

New Zealand Superannuation Amendment Bill

Government Bill

Explanatory note

General policy statement

Overview

This Bill repeals the Retirement Income Act 1993 and transfers the main provisions covering the functions, powers, and appointment of the Retirement Commissioner to the New Zealand Superannuation Act 2001. The Bill will not include reference to the Accord on Retirement Income Policies (the **Accord**) or the requirement for 6-yearly periodic reports on retirement income policy that are currently in the Retirement Income Act 1993. The Bill will ensure that the retirement income policy framework more closely reflects the current environment. It will also consolidate key retirement income policies in the 1 Act.

Background

The Retirement Income Act 1993 was passed to give legislative effect to certain provisions in the Accord. The Accord was entered into by the Alliance, Labour, and National parliamentary parties, and was later joined by the United Party. The Accord's purpose was to achieve consensus on the retirement income policies to be implemented in New Zealand. The Accord proposed, and the Retirement Income Act 1993 established, the position of Retirement Commissioner and the requirement for 6-yearly periodic reports on retirement income policy.

Since the introduction of the Retirement Income Act 1993, several changes have occurred that have undermined the utility of the Retirement Income Act 1993 in its current form. Specifically, these

changes relate to the non-observance of the Accord, the passage of the New Zealand Superannuation Act 2001, and recommendations made by the Periodic Report Group 2003 (the **PRG**).

The Accord

The Accord has fallen into disuse since 1998. Many of the processes established by the Accord are no longer followed. For example, Accord parties would meet on an irregular basis when there were issues to discuss. There have, however, been no such meetings since early 1998.

The fact that the Accord has fallen into disuse has also created some practical issues in terms of the responsible Minister meeting obligations under the Retirement Income Act 1993. That Act requires the responsible Minister to have regard to the Accord and consult with other Accord signatories when appointing the Retirement Commissioner and in appointing the persons to prepare, and in setting the terms of reference for, the periodic reports.

New Zealand Superannuation Act 2001

The New Zealand Superannuation Act 2001 provides for the current entitlements to New Zealand Superannuation and creates the New Zealand Superannuation Fund. Schedule 4 of the Act provides a mechanism that enables political parties to indicate support for either or both parts of the Act. This has provided a new opportunity for political parties to indicate their support for retirement income policies and supersedes the need for the Accord provisions currently set out in the Retirement Income Act 1993.

Periodic Report Group 2003

The most recent periodic report on retirement income policies was completed in December 2003 by the PRG. The PRG considered that having a policy review only once in every 6 years was too infrequent to adequately inform retirement income policy. The PRG recommended the establishment of an ongoing work programme to replace the 6-yearly periodic reviews. Accordingly, the Bill removes the requirement for periodic reports.

Summary of key measures

The current provisions of the Retirement Income Act 1993 relating to the Retirement Commissioner are transferred to the New Zealand

Superannuation Act 2001. The Bill does not include reference to the Accord or the requirement for periodic reports on retirement income policy.

Removing the requirement for periodic reports means that an amendment is required to the term of office of the incumbent Commissioner. Under the Retirement Income Act 1993 the Commissioner's term of office ends on the day on which a copy of the first periodic report prepared following his or her appointment is presented to the House of Representatives.

Because this provision is no longer operative in light of the removal of the requirement for periodic reports, the Bill includes a provision to fix the term of office for the incumbent Retirement Commissioner as expiring on 16 January 2010. That date is based on the latest date on which the next periodic report would have been presented to the House in the absence of the amendment to remove the requirement for periodic reports.

Crown entity changes

Provisions covering the functions, powers, and appointment of the Retirement Commissioner are amended to reflect the Government's new framework for Crown entities as set out in the Public Finance (State Sector Management) Bill 2003. These changes provide a consistent framework for the governance and operation of all Crown entities, including the Retirement Commissioner.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill. The purpose of the Bill is—

- to repeal the Retirement Income Act 1993;
- to alter the functions and powers of the Retirement Commissioner;
- to include the provisions relating to the functions and powers of the Retirement Commissioner in the New Zealand Superannuation Act 2001 (“the principal Act”).

Clause 4 provides that the Bill binds the Crown.

Part 2

Amendments to the principal Act

Clause 5 inserts a *new section 5A* into the principal Act, which defines terms used in *new Part 4* and *new Schedule 6* of the principal Act.

Clause 6 adds a *new Part 4* to the principal Act. *New section 80* of the principal Act sets out the purpose of the new Part, which is to continue the office of the Retirement Commissioner and to set out the Commissioner's functions, powers, and duties. *New section 81* of the principal Act describes where terms used in *new Part 4* and *new Schedule 6* of the principal Act are defined.

Provisions relating to constitution and appointment of Retirement Commissioner

New section 82 of the principal Act continues the office of the Retirement Commissioner (the **Commissioner**) as a corporation sole and a Crown entity. *New sections 83 and 84* provide for the appointment of the Commissioner, set qualifications for appointment, disqualifications from appointment, and conditions that must be satisfied before a person can be appointed as the Commissioner. These provisions differ from those contained in the Retirement Income Act 1993 and are based instead on comparable provisions in the Public Finance (State Sector Management) Bill 2003, which, when enacted, will govern all Crown entities.

New section 85 of the principal Act provides that the term of office of the Commissioner is 3 years. *New section 85* of the principal Act is subject to a transitional provision (*new section 120*), which is discussed below.

New sections 86 to 92 of the principal Act contain provisions dealing with the validity of the Commissioner's acts, the validity of appointments, the removal of the Commissioner from office, the position of a Judge serving as the Commissioner and the timing of, and prohibition of compensation for, cessation of office. These provisions are based on comparable provisions in the Public Finance (State Sector Management) Bill 2003.

New section 93 of the principal Act sets out the functions of the Commissioner. The main change to the functions of the Commissioner is the removal of the Commissioner's present functions of

providing advice and information in connection with the periodic report currently required to be prepared at 6-yearly intervals on the retirement income policies being implemented by the Government. The reason for this change is that the requirement for these periodic reports is being abolished by this Bill.

New sections 94 to 101 of the principal Act contain provisions relating to the capacity, powers, discretions, and duties of the Commissioner, the accountability of the Commissioner to the responsible Minister, the circumstances in which the Commissioner may rely on information and advice supplied by other persons, and the ability of the responsible Minister to apply for a Court order restraining the Commissioner from taking certain actions, or requiring him or her to take certain actions. As with earlier provisions, these provisions are based on comparable provisions in the Public Finance (State Sector Management) Bill 2003.

Minister's role

New sections 100 and 101 of the principal Act describe the Minister's role and the Minister's accountabilities to Parliament in respect of the work of the Commissioner.

Immunities and privileges

New sections 104 to 112 of the principal Act set out the immunities and privileges enjoyed by the Commissioner, his or her office, and any employee of the Commissioner. These provisions are based on comparable provisions in the Public Finance (State Sector Management) Bill 2003.

Matters of administration

New sections 113 to 117 of the principal Act provide for annual reports by the Commissioner, the conduct of Ministerial reviews of the operations and performance of the Commissioner, and the appropriation of money for the purposes of *new Part 4*. *New section 118* of the principal Act, *clause 7*, and *Schedule 1* insert a *new Schedule 6* into the principal Act (which contains rules governing the conduct of operations by the Commissioner). *New section 119* of the principal Act declares the Retirement Commissioner and every employee of the Commissioner to be an official for the purposes of certain sections of the Crimes Act 1961.

New section 120 of the principal Act preserves the appointment of the person holding office as the Commissioner on the commencement of this Bill and provides that the person's term of office expires on 16 January 2010. (This date has been chosen because it corresponds approximately to the date on which that person's appointment would have expired under the Retirement Income Act 1993; namely the tabling of the next periodic report in the House of Representatives.)

New section 121 of the principal Act enables the Commissioner to complete anything commenced by the Retirement Commissioner under the Retirement Income Act 1993 before its repeal or under the Retirement Villages Act 2003.

Clause 8 repeals the Retirement Income Act 1993.

Minister of Finance's statement on the consultation process followed in the formulation of the New Zealand Superannuation Amendment Bill

Introduction

Section 73 of the New Zealand Superannuation Act 2001 (the Act) provides that the Minister must, on the introduction into the House of Representatives of a Government Bill that proposes an amendment to the Act, bring to the attention of the House the consultation process that was followed in the formulation of the proposed amendment. The term "Minister", for the purposes of section 73, is defined in section 5 of the Act as the Minister of Finance.

That statement must include (without limitation)—

- (a) whether consultation has taken place with the parties that are in agreement with the Part proposed to be amended (as listed in Schedule 4 of the Act);
- (b) whether consultation has taken place with the Guardians (to the extent that the amendment relates to Part 2 of the Act);
- (c) the results of the consultation.

The New Zealand Superannuation Amendment Bill does not propose to amend Part 1 or Part 2 or any of the schedules of the Act. It proposes to insert a new Part 4 and add a new Schedule 6 to the Act containing provisions relating to the appointment, functions, and powers of the Retirement Commissioner. It also proposes to repeal the Retirement Income Act 1993.

Consultation process

The Minister for Social Development and Employment wrote to the leaders of the other Parliamentary parties on 1 December 2003 advising them of his intention to introduce a New Zealand Superannuation Amendment Bill and the amendments that were initially proposed to be contained in the Bill (that is, the amendments transferring the provisions relating to the appointment, functions, and powers of the Retirement Commissioner into the New Zealand Superannuation Act 2001 and repealing the Retirement Income Act 1993, including giving the Retirement Commissioner the periodic reporting function).

After the Government decided to accept the 2003 Periodic Report Group recommendation to remove the periodic reporting function, the Minister wrote again, on 1 March 2004, to the leaders of the other parliamentary parties advising of the proposal to remove the periodic reporting function from the Bill.

In response to the Minister's offer of a briefing by officials, the Green, ACT New Zealand, and New Zealand National Parties requested briefings on the amendments proposed to be included in the Bill.

The Retirement Commissioner, Office for Senior Citizens, the Treasury, the State Services Commission, the Department of Prime Minister and Cabinet, and the Inland Revenue Department were consulted in preparing the amendments contained in the Bill.

No consultation was undertaken with the Guardians of New Zealand Superannuation as the Bill does not propose to amend Part 2 of the Act.

Results of the consultation

The New Zealand National Party, in relation to the removal of the periodic report function, raised the desirability of requiring the Retirement Commissioner to undertake a regular, overall, stocktake of retirement income issues, with its timing linked to that of the statement on long-term fiscal position proposed in the Public Finance (State Sector Management) Bill 2003. It had no other concerns with the proposed amendments.

The United Future New Zealand Party supported the proposed amendments.

The Progressive Coalition Party supported the amendments initially proposed.

No concerns with the proposed amendments were raised by the Green, New Zealand First, or ACT New Zealand Parties.

The Retirement Commissioner, and the government departments and office consulted supported the amendments proposed by the Bill.

Hon Dr Michael Cullen,
Minister of Finance.

1 April 2004

Hon Steve Maharey

New Zealand Superannuation Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the New Zealand Superannuation Amendment Act **2004**.
- (2) In this Act, the New Zealand Superannuation Act 2001¹ is called “the principal Act”.

¹ 2001 No 84

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Preliminary provisions

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3 Purpose

The purpose of this Act is—

- (a) to repeal the Retirement Income Act 1993;
- (b) to alter the functions and powers of the Retirement Commissioner;
- (c) to include the provisions relating to the functions and powers of the Retirement Commissioner in the principal Act.

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- 4 Act binds the Crown**
This Act binds the Crown.

Part 2

Amendments to principal Act

- 5 New section 5A inserted** 5
The principal Act is amended by inserting, after section 5, the following section:
- “5A Interpretation of Part 4 and Schedule 6**
In **Part 4** and in **Schedule 6**, unless the context otherwise requires,— 10
- “**Commissioner** means the office of the Retirement Commissioner continued by this Part
- “**fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest 15
- “**Government** means the Executive Government of New Zealand
- “**Minister** means the Minister of the Crown who is, with the authority of the Prime Minister, responsible for the administration of **Part 4** 20
- “**officeholder** means the individual who, for the time being, holds office as Commissioner.”
- 6 New Part 4 added**
The principal Act is amended by inserting, after section 79, the following Part: 25
- #### **“Part 4**
- #### **“Retirement Commissioner**
- “80 Purpose of this Part**
The purpose of this Part is to continue the office of the Retirement Commissioner and to set out the Commissioner’s functions, powers, and duties. 30
- “81 Interpretation of this Part and Schedule 6**
In this Part and in **Schedule 6**, the terms **Commissioner**, **fees framework**, **Government**, **Minister**, and **officeholder** have the meaning set out in **section 5A**. 35

*“Provisions relating to constitution and appointment of
Retirement Commissioner*

“82 Retirement Commissioner

- “(1) There continues to be a Commissioner called the Retirement Commissioner. 5
- “(2) The Commissioner continues to be a corporation sole with perpetual succession.
- “(3) The Commissioner is a Crown entity for the purposes of the Public Finance Act 1989.

“83 Appointment of Commissioner 10

- “(1) The Commissioner is appointed by the Minister.
- “(2) The Minister may only appoint as Commissioner a person who, in the Minister’s opinion, has the appropriate skills and experience to perform the Commissioner’s functions and powers. 15
- “(3) The following persons may not be appointed as Commissioner:
- “ (a) a person who is an undischarged bankrupt:
- “ (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, section 383, or section 385 of the Companies Act 1993: 20
- “ (c) a person who is subject to a property order made under section 10, section 11, section 12, section 30, or section 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act: 25
- “ (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person. 30
- “ (4) The acts of an officeholder are not invalid simply because—
- “ (a) the officeholder’s appointment was defective; or 35
- “ (b) the officeholder is not qualified to be appointed as Commissioner.

- “84 Requirements before appointment**
- “(1) Before a person is appointed as Commissioner, the person must—
- “(a) consent in writing to the appointment; and
 - “(b) certify that he or she is not disqualified from being appointed as Commissioner; and 5
 - “(c) disclose to the Minister the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the office of Commissioner. 10
- “(2) A failure to comply with **subsection (1)(c)** does not affect the validity of an act or matter.
- “(3) Every person commits an offence who fails to comply with **subsection (1)(c)**, and is liable on summary conviction to a fine not exceeding \$5,000. 15
- “85 Term of office**
- “(1) An officeholder—
- “(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 until— 20
 - “(i) the officeholder is reappointed; or
 - “(ii) the officeholder’s successor is appointed; or
 - “(iii) the Minister informs the officeholder in writing that the officeholder is not to be reappointed. 25
- “(2) **Subsection (1)** is subject to **sections 92 and 120**.
- “86 Validity of officeholder’s acts**
- The acts of the person appointed as the officeholder are valid even though—
- “(a) a defect existed in the appointment of the person; or 30
 - “(b) the person was not qualified for appointment; or
 - “(c) the occasion for the person acting, or for his or her appointment, had not arisen or had ceased.
- “87 Validity of appointments**
- “(1) The appointment of a person as the officeholder is not invalid 35 only because a defect existed in the appointment of the person.

“(2) This section does not apply to a defect in the qualifications for appointment of the officeholder.

“88 **Removal of officeholder**

“(1) The Minister may, at any time and for any reason that in the Minister’s opinion justifies the removal, remove the officeholder from the office of Commissioner by written notice to the officeholder (with a copy to the Commissioner). 5

“(2) Before acting under **subsection (1)**, the Minister must give the officeholder a reasonable opportunity to make written submissions or be heard on the proposal to remove him or her. 10

“(3) The notice of removal must state—

“(a) the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and

“(b) the reason for the removal. 15

“89 **Process for removal**

The Minister may remove the officeholder under **section 88** with as little formality, and as much expedition, as is permitted by—

“(a) the principles of natural justice; and 20

“(b) a proper consideration of the matter; and

“(c) the requirements of this Act.

“90 **Judge serving as Commissioner**

“(1) This section applies if a Judge is the officeholder.

“(2) The Judge may not be removed from the office of Commissioner under **section 88**. 25

“(3) The Judge may be removed from the office of Commissioner under the general law applying to the removal of Judges from office.

“91 **No compensation for cessation of office** 30

A person is not entitled to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold the office of Commissioner.

- “92 When officeholder ceases to hold office**
 The officeholder ceases to hold office if he or she—
- “(a) resigns in accordance with **clause 8** of **Schedule 6**; or
 - “(b) is removed from office in accordance with **sections 88 to 90**; or 5
 - “(c) becomes disqualified from being the officeholder under any of **paragraphs (a) to (d)** of **section 83(3)**; or
 - “(d) otherwise ceases to hold office in accordance with any enactment.
- “Functions, powers, and duties of Commissioner* 10
- “93 Functions**
 The functions of the Commissioner are as follows:
- “(a) to develop and promote methods of improving the effectiveness of the retirement income policies from time to time implemented by the Government in New Zealand, including the promotion of education about retirement income issues and the publication of information about those issues: 15
 - “(b) to monitor the effects of retirement income policies that are being implemented in New Zealand: 20
 - “(c) to advise on retirement income issues, when requested to do so by the Minister:
 - “(d) to monitor the effectiveness of persons (whether referred to as ombudsmen or by any other term) who have been appointed (other than under statutory authority) to consider complaints and disputes about savings and investments; and to consider any issues addressed to the Commissioner by any such person and, if appropriate, to make recommendations to any person: 25
 - “(e) to collect and publish information for the purpose of enabling the fulfilment of any of the functions referred to in this section: 30
 - “(f) to perform such other functions as are conferred on the Commissioner by this Act or any other enactment.
- Compare: 1993 No 148 s 6 35
- “94 Capacity and powers**
- “(1) The Commissioner may do anything—**
- “(a) authorised by this Act or another Act; or
 - “(b) that a natural person of full age and capacity may do.

- “(2) The Commissioner may exercise the powers conferred by **subsection (1)** only for the purpose of carrying out the Commissioner’s functions.
- “(3) **Subsection (1)** applies except as provided in this Act or another Act or rule of law. 5
- Compare: 1993 No 148 s 7
- “95 **Discretion in relation to performance and exercise of functions and powers**
- “(1) Subject to the provisions of this Part and of any other enactment, the Commissioner has complete discretion in the performance or exercise, and the manner of the performance or exercise, of any function or power of the Commissioner. 10
- “(2) Without limiting **subsection (1)**, the Commissioner may at any time, if he or she considers it appropriate,—
- “(a) comment publicly on any matter relating to his or her functions; or 15
- “(b) deliver to the Minister a report in writing on any retirement income issues that he or she considers the Minister should be advised of.
- “(3) The Minister must, as soon as practicable after receiving a report under **subsection (2)(b)**, present a copy of that report to the House of Representatives. 20
- “96 **Duties**
- “(1) The officeholder, when acting as Commissioner, must—
- “(a) act with honesty and integrity; and 25
- “(b) act in good faith and not pursue his or her own interests at the expense of the interests of the office of the Commissioner; and
- “(c) act with the care, diligence, and skill that a reasonable person holding office as Commissioner would exercise in the same circumstances, taking into account (without limitation)— 30
- “(i) the nature of the office; and
- “(ii) the nature of the action; and
- “(iii) the position of the officeholder and the nature of the responsibilities undertaken by him or her. 35
- “(2) The duties of the officeholder under this section and **section 97** are duties owed to the Minister and to the Commissioner.

- “(3) If the officeholder does not comply with his or her duties, the officeholder may be removed from office under **section 88**.
- “(4) This section does not affect any other ground for removing the officeholder from office.
- “(5) **Subsection (3)** does not affect— 5
- “(a) anything else for which the member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach; or
- “(b) the right to apply for a court order under **section 98**.
- “97 **Duty not to disclose information** 10
- “(1) If the officeholder has information in his or her capacity as the officeholder that would not otherwise be available to him or her, the officeholder must not disclose that information to any person, or make use of, or act on, that information, except—
- “(a) in the performance of the entity’s functions; or 15
- “(b) as required or permitted by law; or
- “(c) in accordance with **subsection (2)**; or
- “(d) in complying with the requirements for the officeholder to disclose interests.
- “(2) The officeholder may disclose, make use of, or act on the information if— 20
- “(a) the member is first authorised to do so by the Minister; and
- “(b) the disclosure, use, or act in question will not, or will not be likely to, prejudice the office of the Commissioner. 25
- “98 **Court actions restraining actions of officeholder**
- “(1) The Minister may apply to a court for an order—
- “(a) requiring the officeholder to take any action that is required to be taken by the officeholder under this Act: 30
- “(b) restraining the officeholder from engaging in conduct that would contravene this Act:
- “(c) granting any consequential relief.
- “(2) The court may make an order on the application, subject to the following rules: 35
- “(a) an order may be made only if the court is satisfied that it is just and equitable to do so; and
- “(b) no order may be made in respect of conduct that has been completed.

- “(3) The court may, at any time before the final determination of an application under this section, make as an interim order any order that it is empowered to make as a final order.
- “99 **When officeholder may rely on certain information and advice** 5
- “(1) The officeholder, when acting as the Commissioner, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
- “(a) an employee of the Commissioner who the officeholder believes on reasonable grounds to be reliable and competent in relation to the matters concerned: 10
- “(b) a professional adviser or expert in relation to matters that the officeholder believes on reasonable grounds to be within the person’s professional or expert competence. 15
- “(2) The officeholder, when acting as the Commissioner, may rely on reports, statements, financial data, and other information supplied by the Crown.
- “(3) **Subclauses (1) and (2)** apply to the officeholder only if the officeholder— 20
- “(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. 25
- “100 **Commissioner to have regard to Government policy**
- “(1) In the exercise and performance of the Commissioner’s functions and powers, the Commissioner must have regard to any Government policy that—
- “(a) relates to the Commissioner’s functions; and 30
- “(b) is communicated to the Commissioner by written direction of the Minister.
- “(2) A direction under this section—
- “(a) must not be given unless the Minister has first consulted the Commissioner about the direction and its proposed terms; and 35
- “(b) may be amended, revoked, or replaced, at any time, in the same manner.

- “(3) As soon as practicable after giving a direction under this section, the Minister must—
- “(a) publish a copy in the *Gazette*; and
 - “(b) present a copy to the House of Representatives.
- “101 **Accountability of officeholder to Minister** 5
The officeholder is accountable to the Minister for performing his or her duties as the Commissioner.
- “Minister’s role*
- “102 **Minister’s role** 10
The role of the Minister is to oversee and manage the Crown’s interests in, and relationship with, the Commissioner and to exercise any statutory responsibilities given to the Minister, including functions and powers, under this Act or another Act.
- “103 **Minister accountable to House of Representatives** 15
The Minister is accountable to the House of Representatives for the exercise and performance of the functions and powers given to him or her in relation to the Commissioner.
- “Immunities and privileges*
- “104 **Proceedings privileged** 20
- “(1) Neither the officeholder nor an employee of the Commissioner is personally liable for any liability of the Commissioner by reason only of being an officeholder or employee.
 - “(2) For the purposes of clause 3 of Part II of the First Schedule of the Defamation Act 1992, any report made by the Commissioner under this Act is to be taken to be an official report. 25
- “105 **Immunity from civil liability to third parties**
- “(1) Neither the officeholder nor an employee of the Commissioner is liable to any person (other than the Commissioner) for any act or omission by him or her, in the performance or intended performance of functions under this Act, unless the act or omission arises out of conduct that is not in good faith. 30
 - “(2) The Commissioner is liable for any act or omission for which, but for this section, the officeholder, or an employee of the Commissioner would have been liable to a person.

“(3) To avoid doubt, this section does not affect the right of any person to apply for judicial review.

“106 **Indemnity for costs incurred in claims or proceedings (other than criminal)**

The Commissioner may only indemnify the officeholder or an employee of the Commissioner for costs incurred in any claim or proceedings (other than criminal) in relation to an act or omission by him or her in the performance or intended performance of functions under this Act if— 5

“(a) the claim relates to conduct that is covered by the immunity in **section 105** (for example, conduct other than not in good faith); and 10

“(b) the proceedings result in judgment being given in his or her favour or the proceedings being discontinued.

“107 **Indemnity for costs incurred in criminal proceedings** 15

The Commissioner may only indemnify the officeholder or an employee of the Commissioner for costs incurred in any criminal proceedings in relation to an act or omission by him or her in the performance or intended performance functions under this Act if he or she is acquitted or the proceedings are dismissed or withdrawn. 20

“108 **Insurance for liability and costs incurred in claims or proceedings (other than criminal)**

The Commissioner may only effect insurance cover for the officeholder or an employee of the Commissioner in relation to liability and costs incurred in any claim or proceedings (other than criminal) in relation to an act or omission by him or her that is in the performance or intended performance of functions under this Act. 25

“109 **Insurance for costs incurred in criminal proceedings** 30

“(1) The Commissioner may only effect insurance cover for the officeholder or an employee of the Commissioner in relation to costs incurred in any criminal proceedings in relation to an act or omission by him or her in the performance or intended performance of functions under this Act if he or she is acquitted or the proceedings are dismissed or withdrawn. 35

“(2) This section applies except as otherwise provided in this Act.

- “110 **Saving of judicial protections from liability**
 A Judge who is appointed as the officeholder has the same immunities and limitations or other protections from liability when acting as the officeholder as he or she would have as a Judge. 5
- “111 **Breach of indemnity and insurance limits**
 “(1) If the officeholder or an employee of the Commissioner is indemnified or insured by a statutory entity in breach of this Act, that person must repay to the Commissioner the cost of providing or effecting that indemnity or insurance cover to the extent that the indemnity or insurance cover exceeds that which could have been provided or effected under this Act. 10
 “(2) The Commissioner may recover the amount as a debt due in a court of competent jurisdiction.
- “112 **Definitions for protections from liability** 15
 In **sections 105 to 111**,—
effect insurance includes pay, whether directly or indirectly, the costs of the insurance
employee includes a person who was an employee at any time after the commencement of this Act but who is no longer an employee 20
officeholder includes a person who was the officeholder at any time after the commencement of this Act but who is no longer an officeholder.
- “Matters of administration”* 25
- “113 **Annual report**
 “(1) Without limiting the right of the Commissioner to report at any other time, as soon as practicable after the end of each financial year the Commissioner must give the Minister a report on the exercise of the Commissioner’s functions under this Act during that year. 30
 “(2) The report must state—
 “(a) the total value of the remuneration and other benefits received by the officeholder in the financial year; and
 “(b) the number of employees who, during the financial year, received remuneration and other benefits in their capacity as employees, the total value of which 35

- exceeded \$100,000, and the number of those employees in brackets of \$10,000; and
- “(c) the number of employees of the Commissioner, who, during the financial year, received any compensation or other benefits on termination, and the total value of the compensation or other benefits; and 5
- “(d) if the Commissioner has established any committee, the number of members of the committee who, during the financial year, received—
- “(i) fees or other benefits, or both, in their capacity as members, and the total value of those fees and other benefits; and 10
- “(ii) any compensation or other benefits on termination of their membership, and the total value of the compensation and other benefits; and 15
- “(e) details of any indemnity provided by the Commissioner during the financial year to the officeholder or employee of the Commissioner; and
- “(f) details of any insurance cover effected by the Commissioner during the financial year in respect of the liability of the officeholder or any employee of the Commissioner. 20
- “(3) Information need not be included in the report if it could properly be withheld if a request for information were made under the Official Information Act 1982. 25
- “(4) The Minister must present a copy of the report to the House of Representatives in accordance with section 44A of the Public Finance Act 1989.
- “(5) In **subsection (2), officeholder and employee** include a person who was the officeholder or employee at any time after the commencement of this Part but is no longer the officeholder or an employee, as the case may be. 30
- “114 **Review of Commissioner’s operations and performance**
- “(1) The Minister may review the operations and performance of the Commissioner at any time. 35
- “(2) This section does not limit the powers of review in the State Sector Act 1988 or the Public Audit Act 2001 or under any other Act.
- “(3) The Commissioner must take all reasonable steps to co-operate with the review. 40

- “115 Power to request information in connection with review**
- “(1) The Commissioner must supply to the Minister any information reasonably required by the Minister, and requested by the Minister, in connection with the exercise of his or her powers under **section 114**. 5
- “(2) This section is subject to **section 116**, and does not limit section 45B of the Public Finance Act 1989.
- “116 Good reasons for refusing to supply requested information**
- “(1) A request for information under **section 115** may be refused 10 if—
- “(a) the withholding of the information is necessary to protect the privacy of a person (whether or not a natural person or a deceased person); or
- “(b) the supply of the information would limit the Commissioner’s ability to act independently in— 15
- “(i) making decisions about a particular person; or
- “(ii) carrying out the Commissioner’s statutorily independent functions.
- “(2) The reason in **subsection (1)(a)** applies only if it is not outweighed by the Minister’s need to have the information in order to discharge the Minister’s ministerial duties. 20
- “(3) Information may not be withheld under this section if it could not properly be withheld under the Official Information Act 1982. 25
- “117 Money to be appropriated for purposes of this Act**
- All fees, salaries, allowances, and other expenditure payable or incurred under, or in the administration of, this Part is payable out of money appropriated by Parliament for the purpose. 30
- “118 Provisions applying to Commissioner**
- The provisions in **Schedule 6** apply to the Commissioner.

“119 Officeholder and employees of Commissioner are officials

The officeholder and every employee of the Commissioner is an official for the purposes of sections 78, 78A, 105, and 105A of the Crimes Act 1961.

5

“Transitional and miscellaneous provisions

“120 Continuation of office, appointment of Commissioner, and employment of employees

“(1) The office continued by **section 82** is the office of Retirement Commissioner established by section 5 of the Retirement Income Act 1993, and, accordingly, every reference to the Retirement Commissioner in an enactment or document made before the commencement of this Part is a reference to the Retirement Commissioner continued by **section 82**.

10

“(2) On the commencement of this Part, the person who, immediately before that commencement, held office as Retirement Commissioner under the Retirement Income Act 1993 is to be taken to have been appointed as Commissioner under **section 83—**

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“(a) for a term that expires on 16 January 2010; and

20

“(b) subject to the determination under the Remuneration Authority Act 1977 that applied to the person immediately before that commencement.

“(3) This Part does not affect the employment of any person who, immediately before the commencement of this Part, was an employee of the Retirement Commissioner.

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“121 Application of this Part to matters commenced under Retirement Income Act 1993 or Retirement Villages Act 2003

“(1) The Commissioner may continue or complete any act, matter, or thing commenced by the Commissioner under the Retirement Income Act 1993 or the Retirement Villages Act 2003 but not completed on the commencement of this Part.

30

“(2) The provisions of this Part apply with all necessary modifications to the continuation or completion of any act, matter, or thing referred to in **subsection (1)**.”

35

7 New Schedule 6 added

The principal Act is amended by adding the **Schedule 6** set out in the Schedule of this Act.

8 Repeals

- (1) The Retirement Income Act 1993 (1993 No 148) is repealed. 5
 - (2) Section 36(2) of the Retirement Villages Act 2003 (2003 No 112) is repealed.
-

s 7

Schedule New Schedule 6 of principal Act

s 118

Schedule 6 Provisions applying to Retirement Commissioner

Terms and conditions of appointment 5

1 **Concurrent offices**

The officeholder must not, without the approval of the Minister, hold any office of trust or profit, other than his or her office as Commissioner, or engage in any occupation for reward outside the duties of that office. 10

Conflict of interest disclosure rules

2 **When interests must be disclosed**

- (1) In this clause, **matter** means—
- (a) the Commissioner's performance of the Commissioner's functions or exercise of the Commissioner's powers; or 15
 - (b) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Commissioner.
- (2) The officeholder is **interested** in a matter if he or she, directly or indirectly,—
- (a) may derive a financial benefit from the matter; or
 - (b) is the spouse, de facto partner (whether of the same or different sex), child, or parent of a person who may derive a financial benefit from the matter; or 25
 - (c) may have a financial interest in a person to whom the matter relates; or
 - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or 30
 - (e) may derive a benefit from, or have an interest in, the matter that would be likely to influence him or her in carrying out his or her responsibilities (for example, because he or she is a member of, or is affiliated to, any body that has taken a policy position on the matter). 35
- (3) However, the officeholder is not interested in a matter—

Schedule 6—continued

- (a) only because he or she receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act or another Act; or
- (b) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities under this Act or another Act. 5
- 3 Obligation to disclose interest**
- (1) If the officeholder is interested in a matter relating to the activities of the Commissioner, he or she must disclose details of the interest in accordance with **clause 4** as soon as practicable after the officeholder becomes aware that he or she is interested. 10
- (2) A general notice of an interest in a matter relating to the activities of the Commissioner, or in a matter that may in future relate to those activities, that is disclosed in accordance with **clause 4** is a standing disclosure of that interest for the purposes of this clause. 15
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases. 20
- 4 Who disclosure of interests must be made to**
- The officeholder must disclose details of the interest in an interests register kept by the Commissioner and to the Minister. 25
- 5 What must be disclosed**
- The details that must be disclosed under **clause 4** are—
- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
- (b) the nature and extent of the interest (if the monetary value cannot be quantified). 30
- 6 Consequences of being interested in matter**
- If the officeholder is interested in a matter relating to the Commissioner, he or she—

Schedule 6—continued

- (a) must not take part in any discussion of any committee relating to the matter, or otherwise participate in any activity of the Commissioner that relates to the matter; and
- (b) must not sign any document relating to the entry into a transaction of or the initiation of the matter. 5
- 7 Permission to act despite being interested in matter**
- (1) The Minister may, by prior written notice to the Commissioner, permit the officeholder to do any thing otherwise prohibited by **clause 6** if the Minister is satisfied that it is in the public interest. 10
- (2) The permission may state conditions that the officeholder or Commissioner must comply with.
- (3) The Minister may amend or revoke the permission in the same way as it may be given. 15
- 8 Resignation**
- (1) The officeholder may, at any time, resign from office by sending a written notice to the Minister.
- (2) Unless the officeholder is sooner removed from office, a notice under **subclause (1)** takes effect on the later of— 20
- (a) the day the Minister receives it; and
- (b) a day the officeholder states in it for the purpose.
- 9 Salaries and allowances**
- (1) The officeholder is entitled to payment of— 25
- (a) a salary at a rate determined by the Remuneration Authority; and
- (b) any allowances determined by the Remuneration Authority.
- (2) Any determination made under **subclause (1)** may be made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination. 30
- (3) **Subclause (2)** is subject to the Remuneration Authority Act 1977. 35

Schedule 6—continued

- (4) If no date is specified in a determination under **subclause (2)**, the determination comes into force on the date it is made.
- (5) In addition, the officeholder is entitled to receive, from the funds of the Commissioner, reasonable and actual allowances for travelling and other expenses relating to the performance of his or her functions and duties as Commissioner, in accordance with the fees framework. 5
- 10 Superannuation or retiring allowances**
- (1) For the purpose of providing a superannuation fund or retiring allowance for the Commissioner or any employee of the Commissioner, sums by way of subsidy or contribution may be paid into any superannuation scheme that is registered under the Superannuation Schemes Act 1989 and approved by the Minister of Finance for the purposes of this clause. 10
- (2) Despite anything in this clause, any person who, immediately before being appointed as the Commissioner or as an employee of the Commissioner, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is considered, for the purposes of that Act, to be employed in the Government service so long as that person continues to hold office as the Commissioner or as an employee of the Commissioner, and that Act applies to that person in all respects as if service as or for the Commissioner were Government service. 15
20
- (3) Subject to the Government Superannuation Fund Act 1956, nothing in **subclause (2)** entitles a person to become a contributor to the Government Superannuation Fund after the person has ceased to be a contributor. 25
- (4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with **subclause (2)**, to a person who holds office as the Commissioner or as an employee of the Commissioner and is a contributor to the Government Superannuation Fund, the term **controlling authority**, in relation to any such person, means the Commissioner. 30

Schedule 6—continued*Employees***11 Employees**

- (1) The Commissioner may appoint any employees (including acting or temporary or casual employees) necessary for the efficient carrying out of the Commissioner's functions, powers, and duties under this Act or any other enactment. 5
- (2) The Commissioner, in making an appointment under this clause, must give preference to the person who is best suited to the position.
- (3) Employees appointed under this clause are employed on any terms and conditions of employment that the Commissioner determines. 10
- (4) The Commissioner must, before entering into a collective agreement in relation to all or any of the Commissioner's employees appointed under this clause, or agreeing to an amendment to such an agreement,— 15
- (a) consult with the State Services Commission with respect to the terms and conditions of employment to be included in the collective agreement; and
- (b) have regard to any recommendations the State Services Commission makes to the Commissioner within a reasonable time of being consulted. 20
- (5) Failure to comply with **subsection (4)** does not invalidate any act of the officeholder or an employee of the Commissioner.

12 Commissioner to be good employer 25

- (1) The Commissioner must, if it employs employees,— 25
- (a) operate a personnel policy that complies with the principle of being a good employer; and
- (b) make that policy (including the equal employment opportunity programme) available to its employees; and 30
- (c) ensure the Commissioner's compliance with that policy (including the equal employment opportunities programme) and report in its annual report on the extent of the Commissioner's compliance. 35
- (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

Schedule 6—continued

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 5
 - (d) recognition of—
 - (i) the aims and aspirations of Māori; and
 - (ii) the employment requirements of Māori; and
 - (iii) the need for involvement of Māori as employees of the Crown entity; and 10
 - (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 15
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this clause, 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 barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons. 20 25

13 Application of certain Acts to Commissioner and employees

No person is considered to be employed in the service of the Crown for the purposes of the State Sector Act 1988 by reason only of that person's appointment as the Commissioner or as a person appointed under **clause 11 or clause 27**. 30

*Delegations***14 Ability to delegate**

- (1) The Commissioner may delegate any of the functions and powers of the Commissioner, either generally or specifically, to any of the following persons by written notice to the person: 35
- (a) an employee:

Schedule 6—continued

- (b) a person approved by the Minister.
- (2) The reference to powers in **subclause (1)** does not include—
- (a) the power to delegate under this clause; or
- (b) the power to appoint attorneys under **clause 17**.
- 15 Effect of delegation** 5
- (1) If any functions or powers of the Commissioner are delegated, the delegate may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the Commissioner. 10
- (2) A delegate who purports to perform a function or exercise a power under a delegation is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation.
- (3) The Commissioner may, at any time, revoke a delegation by written notice to the delegate. 15
- (4) A delegation does not prevent the Commissioner from performing the function or exercising the power.

Transactions

- 16 Services for Commissioner** 20
- The Crown, acting through any department, may, at the request of the Commissioner, execute any work or enter into any arrangements for the execution or provision by the Department for the Commissioner of any work or service, or for the supply to the Commissioner of any goods, stores, or equipment, on and subject to any agreed terms and conditions. 25
- 17 Method of contracting**
- (1) A contract or other enforceable obligation may be entered into by the Commissioner as provided in this clause.
- (2) An obligation that, if entered into by an individual, is required to be by deed may be entered into on behalf of the Commissioner in writing, signed under the name of the Commissioner, by— 30
- (a) the officeholder; or

Schedule 6—continued

- (b) 1 or more attorneys appointed by the Commissioner in accordance with this clause.
- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of the Commissioner in writing by the officeholder or a person acting under the Commissioner's express or implied authority. 5
- (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 Commissioner in writing or orally by the officeholder or a person acting under the Commissioner's express or implied authority. 10
- (5) The Commissioner may, in addition to complying with **sub-clauses (2) to (4)**, affix its common seal (if he or she has one) to the contract or document containing the enforceable obligation. 15
- (6) This clause applies to a contract or other obligation—
- (a) whether or not that obligation was entered into in New Zealand; and
- (b) whether or not the law governing that obligation is the law of New Zealand. 20
- 18 Attorneys**
- (1) The Commissioner may, by an instrument in writing executed in accordance with **clause 15(2)**, appoint a person as his or her attorney either generally or in relation to a specified matter.
- (2) An act of the attorney in accordance with the instrument binds the Commissioner. 25
- 19 Presumptions and saving of certain transactions**
- (1) The validity or enforceability of any deed, agreement, right, or obligation entered into, or incurred, by the Commissioner is not affected by a failure of the Commissioner to comply with any provision of this schedule. 30
- (2) A person purporting to execute any documentation on behalf of the Commissioner under any authority is, in the absence of proof to the contrary, presumed to be acting in accordance with that authority. 35

Schedule 6—continued*Financial matters*

- 20 Funds of Commissioner**
- The funds of the Commissioner consist of—
- (a) any money appropriated by Parliament for the purposes of the Commissioner and paid to the Commissioner for the purposes of the Commissioner; and 5
 - (b) all other money lawfully received by the Commissioner for the purposes of the Commissioner; and
 - (c) all accumulations of income derived from that money.
- 21 Bank accounts** 10
- (1) The Commissioner must open at any bank or banks any accounts necessary for the exercise of the Commissioner's functions and powers.
 - (2) All money received by the Commissioner, or by any employee of the Commissioner, must, as soon as practicable after it has been received, be paid into bank accounts of the Commissioner designated by the Commissioner. 15
 - (3) The withdrawal from or payment of money to any such account must be authorised in a manner the Commissioner thinks fit. 20
- 22 Investment of money**
- Any money that belongs to the Commissioner and that is not immediately required for expenditure by the Commissioner may be invested under section 25 of the Public Finance Act 1989. 25
- 23 Commissioner must not borrow without consent of Minister and Minister of Finance**
- The Commissioner must not borrow or contract to borrow any money, or renew any loan made to the Commissioner, without the prior approval given jointly by the Minister and the Minister of Finance. 30
- 24 Commissioner must not hold shares without consent of Minister of Finance**
- The Commissioner must not hold any shares or interests in a body corporate or in a partnership, joint venture, or other 35

Schedule 6—continued

association of persons without the prior written consent of the Minister of Finance.

25 Auditor-General is auditor of Commissioner

The Commissioner is a public entity as defined in section 5 of the Public Audit Act 2001, and, in accordance with that Act, the Auditor-General is the auditor of the Commissioner. 5

26 Taxation of Commissioner

The Commissioner is a public authority for the purpose of the Inland Revenue Acts (as that term is defined in the Tax Administration Act 1994). 10

*Employment of experts***27 Employment of experts**

- (1) The Commissioner may, as and when the need arises, appoint any person who, in the Commissioner's opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise by the Commissioner of the Commissioner's functions or powers to make such inquiries or to conduct such research or to make such reports or to render such other services as may be necessary for the efficient performance by the Commissioner of the Commissioner's functions. 15
20
- (2) The Commissioner must pay persons appointed by the Commissioner under this clause, for services rendered by them, fees or commission or both at such rates as the Commissioner thinks fit, and may separately reimburse them for expenses reasonably incurred in providing services for the Commissioner. 25