

[Pursuant to power granted to it by the House, the Commerce and Marketing Committee divided the National Provident Fund Restructuring Amendment Bill into 2 bills, the National Provident Fund Restructuring Amendment Bill (92-2) and the National Provident Fund Restructuring Amendment Bill (No. 2) (92-2A). The National Provident Fund Restructuring Amendment Bill was reported to the House on 29 October 1991. This is the National Provident Fund Restructuring Amendment Bill (No. 2) as it is proposed that it should proceed.]

[AS REPORTED FROM THE COMMERCE AND MARKETING COMMITTEE]

House of Representatives, 23 April 1992.

Words struck out and new words inserted are shown with black rule or single rule before first line and after last line; the figure struck out is shown in italics within bold round brackets and the new figure inserted in roman underlined with a single rule.

Hon. Maurice McTigue

NATIONAL PROVIDENT FUND RESTRUCTURING AMENDMENT (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to—

- (a) Amend the National Provident Fund Restructuring Act 1990; and**
(b) Amend the Income Tax Act 1976

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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 (No. 2) 1992, and shall be read together with and deemed part of the National Provident Fund Restructuring Act 1990* (hereinafter referred to as the principal Act).

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

(3) Sections 5A and 5B of this Act shall be deemed to have come into force on the 7th day of September 1990.

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(4) Section 5F of this Act shall be deemed to have come into force on the 1st day of April 1991.

New

PART I

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AMENDMENTS TO PRINCIPAL ACT

1A. Interpretation—Section 2 of the principal Act is hereby amended by inserting in the definition of the term “proposal”, after the expression “section 10”, the words “or section 10A”.

1B. Contributors to existing schemes—(1) The principal Act is hereby amended by repealing section 38, and substituting the following section:

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

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

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

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New

“(2) Any person—

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

5 “(b) Whose contributions, or part of whose contributions, remain in the scheme on the transfer day—
shall for the purposes of this section be deemed to have been a contributor to that existing scheme immediately before the transfer day.

10 “(3) Any employer—

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

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

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

20 “(4) Nothing in this section limits—

“(a) The terms of any existing scheme; or

“(b) Any other provision of this Act.”

25 **1c. New terms and conditions may be included in trust deed**—Section 48 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

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

“(3) Nothing in subsection (2) of this section limits—

“(a) Sections 47 (ba), 50, and 54 (d), of this Act; or

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

35 “(c) Section 5G of the National Provident Fund Restructuring Amendment Act (No. 2) 1992.”

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

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

(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.

(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. 15

New

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5. Transfer to other superannuation schemes—(1) The principal Act is hereby amended by repealing section 50, and substituting the following section:

“50. (1) Any trust deed prepared in respect of an existing scheme may— 25

“(a) Enable any member or other beneficiary to transfer from the scheme to any other superannuation scheme upon such terms and conditions as are set out in the trust deed or as the Board otherwise determines; and 30

“(b) Provide for the transfer of property from the existing scheme to the superannuation scheme to which the member or other beneficiary transfers upon such terms and conditions as are set out in the trust deed, or as the Board otherwise determines. 35

“(2) Except as otherwise approved in writing by the Minister, any such terms and conditions set out in the trust deed or

New

determined by the Board shall include terms and conditions to the effect that—

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

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

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

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

25 “(4) 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.

30 “(5) This section is subject to section 42 of this Act.”

(2) Subject to section 64 of the principal Act but notwithstanding any other enactment or rule of law, the Board is hereby authorised to amend the trust deed for every existing scheme for the purpose of:

- 35 (a) Giving effect to **section 50** of the principal Act as substituted by **subsection (1)** of this section; and
- 40 (b) Specifying in the trust deed the terms and conditions on which any member or other beneficiary of any existing scheme may transfer to the scheme; and

New

(c) Otherwise facilitating the transfer of members and property.

(3) Nothing in the trust deed for an existing scheme or the Superannuation Schemes Act 1989 relating to the consent of any person or organisation to the making of amendments to the trust deed applies to an amendment made under this section. 5

5A. Termination of scheme—Section 56 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph: 10

“(a) Entitling the Minister or a proportion of the members or other beneficiaries of the scheme to determine that the scheme be totally or partially wound up, and authorising the Minister or any other person to determine the manner of such winding up:” 15

5B. Consequences of executing trust deed in respect of existing scheme—(1) The principal Act is hereby amended by repealing section 57 (as amended by section 10 of the National Provident Fund Restructuring Amendment Act 1991), and substituting the following section: 20

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

“(a) Each of the provisions set out in sections 9, 9A, and 10 of the Superannuation Schemes Act 1989 shall be implied in the trust deed; and 25

“(b) The existing scheme shall be treated, for the purposes of that Act, as a trust established by its trust deed, rather than an arrangement constituted under an Act of the Parliament of New Zealand; and 30

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

“(2) 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.” 35

New

5 (2) Nothing in section 57(1)(c) of the principal Act (as substituted by subsection (1) of this section) shall limit or affect any judgment, order, or determination of a court in proceedings commenced on or before the 31st day of March 1993.

(3) Section 10 of the National Provident Fund Restructuring Amendment Act 1991 is hereby consequentially repealed.

10 **5c. Provisions relating to Lump Sum Cash Accumulation Scheme**—(1) The principal Act is hereby amended by repealing section 62.

(2) Section 63 of the principal Act is hereby consequentially amended—

15 (a) By omitting the words “sections 61 and 62”, and substituting the words “section 61”; and

(b) By omitting the words “or in the provident advantage account”.

(3) For the avoidance of doubt, it is hereby declared that the Crown guarantees pursuant to section 60 of the principal Act—

20 (a) The repayment of contributions to the Lump Sum Cash Accumulation Scheme (whether before or after the transfer day) by any person who at the time the contributions were made had not attained the age of 65 years; and

25 (b) The payment of interest payable on those contributions by the Board.

30 (4) Notwithstanding any other enactment or rule of law, the Board is hereby authorised to amend the trust deed for the Lump Sum Cash Accumulation Scheme to permit contributors to contribute until they attain the age of 65 years.

35 (5) Nothing in the trust deed for the Lump Sum Cash Accumulation Scheme or the Superannuation Schemes Act 1989 relating to the consent of any person or organisation to the making of amendments to the trust deed applies to an amendment made under this section.

New

5D. Contributions by Government Departments—The principal Act is hereby amended by repealing section 71, and substituting the following section:

“71. Where contributions are made by a Government Department on behalf of the employees of the Department, the contributions shall be paid by the Department out of money appropriated by Parliament.” 5

5E. No Crown subsidy—The principal Act is hereby amended by inserting, after section 72, the following section: 10

“72A. (1) For the avoidance of doubt, it is hereby declared that the Crown’s liability to pay subsidies under section 71 of the National Provident Fund Act 1950 ceased to have effect with the repeal of that Act.

“(2) Nothing in this section limits sections 69 to 72 of this Act.” 15

5F. Amendments to Fourth Schedule—(1) Clause 3 (1) of the Fourth Schedule to the principal Act is hereby amended by omitting the words “other officers”, and substituting the words “officers, employees,”. 20

(2) Clause 3 (1A) of the Fourth Schedule to the principal Act (as inserted by section 13 of the National Provident Fund Restructuring Amendment Act 1991) is hereby amended—

(a) By inserting, after the word “officers”, the word “employees,”; and 25

(b) By omitting the words “for services”.

5G. Board authorised to make further amendments to trust deeds—(1) Notwithstanding any enactment or rule of law but subject to this section, the Board is hereby authorised to amend, on or before the 31st day of March 1993, any trust deed in respect of any existing scheme in order to: 30

(a) Reflect the practice of the Board in relation to that scheme immediately before the 1st day of April 1991 (whether or not the practice was authorised by the terms and conditions of the scheme or by any Act or rule of law); or 35

(b) Correct any errors in the trust deed (whether or not those errors were also in any terms and conditions of the

New

- scheme immediately before the date of execution of the trust deed); or
- 5 (c) Clarify any provisions in the trust deed which are ambiguous or unclear (whether or not those provisions were ambiguous or unclear in any terms and conditions of the scheme immediately before the date of execution of the trust deed).
- (2) No amendment to a trust deed in accordance with
10 **subsection (1)** of this section shall—
- (a) Be made or be of any force or effect unless the Minister has first approved the proposed amendment:
- (b) Limit or affect any judgment, order, or determination of a
15 court in proceedings commenced before the amendment is made.
- (3) Nothing in the trust deed for an existing scheme or the Superannuation Schemes Act 1989 relating to the consent of any person or organisation to the making of amendments to a trust deed applies to an amendment made under this section.
- 20 (4) Subject to **subsection (2)** of this section, where a trust deed has been amended in accordance with this section, any payments made by the Board and any action taken by the Board before the amendment was made that would, if the terms and conditions applying to the scheme or the terms and conditions of the trust deed for the scheme, as the case may be,
25 were the same as those contained in the trust deed as amended, have been valid, shall be deemed to be and always to have been valid.

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PART (III) II

AMENDMENTS TO INCOME TAX ACT 1976

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

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 5
repealing subparagraph (ii), and substituting the following subparagraphs:

“(ii) Constituted under or pursuant to the National Provident Fund Restructuring Act 1990 or any Act relating to the Government Superannuation Fund 10
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,— 15

“(A) Employees; or

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

“(C) In the case of benefits arising in respect of 20
membership of the superannuation fund by such employees or former employees, relatives or dependants of such employees or former employees; or

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“(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” 30

New

5 “(iii) Not being a superannuation fund of the kind
referred to in **subparagraph (ii)** of this paragraph,
constituted under or pursuant to the National
Provident Fund Restructuring Act 1990 for the
purpose of providing benefits to persons, and
relatives and dependants of persons, who, before the
1st day of April 1991, were members of a
superannuation fund constituted under or pursuant
10 to an Act relating to the National Provident Fund
that satisfied the requirements of **subparagraph (ii)**
of this paragraph (as in force on the 31st day of March
1991); and”.

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

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

20 “(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—

25 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”.

30 (3) Section 204Q(4) (e) of the principal Act (as so substituted)
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”.

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35 (4) Section 204Q(4) (as so substituted) is hereby amended by
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

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fund are derived to a significant extent from 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) 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 requirements of subparagraph (ii) of paragraph (c) of this subsection; and”.

New

(4) This section shall apply with respect to the income year commencing on the 1st day of April 1991 and in every subsequent income year.