

[AS REPORTED FROM THE COMMERCE AND ENERGY
COMMITTEE]

House of Representatives, 2 December 1982.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 8 December 1982.

Words struck out are shown in italics within double bold round brackets, or with double black rule at beginning and after last line; words inserted are shown in roman underlined with a triple rule, or with triple rule before first line and after last line.

Hon. Mr Falloon

**SUPERANNUATION SCHEMES AMENDMENT
(NO. 2)**

ANALYSIS

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3. Classification of schemes
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or classification
5. Regulations

A BILL INTITULED

An Act to amend the Superannuation Schemes Act 1976

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Superannuation Schemes Amendment Act (No. 2) 1982, and shall be read together with and deemed part of the Superannuation Schemes Act 1976* (hereinafter referred to as the principal Act).

*1976, No. 3
Amendment: 1982, No. 7

No. 79—3

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

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“ ‘Class A funds’—

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“(a) Means, in relation to any employee lump sum superannuation scheme or personal lump sum superannuation scheme,—

“(i) All contributions paid to the scheme on or before the 5th day of August 1982, and all income arising from those contributions, whether that income arises before or after that date; and

“(ii) All contributions paid to the scheme on or after the 6th day of August 1982 by or in respect of members of the scheme who were members before that date, and all income arising from those contributions; but

“(b) Does not include any contributions which are paid by or in respect of any member in respect of any year subsequent to the 5th day of August 1982, and which exceed—

“(i) If the member was a member of the scheme for the whole of the year ending with the 5th day of August 1982, and contributions were paid by or in respect of that member as a lump sum or on an irregular basis, the amount of those contributions:

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“(ii) If the member was a member of the scheme for part of the year ending with the 5th day of August 1982, and contributions were paid by or in respect of that member as a lump sum or on an irregular basis, the amount of those contributions or the amount that is required to be paid by or in respect of that member under any contractual obligation entered into before the 6th day of August 1982, whichever is the greater:

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5 “(iii) If the member was a member of the
scheme for the whole or part of the year
ending with the 5th day of August 1982,
and contributions were paid by or in
respect of that member by regular
periodic payments (irrespective of
whether those payments were expressed
as amounts in dollar terms or were
10 calculated at a rate determined by
reference to the income of that
member), the amount in dollar terms of
the contributions paid by or in respect of
the contributor in respect of the period
15 ending with the 5th day of August 1982,
multiplied by the appropriate factor
according to the length of that period so
as to produce an annual amount:
20 “ ‘Class B funds’, in relation to any lump sum
superannuation scheme, means any contributions or
income that are not Class A funds:

New

25 “ ‘Class B fund’ in relation to any superannuation
scheme and any member of such a scheme means all
funds that do not form part of any Class A fund:

30 “ ‘Subsidised’, in relation to any employee pension
superannuation scheme or employee lump sum
superannuation scheme, means a scheme to which
any person employing, engaging, or contracting for
the services of any employee is liable to contribute in
respect of that employee.”.

Struck Out

35 (2) Section 2 of the principal Act is hereby further amended
by repealing the definition of the term “specified lump sum
benefit” (as inserted by section 2 (1) of the Superannuation
Schemes Amendment Act 1982), and substituting the
following definition:

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“ ‘Specified lump sum benefit’ means a lump sum benefit recognised by the Government Actuary as arising from—

“(a) Contributions paid before the date on which a scheme is classified or deemed to be classified as a pension superannuation scheme; and 5

“(b) Contributions paid to the scheme after that date by or in respect of members who were members of the scheme at that date; and 10

“(c) Income arising from the contributions referred to in paragraphs (a) and (b) of this definition to the extent to which such income may be allocated towards that benefit in accordance with any regulations made under this Act; but 15

“(d) Does not include—

“(i) Any contributions which are paid by or in respect of any member by regular periodic payments (irrespective of whether those payments were expressed as amounts in dollar terms or were calculated at a rate determined by reference to the income of that member), and which exceed the amount of the contributions paid by or in respect of the member in respect of the period ending with the day on which application was made for classification of the scheme under this Act as a pension superannuation scheme, multiplied by the appropriate factor according to the length of that period so as to produce an annual amount; or 20 25 30

“(ii) Any income arising from contributions which exceed the amount calculated under subparagraph (i) of this paragraph.” 35

New

(2) Section 2 of the principal Act is hereby amended by omitting from the definition of the term “employee” the words “but does not include any shareholder-employee as defined in section 150 (1) (d) of the Income Tax Act 1976”, and substituting the words “but does not include any person who would be a shareholder-employee within the meaning of section 150 (1) (d) of the Income Tax Act 1976 if the expression ‘20 percent’ was omitted from subparagraphs (i) and (ii) of that provision, and the expression ‘50 percent’ was substituted in each case”.

(3) Section 2 of the principal Act is hereby amended by adding to the definition of the term “pension superannuation scheme” (as inserted by section 2 (1) of the Superannuation Schemes Amendment Act 1982) the words “; and includes any superannuation scheme that has been recognised by the Commissioner of Inland Revenue as a pension fund under section 150 (1) (c) of the Income Tax Act 1976 before the commencement of this Act.”

(4) Section 2 of the principal Act is hereby amended by repealing the definition of the term “specified lump sum benefit”.

(5) Section 2 (2) of the Superannuation Amendment Act 1982 is hereby consequentially repealed.

2A. New sections inserted—The principal Act is hereby amended by inserting, after section 2, the following sections:

“2A. Class A fund in relation to employee lump sum superannuation scheme defined—(1) The Class A fund of every employee lump sum superannuation scheme shall comprise all the funds arising directly or indirectly from contributions to the scheme in respect of members to the extent specified in this section whether those funds arise from those contributions in the year in which they are or have been paid or any subsequent year.

“(2) The Class A fund of every employee lump sum superannuation scheme shall comprise—

“(a) All the funds arising directly or indirectly from contributions paid to the scheme on or before the 31st day of March 1983 by or in respect of members of the scheme who were members on the 5th day of August 1982; and

New

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- “(b) To the extent permitted by subsections (3) to (6) of this section, all the funds arising directly or indirectly from contributions paid to the scheme on or after the 31st day of March 1983 by or in respect of members of the scheme who were members on the 5th day of August 1982. 5
- “(3) In respect of any member—
- “(a) Who was a member of the scheme for the whole or part of the year ending with the 31st day of March 1983; and 10
- “(b) By or in respect of whom contributions were paid by regular periodic payments (irrespective of whether those payments were expressed as amounts in dollar terms or were calculated at a rate determined by reference to the income of that member),— 15
- the Class A fund shall comprise in respect of any year commencing after the 31st day of March 1983—
- “(c) The amount in dollar terms of the contributions paid by or in respect of the member in respect of the period ending with the 31st day of March 1983, multiplied by the appropriate factor according to the length of that period so as to produce an annual amount; or 25
- “(d) The actual amount of the contributions paid by or in respect of the member for the year ending on the 31st day of March 1983,—
- whichever is the greater.
- “(4) In respect of any member— 30
- “(a) Who was a member of the scheme for the whole or part of the year ending with the 31st day of March 1983; and
- “(b) By or in respect of whom contributions were paid on an irregular basis— 35
- the Class A fund in respect of any year commencing after the 31st day of March 1983 shall comprise—
- “(c) The amount of those contributions; or
- “(d) The amount that would have been required to be paid by or in respect of the member under any obligation entered into before the 6th day of August 1982 that is expressed in the instrument governing the scheme if the member had been a member of the scheme for the whole of the year ending with the 31st day of March 1983,— 45
- whichever is the greater.
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New

“(5) In respect of any member to whom subsection (3) or subsection (4) of this section applies, the Class A fund may be increased to the extent that the rate or amount of
5 contributions by or in respect of the member is increased by reference to his age or length of service under any obligation entered into before the 6th day of August 1982 that is expressed in the instrument governing the scheme; but any such increase shall be made on the basis that the member’s
10 salary, staff category, and factors (other than age and length of service) affecting the contributions by or in respect of the member remained unaltered after the 31st day of March 1983 and shall not include any contributions paid by the employer of any member that exceed—

15 “(a) If the member has not attained the age of 30 years, 5 percent of the salary of that member as if that salary had remained unaltered after the 31st day of March 1983:

20 “(b) If the member has attained the age of 30 years but has not attained the age of 40 years, 7.5 percent of the salary of that member as if that salary had remained unaltered after the 31st day of March 1983.

25 “(c) If the member has attained the age of 40 years, 10 percent of the salary of that member as if that salary had remained unaltered after the 31st day of March 1983.

“(6) The Class A fund of any scheme that operates on the principle of unallocated funding and is recognised by the
30 Government Actuary as conferring defined benefits on its members who were members on the 5th day of August 1982, and such defined benefits are conferred in accordance with an obligation entered into on or before that date that is expressed in the instrument governing the scheme, shall also include
35 such contributions as the Government Actuary considers appropriate to provide those benefits.

“(7) The Class A fund of every employee lump sum superannuation scheme shall include any funds transferred to that scheme from the Class A fund of any other employee
40 lump sum superannuation scheme.

New

“2B. Class A fund in relation to personal lump sum superannuation scheme defined—(1) The Class A fund of every personal lump sum superannuation scheme shall comprise all the funds arising directly or indirectly from contributions to the scheme in respect of members to the extent specified in this section whether those funds arise from those contributions in the year in which they are or have been paid or any subsequent year. 5

“(2) The Class A fund of every personal lump sum superannuation scheme shall comprise— 10

“(a) All contributions paid to the scheme on or before the 5th day of August 1982 by or in respect of members who were members of the scheme on that date; and

“(b) To the extent permitted by subsection (3) of this section, all contributions paid to the scheme after the 5th day of August 1982 by or in respect of members who were members of the scheme on that date. 15

“(3) In respect of contributions paid by or in respect of members after the 5th day of August 1982, the Class A fund shall comprise in respect of the year commencing with the 6th day of August 1982 and every subsequent year commencing with the 6th day of August,— 20

“(a) The amount of contributions paid by or in respect of the member in the year that ended with the 5th day of August 1981; or 25

“(b) The amount of contributions paid by or in respect of the member in the year that ended with the 5th day of August 1982(~~(—)~~); or 30

New

“(c) If the member was not a member of the scheme for the whole of the year that ended with the 5th day of August 1982, the amount that would have been required to be paid by or in respect of that member if he had been a member of the scheme for the whole of the year that ended with the 5th day of August 1982 to the extent that the requirement to pay the amount arises under any obligation that was entered into before the 6th day of August 1982 and is expressed in the instrument governing the scheme— 35 40

New

whichever is the greater.

“(4) The Class A fund of every personal lump sum superannuation scheme shall include any funds transferred to
5 that scheme from the Class A fund of any employee lump sum superannuation scheme or any other personal lump sum superannuation scheme.

“2c. Specified lump sum benefit in relation to employee pension superannuation schemes defined—

10 (1) The specified lump sum benefit in relation to any member of an employee pension superannuation scheme means the lump sum retirement benefit that the member would have been entitled to receive under the scheme as a lump sum superannuation scheme immediately before its classification
15 as a pension scheme to the extent that the benefit arises from funds arising directly or indirectly from contributions paid by or in respect of the member—

“(a) Before the date on which the scheme is classified as an employee pension superannuation scheme; and

20 “(b) After the date of classification of the scheme as an employee pension superannuation scheme as if the member’s salary, staff category, and factors (other than age and length of service) affecting the contributions by or in respect of the member remained unaltered after that date.

25 “(2) The specified lump sum benefit in relation to any member shall include, in the case of a member who has been a member of an employee lump sum superannuation scheme and who becomes a member of the scheme as a result of the
30 merger of his employer with any other employer, the takeover of his employer by another employer, or a change in the nature of the superannuation scheme or schemes made available to him by his employer—

“(a) Any specified lump sum benefit that he is entitled to
35 retain at the time he becomes a member of the employee pension superannuation scheme; or

“(b) The specified lump sum benefit to which he would
40 have been entitled if the employee lump sum superannuation scheme of which he is ceasing to be a member had applied for classification as an employee pension scheme with effect on the date on which he becomes a member of the employee pension superannuation scheme.”

Struck Out

3. Classification of schemes—(1) Section 13A of the principal Act (as inserted by section 4 of the Superannuation Schemes Amendment Act 1982) is hereby amended by inserting, after subsection (1), the following subsections: 5

“(1A) Where any scheme is classified by the Government Actuary as an employee pension superannuation scheme or an employee lump sum superannuation scheme, the Government Actuary shall determine whether or not the scheme is a subsidised scheme and shall further classify the 10 scheme accordingly.

“(1B) Where any scheme is classified by the Government Actuary as an employee lump sum superannuation scheme or a personal lump sum superannuation scheme, the Government Actuary shall identify those funds of the scheme that are 15 or will be Class A funds, and those funds of the scheme that are or will be Class B funds, and that identification shall form part of the classification of the scheme.”

(2) Section 13A of the principal Act (as so inserted) is hereby amended by repealing subsection (3), and substituting 20 the following subsection:

“(3) Any superannuation scheme that has not been classified under this section shall be deemed to be classified as a personal lump sum superannuation scheme and all the funds of any such scheme shall be deemed to be classified as 25 Class B funds.”

(3) Section 13A of the principal Act (as so inserted) is hereby amended by omitting from subsection (4) the words “subsection (1) of”.

New

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3. Classification of schemes—(1) The principal Act is hereby amended by repealing section 13A (as inserted by section 4 of the Superannuation Schemes Amendment Act 1982), and substituting the following section:

“13A. (1) Where any scheme has been approved under 35 section 13 of this Act whether before or after the commencement of this Act, the Government Actuary shall, on the application of the trustees or managers of the scheme, or on application for approval and classification being made to him under section 12 (1) of this Act, classify that scheme as— 40

“(a) An employee pension superannuation scheme; or

“(b) A personal pension superannuation scheme; or

New

“(c) An employee lump sum superannuation scheme; or

“(d) A personal lump sum superannuation scheme.

“(2) Where any scheme is classified by the Government
5 Actuary as an employee pension superannuation scheme or
an employee lump sum superannuation scheme, the
Government Actuary shall determine whether or not the
scheme is a subsidised scheme and shall further classify the
scheme accordingly.

10 “(3) Where any scheme is classified by the Government
Actuary as an employee lump sum superannuation scheme or
a personal lump sum superannuation scheme, the Govern-
ment Actuary shall identify those contributions to and funds
15 contributions to and funds of the scheme that are or will form the Class A fund, and those
the Class B fund, and that identification shall form part of the
classification of the scheme.

“(4) Where any change is made to a superannuation
20 scheme, the Government Actuary may change the classifica-
tion of that scheme accordingly.

“(5) Any superannuation scheme that has not been
classified under this section shall be deemed to be classified as
a personal lump sum superannuation scheme and all the
contributions to and funds of any such scheme shall be
25 deemed to be classified as a Class B fund.

“(6) Where an application is made to have a superannua-
tion scheme classified under this section, and the scheme is so
classified, the classification shall be deemed to take effect on
the date of application for such classification or such later
30 date as may be determined by agreement between the
applicant and the Government Actuary, whether or not
changes to the scheme were necessary to enable that
classification to be given.”

(2) Section 4 of the Superannuation Schemes Amendment
35 Act 1982 is hereby consequentially repealed.

**4. Suspension and withdrawal of approval or classifi-
cation**—Section 15A (5) of the principal Act (as enacted by
section 5 of the Superannuation Schemes Amendment Act
1982) is hereby amended by adding, after the words
40 “personal lump sum superannuation scheme”, the words
“, and all the funds of any such scheme shall be deemed to be
classified as (*Class B funds*) a Class B fund in respect of that

year and every subsequent year until the scheme is otherwise classified under this Act”.

5. Regulations—Section 18 (d) of the principal Act (as substituted by section 6 (2) of the Superannuation Schemes Amendment Act 1982) is hereby amended—

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- (a) By inserting, after the words “that scheme”, the words “, and conditions requiring that the trustees and managers shall include an organisation specified in the regulations either particularly or as a member of a class of organisations so specified”;
- (b) By inserting, after the words “specified levels”, the words “, allocation of contributions or income towards specified benefits,”.

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New

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by omitting the word “investments”, and substituting the words “allocation of contributions or funds towards specified benefits, investments and retention of unauthorised investments until specified dates, borrowing (including conditions prohibiting borrowing by schemes),”

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6. Personal lump sum superannuation schemes may be terminated before 31 March 1984—(1) Notwithstanding anything in the trust deed of any personal lump sum superannuation scheme that permits or prohibits the termination of any such scheme, the trustees may, by resolution made before the 31st day of March 1984, terminate the scheme.

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(2) Where any resolution is made under subsection (1) of this section, the trustees shall distribute the assets of the scheme to the members or on their behalf before the 31st day of March 1984.

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(3) The trustees shall give notice to the Government Actuary of any resolution made by them under subsection (1) of this section and shall inform him when the distribution of the assets has been completed.

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