

National Provident Fund Restructuring Amendment Act 1997

Public Act 1997 No 83
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Note

Changes authorised by subpart 2 of Part 3 of the Legislation Act 2019 have been made in this consolidation. See the notes at the end of this consolidation for further details.

This Act is administered by the Treasury.

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An Act to—

- (a) **Amend the National Provident Fund Restructuring Act 1990; and**
- (b) **Authorise the amendment of the trust deeds for existing schemes for various purposes; and**
- (c) **Provide for the establishment of a new scheme or schemes for the purpose of paying pensions; and**
- (d) **Provide for the amalgamation of 2 or more of the existing schemes; and**
- (e) **Provide for other incidental matters**

BE IT ENACTED by the Parliament of New Zealand as follows:

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.

2 Interpretation

In this Act, unless the context otherwise requires,—

Amalgamation proposal means a draft proposal that has been approved under section 21

Appointed actuary means the actuary appointed for the time being by the Board

Appointed day, in relation to an amalgamation proposal, means the day that is stated as the appointed day for that proposal in a notice in the *Gazette* given under section 21

Defined benefit scheme has the same meaning as in the principal Act, and includes the Aircrew Superannuation Scheme

Defined contribution scheme has the same meaning as in the principal Act, and includes the National Superannuation Scheme for Farm Workers

Pension includes an allowance, annuity, or other periodic payment

Pension scheme means a scheme established under section 17

Reserves has the same meaning as in section 50(4) of the principal Act

Total credit means, in relation to those existing schemes that have separate pension and lump sum sections, each of the pension credit and the lump sum credit, to the effect that each of those will be regarded as a total credit.

Part 1

Amendments to principal Act

3 Interpretation

This section amended the definition of **existing scheme** in section 2 of the principal Act.

4 New section inserted

This section inserted section 40A and the preceding heading of the principal Act.

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

5 Payments to existing schemes

This section inserted sections 40B to 40D and the preceding heading of the principal Act.

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

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 one 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.
- (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).

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 <i>Gazette</i>	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 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).

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 <i>Gazette</i>	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 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).

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 <i>Gazette</i>	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 31(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

32 Consequential amendment to Income Tax Act 1994

[Repealed]

Section 32 was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Schedule 1 Provisions applying to new pension schemes

Section 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.
- (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

Section 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) of this subclause, 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 to 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.

Clause 8 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” in all places in which they appear.

Schedule 2 clause 8(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Schedule 2 clause 8(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Schedule 2 clause 8(c): amended, on 1 April 2008, 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.

Clause 9 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Schedule 2 clause 9(a): amended, on 1 April 2008, 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.

Consolidation notes**1 *General***

This is a consolidation of the National Provident Fund Restructuring Amendment Act 1997 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this consolidation*

This consolidation is not an official version of the legislation under section 78 of the Legislation Act 2019.

3 *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Income Tax Act 2007 (2007 No 97): section ZA 2(1)