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1992, No. 61

An Act to amend the Government Superannuation Fund Act 1956

[*30 June 1992*

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

1. Short Title and commencement—(1) This Act may be cited as the Government Superannuation Fund Amendment Act (No. 2) 1992, and shall be read together with and deemed part of the Government Superannuation Fund Act 1956 (hereinafter referred to as the principal Act).

(2) Except as provided in section 11 (3) of this Act, this Act shall come into force on the 1st day of July 1992.

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, before the definition of the term "Board", the following definition:

" 'Appointed member' means a member of the Board appointed under paragraph (e) or paragraph (g) of section 3A (1) of this Act:".

(2) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term "financial year" (as substituted by section 2 (1) of the Government Superannuation Fund Amendment Act 1976), and substituting the following definition:

" 'Financial year' means the period of 12 months ending with the 30th day of June:".

(3) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term "member of the Prisons Service" (as inserted by section 2 (1) of the Government Superannuation Fund Amendment Act 1986), and substituting the following definition:

" 'Member of the Prisons Service' means an employee of the Department of Justice who occupies a position that carries custodial or supervisory responsibility over prison inmates:".

(4) Section 2 (1) of the Government Superannuation Fund Amendment Act 1986 is hereby consequentially repealed.

(5) Notwithstanding the definition of the term "financial year" (as substituted by subsection (2) of this section) in section 2 (1) of the principal Act, the period of 15 months beginning on the 1st day of April 1992 and ending with the 30th day of June 1993 shall, for the purposes of the principal Act, be treated as one financial year.

3. New sections substituted—(1) The principal Act is hereby amended by repealing sections 3 to 5, and substituting the following sections:

"3. **Government Superannuation Board**—(1) For the purposes of this Act there shall be a Board, to be called the Government Superannuation Board.

"(2) The Board shall be and be deemed always to have been a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing

and suffering all such acts and things as bodies corporate may do and suffer.

"3A. **Membership**—(1) The Board shall consist of—

"(a) The Minister of Finance (who shall be the Chairperson):

"(b) The Secretary to the Treasury (who shall be the Deputy Chairperson):

"(c) The State Services Commissioner:

"(d) The chief executive officer of the New Zealand Railways Corporation:

"(e) Two members to be appointed by the Governor-General on the recommendation of the Minister of Finance:

"(f) The Commissioner of Police:

"(g) Six members (being contributors to the Fund) to be appointed by the Governor-General, on the recommendation of the Minister of Finance, as staff representatives.

"(2) The powers of the Board shall not be affected by any vacancy in its membership.

"3B. **Nomination of appointed members**—(1) Of the two members appointed under section 3A (1) (e) of this Act—

"(a) One shall be appointed on the nomination of the Minister of Education to represent employers of contributors employed in the Education service:

"(b) One shall be appointed on the joint nomination of the chief executive of New Zealand Post Limited, the chief executive of Postbank Limited, and the chief executive of Telecom Corporation of New Zealand Limited, or, in default of a joint nomination, after consultation by the Minister of Finance with each of those chief executives.

"(2) Of the staff representatives appointed under section 3A (1) (g) of this Act—

"(a) One shall be appointed on the nomination of the New Zealand Public Service Association Incorporated:

"(b) One shall be appointed on the joint nomination of those service organisations that in the opinion of the Minister of Finance represent persons employed by the New Zealand Railways Corporation and persons employed by any transferee company within the meaning of the New Zealand Railways Corporation Restructuring Act 1990 or, in default of a joint nomination, after consultation by the Minister with each of those organisations:

"(c) One shall be appointed on the joint nomination of those service organisations that in the opinion of the Minister of Finance represent persons employed in the Education service or, in default of a joint nomination, after consultation by the Minister with each of those organisations:

"(d) One shall be appointed on the nomination of the Communication and Energy Workers Union (Incorporated):

"(e) One shall be appointed on the joint nomination of the New Zealand Police Association Incorporated, and of representatives of the commissioned officers of the Police or, in default of a joint nomination, after consultation by the Minister of Finance with that organisation and with those representatives:

"(f) One shall be appointed on the nomination of the Minister of Defence to represent permanent members of the regular forces.

"3C. **Term of office of appointed members**—(1) Except as provided in subsection (3) of this section, every appointed member shall be appointed for a term of 3 years, but may from time to time be reappointed, or may be at any time removed from office by the Governor-General for disability affecting performance of duty, insolvency, neglect of duty, or misconduct, proved to the satisfaction of the Minister of Finance.

"(2) Any appointed member may at any time resign his or her office by giving written notice to that effect to the Minister of Finance.

"(3) If any appointed member dies, is removed from office, or resigns, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his or her predecessor was appointed.

"(4) Every appointed member, unless he or she sooner vacates office as provided in subsection (3) of this section, shall continue in office until he or she is reappointed or his or her successor comes into office, notwithstanding that the term for which he or she was appointed may have expired.

"4. **Representation of absent members**—(1) In the absence from any meeting of the Board of any *ex officio* member of the Board who is in the Government service, any

officer of the Government service having authority to act in that member's place during that member's absence may attend the meeting in that member's stead.

"(2) Except as provided in the foregoing provisions of this section, the Minister of Finance may from time to time appoint any person to act for any member of the Board at any meeting in the event of that member's absence therefrom.

"(3) While any person is attending any meeting of the Board pursuant to this section, that person shall be deemed for all purposes to be a member of the Board, and the fact that any person so attends shall be sufficient evidence of that person's authority to do so.

"5. **Procedure of Board**—(1) At any meeting of the Board at which the Chairperson is not present and no person attends in the Chairperson's stead, the Deputy Chairperson, if he or she is present, shall preside, and, if the Deputy Chairperson is not present and no person attends in his or her stead, the Board shall appoint a Chairperson from the members present.

"(2) At all meetings of the Board 7 members shall form a quorum.

"(3) Subject to the provisions of this Act and of any regulations made under this Act, the Board may regulate its procedure in such manner as it thinks fit."

(2) The following enactments are hereby consequentially repealed:

(a) So much of the Second Schedule to the Government Superannuation Fund Amendment Act 1976 as relates to section 3 (3) (d) of the principal Act:

(b) Section 4 of the Government Superannuation Fund Amendment Act 1986.

4. Audit of accounts—Section 19 of the principal Act is hereby repealed.

5. Election of variable retiring allowance to secure a level income—Section 40 of the principal Act is hereby amended by repealing subsection (7), and substituting the following subsections:

"(7) An election under this section may be made—

"(a) At any time within the 3 months immediately preceding the retirement of the contributor, or at any time after retirement and before acceptance of the first instalment of the retiring allowance; or

"(b) With the consent of the Board, at any later date.

"(8) More than one election may be made by a contributor under this section, except that second or subsequent elections may be made only with the consent of the Board.

"(9) A contributor may, with the consent of the Board, cancel any election under this section by notice in writing delivered to the Superintendent.

"(10) Where an election is cancelled, future payments of the retiring allowance shall, subject to any further election under this section, be paid at the rate at which they would have been payable if the election had not been made, with an adjustment calculated on actuarial principles in respect of the variation in the amount of the retiring allowance while the election was in force.

"(11) The Board's consent under subsection (7) (b) or subsection (8) or subsection (9) of this section may be subject to such terms and conditions as the Board may determine."

6. Refund of contributions on retiring before entitled to retiring allowance—(1) Section 42 (4) of the principal Act (as amended by section 13 (1) of the Government Superannuation Fund Amendment Act 1959) is hereby amended by omitting the words "financial year has been so paid on the 31st day of March", and substituting the words "financial year has been so paid on the 30th day of June".

(2) Section 13 (1) of the Government Superannuation Fund Amendment Act 1959 is hereby consequentially repealed.

7. Computation of refunds for redundant employees of Niue Public Service—The principal Act is hereby amended by inserting, after section 51, the following section:

"51A. Where the cessation of service at any time after the 1st day of June 1991 of any contributor from the Niue Public Service is compulsory for any reason other than misconduct, section 42 of this Act shall apply and be read as if it entitled the contributor to receive a refund of an amount which is the sum of—

"(a) The total amount of the contributor's contributions to the Fund (less any sums already received by the contributor from the Fund); and

"(b) The total amount paid to the Fund in respect of that contributor by the Niue Government under section 95 (2) of this Act; and

"(c) A sum by way of interest on both of the total amounts referred to in paragraphs (a) and (b) of this

subsection, computed in the same manner as provided for in section 42 (3) of this Act."

8. Special provisions in relation to elections made after 30 June 1992—(1) The principal Act is hereby amended by inserting, after section 61A (as inserted by section 13 of the Government Superannuation Fund Amendment Act 1985 and amended by section 2 (1) of the Government Superannuation Fund Amendment Act (No. 2) 1991), the following section:

"61AA. (1) Nothing in section 61A (1A) of this Act limits the provisions of section 61E (4) of this Act.

"(2) Nothing in section 61A (1A) of this Act prevents any person who is employed in the Government service on or after the 1st day of July 1992 from again electing to become a contributor to the Fund under this Part of this Act if—

"(a) That person was a contributor to the Fund under this Part of this Act in respect of a period of Government service that took place before the 1st day of July 1992; and

"(b) That person's contributions under this Part of this Act in respect of his or her previous period of Government service have remained, as a result of an election made by that person under section 61R (1) (c) of this Act, in the Fund throughout the period between the date on which that person's election under section 61R (1) (c) of this Act took effect and the date on which that person again elects to become a contributor to the Fund under Part IIA of this Act.

"(3) Nothing in section 61A (1A) of this Act prevents any person who resumes employment in the Government service on or after the 1st day of July 1992 from again electing to become a contributor to the Fund under this Part of this Act if—

"(a) That person was a contributor to the Fund under this Part of this Act in respect of a period of Government service that took place before the 1st day of July 1992; and

"(b) That person's contributions under this Part of this Act in respect of his or her previous period of Government service have remained, as a result of an election made by that person under section 61S (1) (b) of this Act, in the Fund throughout the period between that person's two periods of Government service."

9. Application of Part IIIA of principal Act after 30 June 1992—Section 71B of the principal Act (as inserted by section 15 (1) of the Government Superannuation Fund Amendment Act 1986) is hereby amended by adding, as subsections (2) and (3), the following subsections:

"(2) Nothing in this Part of this Act shall apply in respect of—

"(a) Any person who first becomes a member of the regular forces after the 30th day of June 1992; or

"(b) Any period of service as a member of the regular forces after the 30th day of June 1992 by any person who rejoins the regular forces after that date (other than a person whose contributions in respect of his or her previous period of service remain, as a result of an election made by that person under this Part of this Act, in the Fund throughout the period between that person's two periods of service as a member of the regular forces).

"(3) Nothing in subsection (2) of this section prevents any person who returns to service in the regular forces on or after the 1st day of July 1992 from again electing to become a contributor to the Fund under this Part of this Act if—

"(a) That person was, as at the close of the 30th day of June 1992, a contributor to the Fund under this Part of this Act who was on leave of absence, without salary, from the regular forces; and

"(b) That person has, throughout the period beginning with the date on which he or she began his or her period of leave of absence, without salary, from the regular forces and ending with the date on which he or she returned to service with the regular forces, either—

"(i) Continued to contribute to the Fund in accordance with section 32 of this Act (as applied by section 71s (2) of this Act); or

"(ii) As a result of an election made by that person under section 71P (1) of this Act allowed his or her contributions to remain in the Fund."

10. Benefits where contributor leaves regular forces and is not entitled to retiring allowance—Section 71K (1) (b) of the principal Act (as inserted by section 15 (1) of the Government Superannuation Fund Amendment Act 1986) is hereby amended by omitting the expression "31st day of March", and substituting the expression "30th day of June".

11. Interpretation—(1) Section 81A of the principal Act (as inserted by section 4 of the Government Superannuation Fund Amendment Act 1989) is hereby amended by repealing paragraph (b) of the definition of the term "Judge", and substituting the following paragraph:

"(b) A Judge of the Employment Court appointed under section 113 of the Employment Contracts Act 1991 or deemed to have been appointed under that Act by subsection (1) or subsection (2) of section 188 of that Act:".

(2) Section 81A of the principal Act (as so inserted) is hereby amended by repealing paragraph (b) of the definition of the term "temporary Judge", and substituting the following definition:

"(b) A Judge of the Employment Court appointed under section 116 of the Employment Contracts Act 1991:".

(3) This section shall be deemed to have come into force on the 19th day of August 1991.

12. Application of Part VA of principal Act after 30 June 1992—Section 81B of the principal Act (as inserted by section 4 of the Government Superannuation Fund Amendment Act 1989) is hereby amended by adding the following subsections:

"(2) Nothing in this Part of this Act shall apply in respect of—

"(a) Any person who is first appointed as a Judge or as Solicitor-General after the 30th day of June 1992; or

"(b) Any period of judicial service after the 30th day of June 1992 by any person who resumes judicial service after that date (other than a person whose contributions in respect of his or her previous period of judicial service remained, as a result of an election made by that person under this Part of this Act, in the Judges Superannuation Account throughout the period between that person's two periods of judicial service).

"(3) Nothing in subsection (2) of this section prevents any person who, as at the close of the 30th day of June 1992, is a temporary Judge and who is appointed as a Judge immediately after ceasing to be a temporary Judge, from—

"(a) Contributing in accordance with section 81G (3) of this Act in respect of his or her service as a temporary Judge; and

"(b) Contributing under this Part of this Act in respect of that immediately following period of service as a Judge.

"(4) Nothing in subsection (2) of this section prevents any person who, as at the close of the 30th day of June 1992, is a Master to whom this Part of this Act applies, and who takes office as a Judge immediately after ceasing to be a Master, from contributing under this Part of this Act in respect of his or her period of service as a Judge.

"(5) Notwithstanding subsection (2) of this section, this Part of this Act shall continue to apply to any person who, as at the close of the 30th day of June 1992, holds the office of Solicitor-General."

13. Application—The principal Act is hereby amended by inserting, after section 81x (as inserted by section 4 of the Government Superannuation Fund Amendment Act 1989), the following section:

"81xA. Nothing in this Part of this Act shall apply in respect of—

"(a) Any person who is first appointed as a Master after the 30th day of June 1992; or

"(b) Any period of service as a Master after the 30th day of June 1992 by any person who resumes service as a Master after that date (other than a person whose contributions in respect of his or her previous period of service as a Master remained, as a result of an election made by that person under Part VA of this Act (as applied by section 81Y (4) or section 81Z (3) of this Act), in the Judges Superannuation Account throughout the period between the person's two periods of service as a Master)."

14. Application—The principal Act is hereby amended by inserting, after section 82 (as substituted by section 2 of the Government Superannuation Fund Amendment Act 1987), the following section:

"82A. (1) Nothing in this Part of this Act shall apply in respect of any person who, not being a member on the 30th day of June 1992, is elected as a member after that date.

"(2) Where any person who is a member on the 30th day of June 1992—

"(a) Is not re-elected as a member at any general election that takes place after that date; or

"(b) Ceases to be a member after that date by reason of his or her seat having become vacant under section 32 of the Electoral Act 1956,—

nothing in this Part of this Act shall apply in respect of any subsequent period of service as a member."

15. Special right of person who has not attained 50 years to elect to surrender proportion of retiring allowance and receive cash payment—Section 84AA (3) (a) of the principal Act (as enacted by section 2 of the Government Superannuation Fund Amendment Act 1987) is hereby amended by omitting the expression "Section 84 (3)", and substituting the expression "subsections (3) and (4) of section 84".

16. Repeal of provisions relating to re-election—The principal Act is hereby amended by repealing sections 85B, 85C, and 85D (as enacted by section 2 of the Government Superannuation Fund Amendment Act 1987).

17. Re-election as member after retiring—The principal Act is hereby amended by repealing section 86 (as substituted by section 2 of the Government Superannuation Fund Amendment Act 1987), and substituting the following section:

"86. Where any person who is in receipt of, or who would otherwise become entitled to, an annual retiring allowance under this Part of this Act (including a person who has ceased to be a member before the 1st day of July 1992) again becomes a member, that annual retiring allowance shall not be payable while that person continues to be a member; and, upon subsequently ceasing to be a member, the annual retiring allowance shall be payable to that person at the rate at which it would have been payable in accordance with this Part of this Act if that person had not again become a member."

18. Application of Part VIA of principal Act after 30 June 1992—Section 88A of the principal Act (as inserted by section 2 of the Government Superannuation Fund Amendment Act (No. 2) 1985) is hereby amended by inserting, after subsection (1), the following subsections:

"(1A) Nothing in this Part of this Act shall apply in respect of—

"(a) Any person who first becomes a member of the Police after the 30th day of June 1992; or

"(b) Any period of service as a member of the Police after the 30th day of June 1992 by any person who rejoins the Police after that date (other than a person whose contributions in respect of his or her previous period of service as a member of the Police remained, as a result of an election made by that person under section 61s (1) (b) of this Act (as applied by section 88H (1) of this Act), in the Fund throughout the period between that person's two periods of service as a member of the Police).

"(1B) Nothing in subsection (1A) of this section prevents any person who returns to service as a member of the Police on or after the 1st day of July 1992 from again electing to become a contributor to the Fund under this Part of this Act if—

"(a) That person was, as at the close of the 30th day of June 1992, a contributor to the Fund under this Part of this Act who was on leave of absence, without salary, from the Police; and

"(b) That person has, throughout the period beginning with the date on which he or she began his or her period of leave of absence, without salary, from the Police and ending with the date on which he or she returned to service with the Police, either—

"(i) Continued to contribute to the Fund in accordance with section 32 of this Act (as applied by section 88M (2) of this Act); or

"(ii) As a result of an election made by that person under section 88J (1) of this Act allowed his or her contributions to remain in the Fund."

19. Application of Part VIB of principal Act after 30 June 1992—(1) Section 88N (1) of the principal Act (as inserted by section 23 of the Government Superannuation Fund Amendment Act 1986) is hereby amended by omitting the words "required to contribute", and substituting the words "and who contributes".

(2) Section 88N of the principal Act (as so inserted) is hereby further amended by inserting, after subsection (1), the following subsections:

"(1A) Nothing in this Part of this Act shall apply in respect of—

"(a) Any person who first becomes a member of the Prisons Service after the 30th day of June 1992; or

"(b) Any period of service as a member of the Prisons Service after the 30th day of June 1992 by any person who rejoins the Prisons Service after that date (other than a person whose contributions in respect of his or her previous period of service as a member of the Prisons Service remained, as a result of an election made by that person under section 61s (1) (b) of this Act (as applied by section 88u (1) of this Act), in the Fund throughout the period between that person's two periods of service as a member of the Prisons Service).

"(1B) Nothing in subsection (1A) of this section prevents any person who returns to service in the Prisons Service on or after the 1st day of July 1992 from again electing to become a contributor to the Fund under this Part of this Act if—

"(a) That person was, as at the close of the 30th day of June 1992, a contributor to the Fund under this Part of this Act who was on leave of absence, without salary, from the Prisons Service; and

"(b) That person has, throughout the period beginning with the date on which he or she began his or her period of leave of absence, without salary, from the Prisons Service and ending with the date on which he or she returned to service with the Prisons Service, either—

"(i) Continued to contribute to the Fund in accordance with section 32 of this Act (as applied by section 88z (2) of this Act); or

"(ii) As a result of an election made by that person under section 61R (1) (c) of this Act (as applied by section 88u (2) of this Act) allowed his or her contributions to remain in the Fund."

20. Members of Prisons Service who may contribute to Fund under Part VIB of principal Act—(1) The principal Act is hereby amended by repealing section 88o (as inserted by section 23 of the Government Superannuation Fund Amendment Act 1986), and substituting the following section:

"88o. (1) Every person who, on the commencement of the 1st day of July 1992, is a member of the Prisons Service and is contributing to the Fund in that capacity may continue to contribute to the Fund under this Part of this Act in respect of any period during which the person remains a member of the Prisons Service.

"(2) Every person who returns to service in the Prisons Service on or after the 1st day of July 1992 may again elect to contribute to the Fund under this Part of this Act if—

"(a) That person was, as at the close of the 30th day of June 1992, a contributor to the Fund under this Part of this Act who was on leave of absence, without salary, from the Prisons Service; and

"(b) That person has, throughout the period beginning with the date on which he or she began his or her period of leave of absence, without salary, from the Prisons Service and ending with the date on which he or she returned to service with the Prisons Service, either—

"(i) Continued to contribute to the Fund in accordance with section 32 of this Act (as applied by section 88z (2) of this Act); or

"(ii) As a result of an election made by that person under section 61R (1) (c) of this Act (as applied by section 88U (2) of this Act) allowed his or her contributions to remain in the Fund.

"(3) Every person who rejoins the Prisons Service on or after the 1st day of July 1992 may contribute to the Fund under this Part of this Act in respect of any period during which that person, after rejoining, remains a member of the Prisons Service only if that person's contributions under this Part of this Act in respect of his or her previous period of service as a member of the Prisons Service remained, as a result of an election made by that person under section 61s (1) (b) of this Act (as applied by section 88U (1) of this Act), in the Fund throughout the period between that person's two periods of service as a member of the Prisons Service.

"(4) Where, on or after the 1st day of July 1992, any person who is a contributor to the Fund under this Part of this Act—

"(a) Ceases to be a member of the Prisons Service; but

"(b) Becomes an employee of the Department of Justice with responsibilities relating to the administration of the criminal justice system; and

"(c) Obtains the approval of the Chief Executive of the Department of Justice to that person remaining a contributor under this Part of this Act,—

this Part of this Act shall apply to that person as if his or her service as an employee of the Department of Justice with responsibilities relating to the administration of the criminal justice system were service as a member of the Prisons Service."

(2) The repeal by subsection (1) of this section of section 88O of the principal Act (as inserted by section 23 of the Government Superannuation Fund Amendment Act 1986) shall not affect any election made, before the 1st day of July 1992, under subsection (3) of section 88O of the principal Act (as so inserted).

21. Right to cease to contribute under Part VIB of principal Act—The principal Act is hereby amended by inserting, after section 88P (as inserted by section 23 of the Government Superannuation Fund Amendment Act 1986), the following section:

"88PA. Section 61R of this Act shall apply to contributors under this Part of this Act as if the reference in subsection (5) of that section to Government Service were a reference to service in the Prisons Service."

22. Sections to apply to contributors and contributions under Part VIB of principal Act—Section 88Z (3) of this Act (as inserted by section 23 of the Government Superannuation Fund Amendment Act 1986) is hereby amended by inserting, after the expression "sections 88P,", the expression "88PA,".

23. Annual report and financial statements—The principal Act is hereby amended by repealing section 93, and substituting the following section:

"93. (1) The Board shall, as soon as practicable after the end of each financial year, furnish to the Minister of Finance a report on matters affecting the Fund during that year, which report shall include a statement of contributors and of retiring and other allowances at the end of that year.

"(2) The Board shall include in every annual report of the Board the financial statements prepared by the Board in accordance with Part V of the Public Finance Act 1989, in respect of the financial year to which the report relates, together with the audit report and management statement relating to those financial statements.

"(3) A copy of every annual report of the Board shall be tabled in the House of Representatives in accordance with section 44 of the Public Finance Act 1989."

24. Transitional provisions—(1) Notwithstanding the provisions of the principal Act or of this Act, every member of the Board in office immediately before the commencement of

this Act under section 3 (1) (h) of the principal Act (as repealed by section 3 of this Act) shall be deemed to have been appointed under section 3A (1) (g) of the principal Act (as substituted by section 3 of this Act).

(2) The term of office of every person deemed by subsection (1) of this section to have been appointed to the Board shall expire on the date on which, but for the passing of this Act, his or her term would have expired under the provisions of the principal Act.

This Act is administered in the Government Superannuation Fund Department.