

## NATIONAL PROVIDENT FUND RESTRUCTURING AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill—

- (a) Makes a number of amendments to the National Provident Fund Restructuring Act 1990:
- (b) Authorises the Board of Trustees of the National Provident Fund to amend the trust deeds of the Meat Industry Scheme, the Meat Industry-Related Trades Scheme, and the Pension National Scheme to enable the Board to continue to make certain payments to members in line with past practice and validates the past practice of the Board in making such payments:
- (c) Amends section 204Q of the Income Tax Act 1976 which exempts certain superannuation funds from the requirements of the Act relating to the taxation of persons carrying on the business of life insurance.

*Clause 1* relates to the Short Title and commencement of the Bill. Except for *clauses 3, 4, 6 (1), 7, and 8* (which are deemed to have come into force on 1 April 1991), the Bill comes into force on the day on which it receives the Royal assent. Those clauses of the Bill remove a conflict between section 53 of the Act, which relates to the Board's powers of investment of the property of existing schemes and section 8 of the Superannuation Schemes Act 1989 with effect from 1 April 1991, being the date on which the restructuring of the National Provident Fund became effective.

### PART I

#### AMENDMENTS TO PRINCIPAL ACT

*Clause 2* empowers the Governor-General, by Order in Council, to amend the proposal approved under section 9 of the principal Act at any time after 1 April 1991 for the purpose of correcting any error in the proposal or making any necessary technical amendments.

*Clauses 3 and 4* relate to the amendment made by *clause 6* of the Bill.

*Clause 5* amends section 50 of the principal Act. Under section 50 trust deeds of existing schemes that enable members to transfer to other superannuation schemes and that provide for the transfer of property from the existing scheme to those other superannuation schemes must provide that the property transferred must be the share attributable to the member plus a corresponding

share of the dedicated reserves as at 1 April 1991. This means that only reserves existing on 1 April 1991 can be transferred.

The amendment will allow for the transfer of the member's share of the reserves existing at the time of transfer.

*Clause 6* repeals section 53 of the principal Act and substitutes a new section. The new section removes a possible conflict with section 8 of the Superannuation Schemes Act 1989 which is implied in the trust deed of every existing scheme and to which the Board is subject as trustee. That section requires the Board to exercise the degree of skill and care required of a trustee under the Trustee Act 1956. The present section 53 provides that the property of existing schemes may be invested only in the global asset trust. The new section expressly excludes the application of section 8 of the Superannuation Schemes Act 1989 and the requirements of the Trustee Act 1956 relating to the investment of trust funds in relation to the investment of the property of existing schemes. But for this amendment the Board would be in the position where it would be required to comply with the duties imposed on trustees by the general law but could only invest in the global asset trust.

*Clauses 7 and 8* relate to the amendments made by *clause 6* of the Bill.

*Clause 9* allows the appointment of the Board as Commissioner of the sinking fund of any loan raised by a local authority or as the Commissioner of any Depreciation Fund of a local authority to be made on terms and conditions agreed between the Board and the local authority including those as to fees and charges.

*Clause 10* makes 2 amendments to the Fourth Schedule to the principal Act.

The first relates to clause 2 which currently requires the remuneration and expenses of the members of the Board to be paid by the Crown. Clause 2 is repealed and replaced by a new clause which will require the remuneration and expenses of the members of the Board to be met from the appropriate pool of the global asset trust or existing schemes. The new clause extends to remuneration payable in respect of members, such as superannuation contributions, as well as that which is paid direct to the members themselves.

The second amendment relates to clause 3 and authorises the Board to pay remuneration and expenses to the secretary and any officers and advisors appointed by the Board out of the appropriate pool of the global asset trust or existing schemes.

*Clause 11* makes 2 amendments to the Fifth Schedule to the principal Act.

The first makes it clear that a determination in relation to transfer values on the transfer of a member from the DBP contributors scheme or the DBP annuitants scheme is not limited to changes in those values.

The second amendment requires the value of property transferred from the DBP contributors scheme to the DBP annuitants scheme under clause 3 on a member ceasing to be a contributor to the DBP contributors scheme to be assessed on the basis of the liabilities of the DBP annuitants scheme in respect of the member and not those of the whole scheme.

## PART II

### AMENDMENTS TO EXISTING SCHEMES AND VALIDATIONS

*Clause 12* of the Bill empowers the Board to amend the trust deeds of the Meat Industry Scheme and the Meat Industry-Related Trades Scheme to authorise payments of total credits of members who become redundant in line with the past practice of the Board in making such payments.

In the case of these schemes the Board has, since 1981, allowed members refunds of their total credits in the scheme on becoming redundant in line with a

resolution of the Board even though the schemes were not amended to authorise the payments. The clause accordingly authorises the Board to continue the practice.

The clause empowers the Board to amend the trust deed of the Pension National Scheme to authorise payments of members' total credits in the event of redundancy and authorise a member's total credits to be left in the scheme in the event of the member ceasing to be employed by his or her employer in line with past practice.

In the case of the Pension National Scheme the Board, in June 1981, resolved to include bonuses in total credits refunded to members who became redundant and to credit such bonuses to the accounts of members who, on becoming redundant or who withdrew from the scheme, leave their benefits in the scheme. The scheme was not amended so as to give effect to the resolution at the time. The rules of the scheme were revised in 1987 but the revision did not make provision for the payment or crediting of pre-1987 bonuses and earnings on them. The clause accordingly allows the Board to continue the practice that has been followed in line with the resolution.

Such amendments are to be treated as effective from 1 June 1981 and all payments and other actions of the Board in accordance with the schemes as so amended with effect from that date are validated.

Under the clause the Board may only amend the schemes if the Government Actuary and an auditor appointed by the Board for the purpose certify that the schemes as amended will be able to meet their liabilities.

The clause further validates refunds made by the Board during the period 1 June 1981 to 30 June 1991 to members of the Meat Industry Scheme having less than 5 years membership or who had not attained the age of 55 years.

In the case of the Meat Industry Scheme the Board has, since 1981, allowed members of the scheme having less than 5 years membership or who had not attained the age of 55 years, a refund of contributions and interest on leaving their employment in line with a resolution of the Board. The terms of the scheme were not altered to give effect to the resolution but have continued to require the contributor to have been a member of the scheme for 5 years or to have attained the age of 55 years.

### PART III

#### AMENDMENTS TO INCOME TAX ACT 1976

*Clause 14* amends section 204Q of the Income Tax Act 1976. Section 204Q exempts qualifying superannuation schemes from the provisions of the Income Tax Act 1976 relating to the taxation of persons carrying on the business of life insurance.

The clause extends section 204Q to any superannuation fund constituted under or pursuant to the National Provident Fund Restructuring Act 1990 that provides benefits to members who, before 1 April 1991, were members of a fund constituted under an Act relating to the National Provident Fund that satisfied the requirements of subsection (4)(c)(ii) of that section. The effect of this amendment is that a superannuation fund constituted under the National Provident Fund Restructuring Act 1990 will qualify for exemption even though it is not currently funded by employer contributions if the fund provides benefits to members who, before the restructuring of the National Provident Fund on 1 April 1991, were members of a fund that met the criteria for exemption.

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*Hon. Maurice McTigue*

**NATIONAL PROVIDENT FUND RESTRUCTURING  
AMENDMENT**

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A BILL INTITULED

**An Act to—**

- (a) Amend the National Provident Fund Restructuring Act 1990; and**
- 5 **(b) Authorise the Board of Trustees of the National Provident Fund to amend the trust deeds for certain existing schemes and validate payments made to members of those schemes; and**
- (c) Amend the Income Tax Act 1976**

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

- 15 **1. Short Title and commencement—**(1) This Act may be cited as the National Provident Fund Restructuring Amendment Act 1991, and shall be read together with and deemed part of the National Provident Fund Restructuring Act 1990\* (hereinafter referred to as the principal Act).

\*1990, No. 126

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

(3) **Sections 3, 4, 6 (1), 7, and 8** of this Act shall be deemed to have come into force on the 1st day of April 1991. 5

## PART I

### AMENDMENTS TO PRINCIPAL ACT

**2. Amendment of proposal after transfer day**—The principal Act is hereby amended by inserting, after section 10, the following section: 10

“10A. (1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, approve any amendment to the proposal at any time or times after the transfer day.

“(2) The Minister shall not make a recommendation for the purposes of this section unless— 15

“(a) He or she is satisfied that the amendment is necessary for the purposes of correcting any error in the proposal as approved under section 9 of this Act or is of a purely technical nature; and 20

“(b) He or she is satisfied that the proposal as amended complies with sections 5 and 6 of this Act; and

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

“(3) Any Order in Council under this section—

“(a) Shall identify the amendment approved, but need not incorporate it in the order; and 25

“(b) Shall be deemed to be a regulation within the meaning of the Regulations (Disallowance) Act 1989.

“(4) Every amendment approved under this section shall be deemed to have effect on and from the transfer day and the provisions of this Act shall apply to the proposal as so amended accordingly.” 30

**3. Power to make amendments to existing terms and conditions**—Section 47 (c) of the principal Act is hereby amended by omitting the expression “8,”. 35

**4. Trust deed to be approved by Minister before execution**—Section 49 (2) (a) (iii) of the principal Act is hereby amended by omitting the expression “8,”.

**5. Transfer to other superannuation schemes**—

(1) Section 50 (2) (a) of the principal Act is hereby amended by omitting the word “dedicated”. 40

(2) Section 50 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

5 “(3A) For the purposes of subsection (2) (a) of this section, ‘reserves’ means amounts that are shown in the accounts of the Board as being reserves attributable to a particular scheme whether or not forming part of any reserve account of the scheme.”

10 (3) The Board is hereby authorised to amend the trust deed for every existing scheme for the purpose of giving effect to the amendment made by **subsection (1)** of this section.

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

**6. Investments of existing schemes**—(1) The principal Act is hereby amended by repealing section 53, and substituting the following section:

20 “53. (1) The trust deed for each existing scheme shall provide that the property of the scheme may be invested only in the global asset trust, whether by way of debt securities or participatory securities or otherwise.

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

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

35 “(4) Nothing in section 8 of the Superannuation Schemes Act 1989 or the provisions of the Trustee Act 1956 relating to the investment of trust funds shall apply in respect of the trust deed for an existing scheme or the investment of the property of the scheme.”

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

(3) Nothing in the trust deed for an existing scheme or the Superannuation Schemes Act 1989 relating to the consent of any person or organisation to the making of amendments to

the trust deed applies to an amendment made under **subsection (2)** of this section.

**7. Limitation of liability of Board**—Section 55 of the principal Act is hereby amended by repealing subsection (2).

**8. Consequences of executing trust deed in respect of existing scheme**—(1) Section 57 (a) of the principal Act is hereby amended by omitting the expression “8,”.

(2) Section 57 of the principal Act is hereby further amended by adding, as subsection (2), the following subsection:

“(2) In the application of the Superannuation Schemes Act 1989 in relation to an existing scheme the references in section 11 and section 12 of that Act to section 8 of that Act shall be read as references to section 9 of that Act.”

**9. Board may be appointed Sinking Fund Commissioner or Depreciation Fund Commissioner**—Section 83 (1) of the principal Act is hereby amended by inserting, after the word “appointment,” the words “on such terms and conditions, including those as to fees and charges, as may be agreed,”.

**10. Amendments to Fourth Schedule**—(1) The Fourth Schedule to the principal Act is hereby amended by repealing clause 2, and substituting the following clause:

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

(2) Clause 3 of the Fourth Schedule to the principal Act is hereby amended by inserting, after subclause (I), the following subclause:

“(1A) There may be paid to or in respect of such secretary, officers, and advisors, out of such of the pools of the global asset trust or the property of such of the existing schemes as the Board considers appropriate, such remuneration for services and such expenses as may be determined from time to time by the Board.”

**11. Amendments to Fifth Schedule**—(1) Clause 2 of the Fifth Schedule to the principal Act is hereby amended by

omitting from subclause (5) the word “change”, and substituting the word “matter”.

5 (2) Clause 2 of the Fifth Schedule to the principal Act is hereby further amended by omitting from subclause (6) the word “under”, and substituting the words “determined in accordance with”.

(3) Clause 2 of the Fifth Schedule to the principal Act is hereby further amended by omitting from subclause (7) the word “change”, and substituting the word “matter”.

10 (4) Clause 3 of the Fifth Schedule to the principal Act is hereby amended by omitting the words “liabilities of the DBP annuitants scheme”, and substituting the words “liability in respect of that benefit”.

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

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

## PART II

### 25 AMENDMENTS TO EXISTING SCHEMES AND VALIDATIONS

**12. Board authorised to amend trust deeds for certain existing schemes**—(1) Notwithstanding anything contained in the principal Act or any other Act or rule of law or the provisions of the trust deeds for the schemes,—

30 (a) The Board is hereby authorised to make such amendments to the trust deeds for the Meat Industry Scheme and the Meat Industry-Related Trades Scheme as are necessary to empower the Board to pay to any member who becomes redundant the amount standing to the total credit of the account of the member in the schemes in respect of contributions of the member and his or her employer plus earnings and bonuses irrespective of the length of time that that person has been a member of the scheme:

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



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

(ii) In the event of a member electing to leave his or her total credit in the scheme on ceasing to be engaged by an employer, to authorise the full total credit of the member to be left in the scheme and attract interest in accordance with the provisions of the scheme until a benefit becomes payable under the terms of the scheme. 5  
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(2) For the purposes of **subsection (1)** of this section, the Board may define the words “redundancy”, “redundant”, and “total credit”, or any expression of which those words form part, in such manner as the Board thinks fit. 15

(3) No amendment may be made by the Board under **subsection (1)** of this section unless the Government Actuary and an auditor appointed by the Board for the purpose have each given a certificate in writing stating that the financial resources of the scheme will be sufficient to meet the liabilities of the scheme as so amended. 20

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

- (a) The trust deed shall be deemed to have been amended on the date on which it was executed; and 25
- (b) The terms and conditions of the scheme as it existed on the 1st day of June 1981 shall be deemed to have been amended to the same effect—

and any payments made by the Board and any action taken by the Board in accordance with the trust deed or the terms and conditions of the scheme as so deemed to have been amended shall be deemed to be and always to have been valid. 30

(5) Without limiting **subsection (4)** of this section and notwithstanding anything contained in the principal Act or any rule of law or the provisions of the terms and conditions at any time governing the scheme or the trust deed for the scheme, no payment made by the Board to any person who was a member of the Meat Industry Scheme during the period commencing on the 1st day of June 1981 and ending on the close of the 30th day of June 1991 shall be treated as invalid or unauthorised by reason only of the fact that the person had not, at the time the payment was made, been a member of the scheme for 5 years or attained the age of 55 years. 35  
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PART III

AMENDMENTS TO INCOME TAX ACT 1976

5 **13. Part to be read with Income Tax Act 1976**—This Part of this Act shall be read together with and deemed part of the Income Tax Act 1976\* (in this Part of this Act referred to as the principal Act).

\*R.S. Vol. 12, p. 1

Amendments: 1983, No. 4; 1983, No. 10; 1983, No. 139; 1984, No. 10; 1985, No. 1; 1985, No. 59; 1985, No. 125; 1985, No. 146; 1986, No. 3; 1986, No. 7; 1986, No. 41; 1986, No. 117; 1987, No. 66; 1987, No. 104; 1987, No. 190; 1988, No. 6; 1988, No. 14; 1988, No. 123; 1988, No. 133; 1988, No. 225; 1989, No. 7; 1989, No. 46; 1989, No. 49; 1989, No. 150; 1990, No. 24; 1990, No. 63; 1990, No. 91; 1991, No. 10; 1991, No. 14; 1991, No. 47; 1991, No. 75

10 **14. Superannuation schemes**—(1) Section 204Q (4) (c) of the principal Act (as substituted by section 13 of the Income Tax Amendment Act (No. 2) 1990) is hereby amended by repealing subparagraph (ii), and substituting the following subparagraphs:

15 “(ii) Constituted under or pursuant to the National Provident Fund Restructuring Act 1990 or any Act relating to the Government Superannuation Fund and provides benefits to persons who are, in respect of any employer who agrees to or is required to make contributions to the fund or is accepted as a contributor to the fund or on whose behalf contributions are made to the fund,—

20 “(A) Employees; or

“(B) In the case of deferred benefits relating to a previous period of employment, former employees; or

25 “(C) In the case of benefits arising in respect of membership of the superannuation fund by such employees or former employees, relatives or dependants of such employees or former employees; or

30 “(iii) Constituted under or pursuant to the National Provident Fund Restructuring Act 1990 for the purpose of providing benefits to persons who, before the 1st day of April 1991, were members of a superannuation fund constituted under or pursuant to an Act relating to the National Provident Fund that satisfied the requirements of subparagraph (ii) of this paragraph (as then in force); and”.

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(2) Section 204Q(4) of the principal Act (as so substituted) is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) The only beneficiaries of the superannuation fund are natural persons to whom— 5

“(i) Any of sub-subparagraphs (A) to (C) of subparagraph (i) or **subparagraph (ii)** of paragraph (c) of this subsection applies; or

“(ii) **Subparagraph (iii)** of paragraph (c) of this subsection applies— 10

except to the extent that an employer of employees who are members of the superannuation fund may have a contingent interest in any surplus in the superannuation fund; and”.

(3) Section 204Q(4) (e) of the principal Act (as so substituted) 15 is hereby amended by omitting the words “Each employer”, and substituting the words “Except in the case of a superannuation fund to which **subparagraph (iii)** of **paragraph (c)** of this subsection applies, each employer”.

(4) Section 204Q(4) (as so substituted) is hereby amended by 20 inserting, after paragraph (e), the following paragraph:

“(ea) In the case of a superannuation fund to which **subparagraph (iii)** of paragraph (c) of this subsection applies, the benefits payable by the superannuation fund are derived to a significant extent from 25 contributions made by employers to—

“(i) A superannuation fund constituted under or pursuant to any Act relating to the National Provident Fund that, before the 1st day of April 1991, satisfied the requirements of subparagraph (ii) 30 of paragraph (c) of this subsection (as then in force); or

“(ii) A superannuation fund constituted under or pursuant to the National Provident Fund Restructuring Act 1990 that satisfies the 35 requirements of subparagraph (ii) of paragraph (c) of this subsection; and”.