all members is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted.

(2) The resolution may consist of several documents in the same form, each signed or appearing to have been sent by 1 or more members.

37 Method of contracting

(1) A contract or other enforceable obligation may be entered into by the Authority as stated in subclauses (2) to (5).

(2) An obligation that, if entered into by an individual, would be required to be by deed, may be entered into on behalf of the Authority in writing, signed under the name of the Authority by—

(a) 2 or more of its members; or

(b) 1 or more attorneys appointed by the Authority in accordance with clause 38.

(3) An obligation that, if entered into by an individual, is required to be in writing, may be entered into on behalf of the Authority in writing by a person acting under the Authority's express or implied authority.

(4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of the Authority in writing or orally by a person acting under the Authority's express or implied authority.

(5) The Authority may, in addition to complying with subclauses (2) to (4), affix its common seal, if it has one, to the contract or document containing the enforceable obligation.

(6) This clause applies to a contract or other obligation—

(a) whether or not that contract or obligation was entered into in New Zealand; and

(b) whether or not the law governing the contract or obligation is the law of New Zealand.

Schedule 4—*continued*

38 Attorneys

(1) The Authority may, by an instrument in writing executed in accordance with clause 37(2), appoint a person as its attorney either generally or in relation to a specified matter.

(2) An act of the attorney in accordance with the instrument binds the Authority.

Delegations

39 Ability for board to delegate functions and powers

The board may by writing, either generally or specifically, delegate any of the functions or powers of the Authority to a committee of the board or to any person.

40 Certain powers must not be delegated

(1) The board must not delegate any of the following powers:

(a) the power of delegation in clause 39:

(b) the power to grant a power of attorney:

(c) the power of appointment in section 19 or section 19A.

(2) This clause does not limit sections 19 and 19A of this Act or clauses 23 and 24 of this schedule.

41 Effect of delegation

(1) A person to whom any functions or powers are delegated under clause 39 may carry out those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on the person directly by this Act and not by delegation.

(2) Subclause (1) is subject to any direction given or condition imposed by the board.

42 Presumption of acting in accordance with delegation

A person who appears to act under a delegation under clause 39 is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

Schedule 4—*continued*

43 Other matters relating to delegation

A delegation under clause 39—

(a) is revocable at will, but the revocation does not take effect until it is communicated to the delegate; and

(b) continues in force according to its terms until it is revoked; and

(c) does not prevent the board from performing the functions or exercising the power.

Subsidiaries

44 Subsidiaries

(1) The board must ensure that—

(a) the functions and powers of any subsidiary of the Authority are no broader than those of the Authority; and

(b) the Authority controls the composition of a majority of the board of the subsidiary at all times; and

(c) the Authority holds more than 50% of the voting shares of the subsidiary at all times.

(2) Clauses 46 to 53 apply to any subsidiary as if every reference to the Authority were a reference to a subsidiary, with all necessary modifications.

Committees

45 Committees

(1) The board may, by writing, appoint a committee to—

(a) advise the board on any matters relating to the Authority's functions or powers that are referred to a committee by the board; or

(b) exercise any of the Authority's functions or powers that are delegated to the committee under clause 23 or clause 39.

(2) The board may, by resolution, alter, discharge, continue, or reconstitute a committee appointed under subclause (1).

Schedule 4—*continued*

(3) Committee members may be members of the board or other persons.

(4) A committee may regulate its own procedure, subject to any direction from the board.

(5) Clauses 13 to 37 apply to the committee with all necessary modifications.

Employees

46 Appointment of chief executive officer

(1) The board may from time to time appoint a chief executive officer.

(2) The conditions of employment of a chief executive officer must be determined by the board.

(3) The board must not agree to any conditions of employment for a chief executive officer without—

(a) consulting the State Services Commissioner; and

(b) having regard to all recommendations the Commissioner makes to the board within a reasonable time of being consulted; and

(c) if the board does not adopt the recommendations of the Commissioner, consulting (in the case of the Authority) with the Minister or (in the case of a subsidiary of the Authority) with the Authority.

47 Appointment of other employees

(1) The chief executive officer may appoint those employees, including employees on secondment from other organisations, that he or she thinks necessary for the efficient performance of the Authority's functions, and may negotiate the terms and conditions of employment of such employees.

(2) Subject to the terms and conditions of employment, the chief executive officer may at any time terminate or suspend the employment of any of the Authority's employees.

Schedule 4—*continued*

48 Personnel policy

(1) The board must, if it appoints employees, operate a personnel policy that complies with the principle of being a good employer.

(2) For the purposes of this clause, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

(a) good and safe working conditions; and

(b) an equal employment opportunities programme; and

(c) the impartial selection of suitably qualified persons for appointment; and

(d) recognition of—

(i) the aims and aspirations of Maori; and

(ii) the employment requirements of Maori; and

(iii) the need for involvement of Maori as employees; and

(e) opportunities for the enhancement of the abilities of individual employees; and

(f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and

(g) recognition of the employment requirements of women; and

(h) recognition of the employment requirements of persons with disabilities.

49 Equal employment opportunities

(1) The board must, if it appoints employees,—

(a) develop and publish in each year an equal employment opportunities programme; and

(b) ensure in each year that the programme for that year is complied with and reported on within the board's annual report.

(2) An equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional bar-

Schedule 4—*continued*

riers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

50 Choice of procedure

If the circumstances giving rise to a personal grievance by a person employed by the board are also such that that person would be entitled to make a complaint under the Human Rights Act 1993, that person may take 1, but not both, of the following steps:

(a) the person may invoke, in relation to those circumstances, the procedures applicable in relation to personal grievances under the Employment Relations Act 2000 or the relevant award or agreement; or

(b) the person may make, in relation to those circumstances, a complaint under the Human Rights Act 1993.

51 Superannuation or retiring allowances

For the purpose of providing a superannuation fund or retiring allowances for its employees, the board may from time to time pay sums by way of subsidy or contribution into any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

52 Application of certain acts to members and employees

No person is deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment under clause 46 or clause 47.

53 Existing Government Superannuation Fund members

(1) Despite clause 52, a person who, immediately before becoming an employee of the board, was a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is, for the purposes of that Act, deemed to be employed in the Government

Schedule 4—*continued*

service so long as that person continues to be an employee of the board; and that Act applies to that person in all respects as if that person's service as an employee of the board were Government service.

(2) Nothing in subclause (1) entitles a person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(3) For the purposes of applying the Government Superannuation Fund Act 1956 in accordance with subclause (1), **controlling authority**, in relation to that employee, means the board.

(4) In this section, references to the board include references to a company referred to in section 15B(5)(a) or (c).

Schedule 2

s 40

Consequential amendments to other Acts

Administration Act 1969 (1969 No 52)

Omit from the definition of the term **trustees of a superannuation fund** in section 65(1) the words "the Superintendent of the Government Superannuation Fund" and substitute the expression "the Government Superannuation Fund Authority".

Child Support Act 1991 (1991 No 142)

Omit from section 186(1)(b)(i) the words "the Superintendent" and substitute the expression "the Government Superannuation Fund Authority".

Cook Islands Act 1915 (1915 No 40)

Omit from section 84B(1)(b) the words "the Superintendent of the Fund" and substitute the expression "the Government Superannuation Fund Authority".

Omit from section 84B(4) the words "Government Superannuation Board, elect to contribute to the Fund, at such rate as that Board" and

substitute the words "the Government Superannuation Fund Authority, elect to contribute to the Fund, at such rate as that Authority".

Omit from section 85A(1) the words "the Superintendent of the Government Superannuation Fund" and substitute the expression "the Government Superannuation Fund Authority".

Omit from section 85A(4) the words "Government Superannuation Board determines, such sum as the Board" and substitute the words "the Government Superannuation Fund Authority determines, such sum as that Authority".

District Courts Act 1947 (1947 No 16)

Omit from the definition of the term **employing department** in section 84L(1) the words "the Superintendent" and substitute the expression "the Government Superannuation Fund Authority".

Finance Act 1961 (1961 No 120)

Omit from section 9(5) the words "the Superintendent of the Government Superannuation Fund may allow in that behalf, such sum as the Superintendent" and substitute the words "the Government Superannuation Fund Authority may allow in that behalf, such sum as that Authority".

Higher Salaries Commission Act 1977 (1977 No 110)

Omit from section 17(2) the words "the Superintendent of the Government Superannuation Fund" and substitute the expression "the Government Superannuation Fund Authority".

Niue Act 1966 (1966 No 38)

Omit from section 670(1) the words "the Superintendent of the Government Superannuation Fund" and substitute the expression "the Government Superannuation Fund Authority".

Omit from section 670(5) the words "the Superintendent of the Government Superannuation Fund determines, such sum as the Superintendent" and substitute the words "the Government Superannuation Fund Authority determines, such sum as that Authority".

Police Act 1958 (1958 No 109)

Omit from section 28(5A)(a) the words "the Superintendent of the Government Superannuation Fund" and substitute the expression "the Government Superannuation Fund Authority".

Omit from section 28A(1) the words "the Superintendent of the Government Superannuation Fund" and substitute the expression "the Government Superannuation Fund Authority".

Omit from section 28C(1A)(a) the words "the Superintendent of the Government Superannuation Fund" and substitute the expression "the Government Superannuation Fund Authority".

Omit from section 28D(1A)(a) the words "the Superintendent of the Government Superannuation Fund" and substitute the expression "the Government Superannuation Fund Authority".

Summary Proceedings Act 1957 (1957 No 87)

Omit from the definition of the term **employing department** in section 106B(1) the words "the Superintendent" and substitute the expression "the Government Superannuation Fund Authority".

Schedule 3

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Orders revoked

Government Superannuation Fund (Cost-of-Living Allowance) Order 1984(SR 1984/89)

Superannuation (Cost of Living Allowance) Order 1976 (SR 1976/159)

Superannuation (Dean's Administration Allowance) Order 1969 (SR 1969/130)

Superannuation (Definition of Salary) Order 1948 (SR 1948/125)

Superannuation (Judicial and Other Statutory Salaries) Order 1976 (SR 1976/314)

Superannuation (Post Office Employees) Order 1963 (SR 1963/25)

Superannuation (Post Office Employees) Order 1966 (SR 1966/111)

Superannuation (Post Office Industrial Nurses) Order 1966 (SR 1966/110)

Superannuation (Public Health Nurses) Order 1963 (SR 1963/26)

Superannuation (Public Service Employees) Order 1963 (SR 1963/27)

Superannuation (Railway Employees) Order 1963 (SR 1963/28)

Superannuation (Regrading Allowance) Order 1959 (SR 1959/45)

Superannuation (Samoan Adjustment Allowance) Order 1967 (SR 1967/107)

Legislative history

10 October 2000	Introduction (Bill 65-1)
18 October 2000	First reading and referral to Finance and Expenditure Committee
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