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2000, No. 17

An Act to establish the National Superannuation Fund, to provide for contributions to and the payment of benefits from the Fund and for matters connected therewith and incidental thereto.

(24 November 2000)

PART I

PRELIMINARY

1. **Short Title and Commencement** - (1) This Act may be cited as the Cook Islands National Superannuation Act 2000.

(2) This Act shall come into force on a date to be appointed by the Queen's Representative by Order in Executive Council, and different commencement dates may be appointed for different provisions of this Act.

(3) This Act shall apply to those islands of the Cook Islands and to the class or classes of employees and employers on those islands as the Queen's Representative may by Order in Executive Council determine.

2. Interpretation - (1) In this Act, unless the context otherwise requires –

“actuary” means a person who is a Fellow of the Institute of Actuaries of London or a Fellow of the Faculty of Actuaries in Scotland or a Fellow of the New Zealand Society Actuaries or any similar professional body which registers or regulates actuaries;

“administration manager” means the person (if any) to whom the Trustee has contracted some or all of the administration of the Fund;

“Appeal Authority” means the Cook Islands Superannuation Appeal Authority established under Part V;

“auditor” means a person who is a member within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996 or who is a Chartered Accountant belonging to a body of similar standing;

“benefit” means in relation to a contributor, the benefits the contributor is entitled to under the Trust Deed;

“Board” means the National Superannuation Board constituted under section 4;

“Chief Executive Officer” means the Chief Executive Officer appointed from time to time by the Board under section 7;

“contribution” means in relation to an employee the employee's contributions and the employer's contribution made with respect to that employee under Part IV;

“contributor” means any person in respect of whom a credit is held in the Fund;

“earnings” has the meaning ascribed to it in section 40;

“employed” means to be engaged in manual labour, clerical or professional work or in any business, trade, occupation, vocation or calling in respect of which earnings as defined in section 40 are paid or derived and employment, employ and employs shall have the same meaning;

“employer” means a person who employs an employee and who pays or is liable to pay any earnings as defined in section 40, whether on that person’s own account, or as an agent, or as a trustee or as an assignee of the estate of a bankrupt, or as the liquidator or receiver of a company or as an administrator of a deceased person and includes a person who is a self employed person and a company of which a person is a shareholder employee;

“existing superannuation fund” means

- (a) the New Zealand Government Superannuation Fund established under Government Superannuation Fund Act 1956 of the General Assembly of New Zealand; and
- (b) any other superannuation fund or scheme approved by the Board.

“Financial Secretary” means the person appointed under section 4 of the Ministry of Finance and Economic Management Act 1995-96;

“Financial year” means the year ending 31 December 2001 and every anniversary thereafter;

“Fund” means the Cook Islands National Superannuation Fund established by the Trust Deed;

“member” means a member of the Board or the Appeal Authority as the case may be;

“Minister” means the Minister appointed to be responsible for this Act;

“resident” means a person who has a permanent place of abode in the Cook Islands whether or not that person also has a permanent place of abode outside the Cook Islands;

“self employed person” means a person who is resident in the Cook Islands and who carries on business on his or her own behalf whether alone or otherwise and whether in or beyond the Cook Islands and self employed shall have the same meaning;

“Trust Deed” means the Cook Islands National Superannuation Trust Deed prepared in accordance with section 11;

“Trustee” means a company under the Trustee Companies Act 1967 of New Zealand or the Public Trust Office Act 1957 of New Zealand or an independent professional corporate trustee of similar standing and

experience in the trusteeship of superannuation schemes or pension plans appointed by the Board in accordance with section 11(2)(b);

“shareholder employee” means a person who is an employee of a company in which that person is a shareholder.

(2) A reference to any Act shall include a reference to any amendment of and any enactment in substitution for that Act.

3. **Act to Bind the Crown** - This Act shall bind the Crown.

PART II

NATIONAL SUPERANNUATION BOARD

4. **National Superannuation Board** - (1) For the purposes of this Act there shall be a Board, to be called the National Superannuation Board.

(2) The members of the Board shall comprise -

- (a) the Financial Secretary for the time being who shall be a permanent member;
- (b) one member nominated by and to represent the Cook Islands Workers Association Inc.;
- (c) one member nominated by and to represent the Cook Islands Chamber of Commerce Inc.;
- (d) one member to represent private sector employers who are not members of the Cook Islands Chamber of Commerce Inc.;
- (e) one member nominated by and to represent contributors,

and the Minister shall advise the Queen's Representative to appoint the persons so nominated in accordance with paragraphs (b), (c), (d) and (e).

(3) Every member of the Board other than the Financial Secretary shall be appointed for a term of 3 years but may from time to time be reappointed.

(4) A member may at any time be removed from office by the Queen's Representative acting on the advice of the Minister for disability, insolvency, neglect of duty, or misconduct, or may at any time resign from office by written notice to the Minister.

(5) Where a member is removed from office under subsection (4), that fact and the reasons therefore shall be laid before Parliament within 14 sitting days of the date of the removal.

(6) Unless a member is removed or sooner vacates office as provided in subsection (4), every member of the Board shall continue in office until the member's successor comes into office, or the member is reappointed, notwithstanding that the term for which the member was appointed may have expired.

(7) Where a member's office (other than that of the Financial Secretary) becomes vacant, that vacancy shall be filled in the manner provided for in subsection (2).

(8) If the Financial Secretary resigns or is removed from office as a member or there is no person appointed as Financial Secretary for the time being, the

Minister may in those circumstances appoint a person to the Board to fill the vacancy until either –

- (a) the Financial Secretary resumes office; or
- (b) a person is appointed Financial Secretary.

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

(10) There may be paid, to each member of the Board out of the Fund such reasonable and fair remuneration and allowances as shall be fixed from time to time by the Queen's Representative by Order in Executive Council.

(11) The Queen's Representative may by Order in Executive Council make regulations for the appointment of a person to act as an alternate to and on behalf of a member and to exercise all of the functions, duties, powers and responsibilities of a member as may be prescribed in the event of –

- (a) a member's office being vacant and for the duration of the vacancy;
- (b) a member being unable to perform any of the member's functions, duties, powers and responsibilities;
- (c) a member being unable to attend at a Board meeting or excluded from a meeting or voting at a meeting under section 6(7).

5. **Incorporation of Board** - The Board shall be a body corporate with perpetual succession and a common seal and shall have and may exercise all the rights, powers and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

6. **Meetings and Procedure of Board** - (1) For two years after the commencement date of this Part, the Financial Secretary shall be chairman of the Board and thereafter and from time to time the members shall elect from amongst themselves a chairman of the Board for the remainder of the elected members' term.

(2) At any meeting of the Board the chairman shall preside and if the chairman is unable to be present then the chairman shall appoint a member to be chairman for the purposes of that meeting.

(3) At all meetings of the Board a majority of the members (excluding vacancies and members excluded under subsection (7)) but in any event not less than 3 members shall be a quorum. No business may be transacted at a meeting of the Board if a quorum is not present.

(4) Subject to the provisions of this Act and of any regulations prescribed for the purpose, the Board may meet as the chairman may direct or 2 members may require and the Board may regulate its procedure in such manner as it thinks fit.

(5) A meeting of the Board may be held either –

- (a) by a number of the members who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, or electronic communication by which all members participating and

constituting a quorum can simultaneously communicate with each other throughout the meeting.

(6) A member of the Board who has a direct or an indirect material or pecuniary interest in the performance by the Board of its functions or exercise of a power or in a matter being considered or about to be considered by the Board, (in this section called a transaction) shall as soon as possible after the relevant facts have come to the member's knowledge disclose the full nature of that interest to every other member. A direct or indirect material interest shall not include an interest as a contributor to the Fund.

(7) Those members who are not interested members shall resolve in relation to an interested member that the member –

- (a) be excluded from the meeting while the relevant matter is being considered; or
- (b) be permitted to take part in the deliberations of the Board with respect to the relevant matter but not to vote; or
- (c) be permitted to take part in the deliberations or decisions of the Board as if the member were not an interested member;

and shall record and give effect to the resolution accordingly.

(8) For the purposes of this section a member has an interest in a transaction if the member –

- (a) is a party to, or will or may derive a material financial benefit from, the transaction; or
- (b) has a material financial interest in another party to the transaction; or
- (c) is a director, officer, member, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction; or
- (d) is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction; or
- (e) is otherwise directly or indirectly materially interested in the transaction.

7. **Chief Executive Officer** - (1) There may from time to time be appointed by the Board a Chief Executive Officer on terms and conditions (whether as to salary, allowances, tenure or otherwise) as may be determined by the Board and may at anytime (subject to any contract of service) remove the Chief Executive Officer from office.

(2) If the office of Chief Executive Officer is vacant or if the Chief Executive Officer is unable to act whether for reasons of absence disability or otherwise, the Board may subject to conditions it may determine appoint a person to temporarily fill the vacancy or act during that absence and the person appointed shall for so long as the appointment continues be capable of exercising all of the powers of the Chief Executive Officer subject to any conditions imposed by the Board.

8. **Other Officers and Employees** - (1) There may from time to time be appointed by the Chief Executive Officer on such terms and conditions (whether as to salary, allowances, tenure or otherwise) as are approved by the Board other officers and

employees as may be required for the purposes of this Act and may at any time (subject to any contract of service) remove any officer or employee from office or his or her employment.

(2) The Board shall in respect of officers and employees, operate a personnel policy that complies with the principles of being a good employer. For the purposes of this subsection a good employer is one who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper 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
- (d) opportunities for the enhancement of the abilities of individual employees; and
- (e) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- (f) recognition of the employment requirements of women; and
- (g) recognition of the employment requirements of persons with disabilities.

9. **Board may delegate functions to Chief Executive Officer** - (1) Subject to subsection (6) the Board may from time to time, by resolution, delegate to the Chief Executive Officer or a person authorized to act on behalf of the Chief Executive Officer under section 7(2) any of its powers and functions as it thinks fit.

(2) Subject to any general or special directions given or conditions attached by the Board, the Chief Executive Officer, may exercise any powers delegated under this section in the same manner and with the same effect as if they had been conferred on the Chief Executive Officer directly by this section and not by delegation.

(3) The Chief Executive Officer purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Every delegation under this section shall be revocable at will by the Board, and no delegation shall prevent the exercise of any power by the Board.

(5) Every delegation under this section shall, until it is revoked, continue in force according to its tenor notwithstanding that the Chief Executive Officer to whom it was made may have ceased to hold office, and in any such case every delegation shall continue in force as if made to the person for the time being in office as Chief Executive Officer.

(6) The Board shall not delegate any of the following powers –

- (a) the power of delegation under this section;
- (b) the power to grant a power of attorney under section 13(1)(d).

10. **Chief Executive Officer may attend meetings of Board** - (1) Unless the Board otherwise directs, the Chief Executive Officer, or in his absence an officer appointed in that behalf by the Chief Executive Officer, may attend any meeting of the Board.

(2) Any person attending a meeting under the authority of this section may take part in the deliberations, but shall not vote at the meeting, and shall, if the Board so directs retire temporarily from the meeting.

11. **Functions of the Board** - (1) The functions of the Board are to –
- (a) prepare a trust deed to establish the Cook Islands National Superannuation Fund;
 - (b) appoint the Trustee as provided for in section 11(2)(b) and to remove any Trustee so appointed;
 - (c) administer this Act;
 - (d) enforce collection and payment of contributions to the Fund;
 - (e) monitor the performance of the Trustee under the Trust Deed and the Trustee's duties and responsibilities under the Trust Deed;
 - (f) advise the Trustee;
 - (g) report to and to advise the Minister, as the Minister requires.
- (2) As soon as is practicable after the commencement date of this Part, the Board shall –
- (a) cause to be prepared the Trust Deed, the provisions of which shall not be inconsistent with the provisions of this Act and pursuant to which there shall be established the Cook Islands National Superannuation Fund; and
 - (b) appoint a Trustee to act as Trustee under the Trust Deed following a transparent and contestable process.
- (3) Before the Board shall appoint the initial Trustee under the Trust Deed the Board shall –
- (a) submit the Trust Deed to the Minister;
 - (b) provide the Minister with a certificate from the chairman of the Board certifying that the Trust Deed is not inconsistent with this Act.

12. **Duties of Board Members** - A member, when exercising powers or performing duties as a member, must act –

- (a) in good faith; and
- (b) with reasonable care, diligence, and skill; and
- (c) with honesty and integrity.

13. **Powers of the Board** - (1) Without restricting the generality of section 5, the Board may from time to time for the purposes of enabling it to carry out its functions –

- (a) operate and maintain at any bank or banks or any branch or agencies of any bank an account or accounts and disbursement or subsidiary accounts as it thinks fit;
- (b) appoint and remove the Trustee of the Fund, in accordance with the terms of the Trust Deed;
- (c) advise the Trustee in the performance of its duties and responsibilities under the Trust Deed;

- (d) appoint attorneys either generally or in relation to a specific matter to do on its behalf all things in connection with or arising out of the exercise of its powers under this Act or the administration of this Act;
 - (e) receive payment from the Trustee out of the Fund all salaries and allowances of members, officers and employees of the Board and all other expenditure incurred in the administration of this Act and exercise of the Board's functions and powers;
 - (f) subject to a resolution of the Board, to enter into any contracts and execute all acts deeds matters and things necessary or incidental to the exercise of its functions duties and powers under this Act;
 - (g) appoint committees consisting of Board members or any other persons to assist the Board in the performance of its functions, duties and powers;
 - (h) establish a risk management policy in relation to its functions duties and powers with appropriate insurances in respect of those risks;
 - (i) determine whether any superannuation fund or superannuation scheme is an existing superannuation scheme for the purpose of this Act.
- (2) If any question arises under this Act as to –
- (a) whether any person is employed;
 - (b) whether any person is or is entitled to become a contributor to the Fund;
 - (c) the period for which contributions have been made to the Fund or the amount of those contributions;
 - (d) any other matter under Parts IV or V,

the question shall subject to section 55 be determined by the Board.

(3) The powers conferred by this section shall be exercised by the Board subject to regulations prescribed for the purpose.

14. Board to consult with Minister - (1) The Minister may with the concurrence of Cabinet make representations to the Board in respect of the general policy of the Government as that policy may affect the Fund and which is not inconsistent with this Act or the Trust Deed and the Board shall consult with the Minister and may, but shall not be obliged to, have regard to any such representation.

(2) Every representation made by the Minister under subsection (1) shall be conveyed to the Board and Trustee in writing by the Minister.

(3) Every representation by the Minister and the Board's response shall be tabled in Parliament within 14 sitting days of the representation being made and the response being provided to the Minister.

15. Liability of Board Members and others - (1) A member of the Board and a member of any committee of the Board and every officer and employee of the Board,

shall not be personally liable in an action taken against the member officer or employee for any liability in connection with the administration of this Act or any liability of the Fund or for any act done or omitted to be done by the Trustee, any investment or administration manager or custodian trustee or any person acting under a delegation of the Board's functions and powers, if the member officer or employee acted in good faith in pursuance or intended pursuance of the functions or powers of the Board.

(2) Every member, and every member of any committee officer and employee of the Board is indemnified –

- (a) for costs and damages for any civil liability arising from any action brought by a third party, if the member was acting in good faith in a pursuance or intended pursuance of the functions or powers of the Board; and
- (b) for costs arising from any successfully defended criminal action.

(3) The Fund shall meet any costs and damages arising from this indemnity.

16. **Provisions relating to the Trust Deed** - Subject to the provisions of this Act, the Trust Deed shall –

- (a) establish the Fund;
- (b) appoint the initial Trustee;
- (c) provide for the conditions of entry of members to the Fund;
- (d) provide for the conditions as to termination of membership of the Fund;
- (e) provide for the conditions under which benefits become payable and the way in which the benefits are to be determined;
- (f) provide for the circumstances in which the Fund may be wound up and the way in which the assets of the Fund are to be distributed in an event of a winding up;
- (g) give the Trustee the full capacity and full rights, powers and privileges necessary to act as a prudent and responsible Trustee for the Fund including, subject to consultation with the Board, the power to appoint one or more custodian Trustees and a person or persons as administration managers or investment managers of all or part of the Fund;
- (h) contain no restrictions on the Trustee's investment powers other than what is provided in section 19;
- (i) subject the Trustee to all equitable duties and responsibilities that a Trustee has at law;
- (j) provide for the remuneration and reimbursement of expenses for any Trustee, custodian trustee, investment or administration manager or other agent of the Trustee;
- (k) provide for separate accounts for each contributor;
- (l) provide that the Trustee and its directors shall be indemnified on usual terms and conditions appropriate to superannuation

schemes, against all liabilities and expenses incurred by them in the execution of their duties under the Trust Deed, and they shall have a lien on the Fund for that indemnity;

- (m) provide that the Trustee is entitled to rely on a certificate by the chairman of the Board as to any payments requested by the Board to meet the costs or expenses of the Board as permitted under this Act;
- (n) give the Trustee power to incur all such obligations relating to the Fund as the Trustee in its discretion thinks fit;
- (o) give the Trustee power to borrow money for the purposes of making any investment or paying any benefit or meeting any liability or for the purpose of management of the Fund; and
- (p) give the Trustee power to enter into any insurance or reinsurance contract relating to the payment pursuant to the Fund of any pensions or other benefits contingent on the death or survival of human life.

17. **Provisions relating to the Fund** - All contributions paid pursuant to this Act shall be paid to the Fund; and

- (a) credited to the account of the contributor on whose behalf the contribution was made; and
- (b) held and applied to provide those benefits set out in section 18 to which contributors may be entitled.

18. **Benefits** - The benefits that may be provided to contributors of the Fund from the Fund are principally –

- (a) death benefits;
- (b) pensions on retirement;
- (c) pensions on early retirement;
- (d) other benefits as determined by the Board,

and as are more particularly provided for in the Trust Deed.

19. **Investment of Fund** - (1) The Trustee shall be responsible for investing the Fund and shall invest the Fund on a prudent commercial basis, consistent with best – practice portfolio management.

(2) The Trustee shall for each year provide to the Board the Trustee's investment strategy for that year which shall include –

- (a) the Trustee's expectations as to risk and return; and
- (b) anticipated specific investments and class of investments.

(3) The Board may, after consultation with the Minister, direct the Trustee in investing the Fund –

- (a) to meet the Government's expectations as to the Fund's performance, including the Government's expectations as to risk and return; and
- (b) not to invest in a specified investment or class of investments to which the Crown already has a direct or indirect exposure, for the purpose of limiting that exposure; and

- (c) to invest a proportion of the Fund not exceeding 20 percent within the Cook Islands.
- (4) The Board shall not give a direction that is inconsistent with the Trustee's duty under subsection (1).
- (5) The Trustee shall have no liability for any action taken or omitted to be taken in accordance with any direction given by the Board under subsection (3).
- (6) The Trustee shall notify the Board how the Trustee proposes to give effect to any direction and all such directions to and notice by the Trustee shall be tabled by the Minister in Parliament within 14 sitting days of the notice being received by the Board from the Trustee.

20. **Implied provisions in Trust Deed** - (1) The following provisions shall be implied in the Trust Deed -

- (a) that the Trustee and any investment or administration manager or custodian trustee shall in exercising any power or authority in the administration, management or investment of the Fund shall exercise the care, diligence and skill required of a prudent and professional provider of those services;
 - (b) that no part of the Fund shall revert to any employer;
 - (c) provisions as may be prescribed by regulation.
- (2) The provisions implied by subsection (1) shall apply notwithstanding anything to the contrary in the Trust Deed.
- (3) Every provision implied in the Trust Deed in accordance with subsection (1) shall be enforceable by the Board or any member of the Board or any contributor to the Fund.

21. **Amendment of Trust Deed** - (1) The Board may subject to this Act and after consultation with the Trustee rescind, alter or add to any of the provisions of the Trust Deed for the time being.

(2) An amendment to the Trust Deed shall not adversely affect a contributor's right or claim to benefits or the amount of those benefits that have accrued up until the date of the amendment unless -

- (a) the consent of the contributor is obtained; or
- (b) the amendment is necessary to comply with this Act; or
- (c) the amendment is solely to correct a mistake which has advantageously altered a contributor's right or claim to accrued benefits or the amount of those accrued benefits.

22. **Rights to Information before becoming a contributor** - Each person, before becoming a contributor to the Fund, shall -

- (a) be advised in writing of -
 - (i) the contributions payable;
 - (ii) the charges of fees (if any) that contributors and employers may have to pay in addition to contributions;
 - (iii) the contributor's principal rights and benefits including rights and benefits upon the Fund being wound up;

- (iv) any circumstances which it would be reasonable to expect the Trustee to foresee in which, given the nature of the Fund, any benefit would be expected to reduce over time;
 - (v) any circumstances which it would be reasonable to expect the Trustee to foresee in which, given the nature of the Fund, any contributor would be expected to receive less from the Fund and the contributions made for and on behalf of the contributor;
 - (vi) the contributor's right to request the information required to be supplied under section 23.
- (b) be given a copy of the most recent annual report of the Fund, or, if there is no such report, be advised in writing of –
- (i) the names of the Board members, Trustee and any administration manager and every investment manager and custodian trustee of the Fund (if any); and
 - (ii) the name and address of persons to whom all correspondence from the contributor to the Board and the Trustee should be sent.

23. **Contributors' Rights to Information** - Each contributor shall –

- (a) be given within 6 months of the close of each financial year of the Fund, a copy of the annual report of the Fund in respect of that year; and
- (b) have the right, upon request, -
 - (i) to receive an estimate of the contributor's benefits;
 - (ii) to look at, at any reasonable time, a copy of the Trust Deed, or a copy of any report of an actuarial examination required under section 26;
 - (iii) to receive upon payment of a reasonable fee, a copy of the Trust Deed or a copy of any such report.

24. **Accounts** - (1) The Trustee shall ensure that –

- (a) proper books of accounts are kept in respect of the Fund; and
 - (b) accounts for each financial year are prepared in respect of the Fund; and
 - (c) the accounts for each financial year of the Fund are audited.
- (2) The Board shall ensure that -
- (a) accounts for each financial year are prepared in respect of the Board; and
 - (b) the accounts for each financial year in respect of the Board are audited; and
 - (c) a financial forecast is prepared for each forthcoming financial year.

25. **Annual Reports** - (1) The Trustee shall within 6 months after the end of each financial year, cause to be prepared a report on the Fund for that year.

(2) The annual report shall include the matters specified in the First Schedule.

(3) Every annual report shall be submitted to the Board and the Minister as soon as is practicable thereafter who shall cause a copy to be laid before Parliament within 14 sitting days of its receipt by the Minister.

26. **Actuarial examination** - (1) The Trustee shall ensure that an actuary examines the position of the Fund -

(a) for the first 6 years after the commencement date of Part IV on dates that are no more than 2 years apart; and

(b) thereafter on dates that are no more than 3 years apart.

(2) The Trustee shall ensure that the report of the actuary in respect of each examination is received no later than 3 months after the date on which the financial position of the Fund was examined.

(3) The Trustee shall provide a copy of each report to the Minister who shall cause it to be laid before Parliament within 14 sitting days of its receipt by the Minister.

27. **Taxation** - The Trustee on behalf of the Fund and the Fund shall be exempt from income tax under the Income Tax Act 1997.

PART III

REGISTRATION OF EMPLOYERS AND EMPLOYEES

28. **Registration of Employers** - (1) Every employer who has in their employment at the commencement date of this Part any person for whom there is liability to pay contributions under this Act or for whom such liability would arise if the employee were not exempted under the provisions of section 37 shall, not less than 4 weeks after that date, apply to the Board for registration in the manner prescribed by the Board.

(2) Every person who becomes an employer after the commencement date of this Part shall within 14 days of becoming an employer, apply to the Board for registration in the manner prescribed by the Board.

(3) The Board shall allot a registration number and issue a certificate of registration to each registered employer.

29. **Change of Name or Address of Employer** - A registered employer shall immediately advise the Board of any change in the name or address of the business conducted.

30. **Cessation of Liability** - A registered employer who ceases to be liable for contributions under this Act shall in the manner prescribed by the Board inform the Board and shall certify all liabilities under this Act have been discharged unless the cessation of liability is temporary due to "seasonal" or other variations in the employer's business.

31. **Registration of Employees** - (1) Every employee who is employed by an employer registered in accordance with this Act shall apply to the Board not less than 4 weeks after the commencement date of this Part for registration as a contributor to the Fund in the form prescribed by the Board.

(2) Every person who becomes an employee after the commencement date of this Part shall apply to the Board within 14 days of becoming such an employee for registration as a contributor in the form prescribed by the Board.

32. **Duty of Employer to ensure compliance** - Every employer shall ensure that every employee in their employment who is required to register under this Part is duly registered and shall give every assistance to such employee in making application for registration.

33. **Membership Number and Certificate of Membership** - (1) The Board shall allot to every employee who is registered as a contributor a membership number which shall identify him in all his dealings with the Board and the Trustee and shall supply to each such contributor a certificate of membership on which his membership number shall be recorded.

(2) An employee who takes up employment with another employer shall present his certificate of membership to his new employer and that employer shall quote the number shown on the certificate in all his dealings with the Board and the Trustee in respect of that employee.

(3) Where an employee does not produce a certificate of registration the employer shall require him to complete an application for membership and shall send it to the Board with such information as to the employee's previous employment as may be required by the Board.

34. **Loss of Certificate** - Where a contributor reports to the Board that the contributor's certificate of membership has been lost the Board shall issue a replacement certificate free of charge.

35. **Change of Name** - A contributor whose name changes shall inform the Board immediately either through the contributors' employer or directly and the contributors' certificate of membership shall be surrendered to the Board for amendment or replacement.

PART IV **CONTRIBUTORS AND CONTRIBUTIONS**

36. **Liability and rights to contribute to the Fund** - (1) Every person who is in employment in the Cook Islands or whose employment is outside the Cook Islands while the employer is resident in the Cook Islands and every employer in respect of an employee who is in employment in the Cook Islands or who is employed outside the Cook Islands while resident in the Cook Islands shall make contributions to the Fund in accordance with this Act from the time this Act applies to that person or to that employer or employee as the case may be, as determined by the Queen's Representative by Order in Executive Council in accordance with section 1(3). The contributions shall be calculated as a percentage of an employees earnings on or after the date that this Part or this Act shall commence to apply to that employee's class of employment.

(2) Any contributor or other person may, with the consent of the Board and not otherwise, pay a voluntary contribution of an amount not less than the amount specified in the Trust Deed.

37. **Exclusions from liability to contribute to the Fund** - (1) Subject to the provisions of this Act, an employee or an employer shall not be obliged to contribute to the Fund in respect of the employee's earnings if –

- (a) the employee is 60 years of age or more;
- (b) the employee is less than 18 years of age;
- (c) the employee has attained the age of 55 years by the date that this Part or this Act shall commence to apply to that employee's class of employment and notifies the Board and his employer in writing that he elects not to be a contributor to the Fund;
- (d) in the case of an existing superannuation fund where the cessation of contributions under section 38(1) is not permitted, as determined by the Board.

(2) Where an employee to whom subsection (1) applies, elects to contribute to the Fund then the employer of any such employee shall be liable to pay the employer's contribution on the employee's earnings if the employee's contribution is paid thereon.

(3) An employer who –

- (a) is not resident in the Cook Islands; and
- (b) does not carry on business in the Cook Islands; and
- (c) employs a person who is resident in the Cook Islands while that person is outside the Cook Islands,

shall be under no liability to pay the employers contribution on the earnings paid by that employer to that person.

(4) An employee to whom subsection (1)(c) applies shall remain liable to contribute to the Fund in accordance with this Part until such time that the Board is notified in accordance with that paragraph.

38. **Transfer of members between existing superannuation fund and the Fund** - (1) If permitted by the terms of the instrument or conditions governing any existing superannuation fund and the terms of employment, a person who is a member of an existing superannuation fund may cease contributions to that existing superannuation fund upon or after the commencement date of this Part in which event, that person and the employer of that person shall (unless otherwise exempted under this Act) become contributors to the Fund in accordance with this Act.

(2) Where a person discontinues contributions to an existing superannuation fund in terms of this section, the transfer value of the person's credit, (if any), in the existing superannuation fund shall be dealt with in the manner provided by the Trust Deed.

39. **Contributions** - (1) Subject to the provisions of this Act, the contributions which are required to be made to the Fund by an employee on that employee's earnings

and by the employee's employer in respect of that employee shall be at the following rates

- (a) for the employees contribution, the rates are prescribed in subsection (2) on those earnings; and
 - (b) for the employers contribution on those earnings, the same rate.
- (2) For the purposes of this section the rate of an employee's contribution and an employer's contribution shall be –
- (a) for the period of one year following the commencement date of this Part, 3 percent; and
 - (b) for the period of one year following the first year after the commencement date of this Part, 4 percent; and
 - (c) thereafter, 5 percent.
- (3) The Queen's Representative may by Order in Executive Council and in accordance with a recommendation of the Board and the Trustee, amend the rates set out in subsection (2) whether for classes of employees or employers, or generally.

40. **Calculation of earnings** – (1) For the purposes of this Act, unless the context otherwise requires, the term "earnings", in relation to any person, means all earnings as an employee as determined in accordance with this section and that person's earnings as a self-employed person and shareholder employee as so determined.

(2) For the purposes of this Act, the expression "earnings as an employee" and "earnings" includes any wages, salary, allowances, holiday pay, overtime pay, long-service leave pay, bonuses, gratuities, extra salary, commissions, directors' fees, honoraria, emoluments, or remuneration of any kind paid or payable (whether at piece rates or otherwise and whether in cash or otherwise) to any person in respect of or in relation to the employment of that person as an employee before the imposition of any liability thereon under the Income Tax Act 1997 but does not include –

- (a) a lump sum payment (other than accrued holiday pay or accrued long-service leave pay) made to any person by way of bonus, gratuity, or retiring allowance on the occasion of any termination of employment of that person as an employee, whether such termination is by reason of retirement from employment as an employee, or of redundancy, or any other circumstances whatever; or
- (b) any payment made to any person by way of superannuation, pension, or annuity in respect of past employment of that person, or of any other person of whom that first-mentioned person is or has been the spouse or a child or dependant; or
- (c) any amount which under the Income Tax Act 1997 is deemed to be a dividend paid by a company to any person and received by that person as a shareholder of the company otherwise than in the capacity of a shareholder employee pursuant to subsection (4); or
- (d) any amount derived by any person as an employee which would otherwise be taken into account in calculating earnings as an employee under this subsection but which is

derived from employment outside the Cook Islands from an employer who is neither resident in or carries on business in the Cook Islands.

(3) For the purposes of this Act, the expression "earnings as a self-employed person", means so much of the earnings of that person that is assessable income (as determined under and for the purposes of the Income Tax Act 1997) and beneficially derived from being self-employed.

(4) For the purposes of this Act, the expression "earnings as a shareholder employee", means so much of the earnings of that person (including dividends) that is assessable income (as determined under and for the purposes of the Income Tax Act 1997) that is beneficially derived from –

- (a) a company of which the person is a shareholder employee; and
- (b) any fees, honoraria, allowances or other remuneration as a director of that company.

41. **Deductions of contributions** – (1) For the purpose of enabling the collection of contributions from employees, where an employer or any person on the employer's behalf makes a payment of earnings to or on behalf of an employee, the employer or person by whom the payment is made shall, at the time of making the payment, deduct a sum equal to the amount of the employee's contribution required under section 39(1)(a) from the amount of the employee's earnings.

(2) If an amount equal to the amount of the employee's contribution is not so deducted by the employer in any case, section 43 shall apply to the employee, and section 52 shall apply to the employer.

42. **Keeping of records** – (1) Subject to subsection (2), an employer shall, for the purposes of this Act, keep sufficient records to enable the earnings of employees and the liability for contributions to be readily ascertained by the Board and shall retain all such records for a period of at least 7 years after the completion of the transactions to which they relate.

(2) This section shall not require the retention of any records in respect of which the Board has notified the employer that retention is not required.

43. **Employee's duty where deductions not made** – (1) Where for any reason a deduction by the employer is not made or is not made in full at the time of the making of any payment of earnings, the employee shall, not later than the 20th day of the month next following the month in which the earnings was made, –

- (a) furnish to the Board a return in respect of the payment in the form prescribed by the Board; and
- (b) pay to the Board on behalf of the Fund an amount equal to the employees contribution that should have been made but was not made.

(2) The amount so payable shall constitute a debt payable to the Fund and shall be recoverable in the name of the Fund by the Board accordingly.

(3) Notwithstanding subsections (1) and (2), the Board may in its discretion waive the employee's obligations under this section.

44. **Liability of employers, self-employed persons, and shareholder employees for payment of contributions and tax deductions** – (1) An employer (other than a self-employed person in respect of his or her earnings) who pays earnings to an employee shall make a payment in accordance with this Act of the employer's contribution on the amount of those earnings, which payment shall be the amount of the employer's contribution to be made under section 39(1)(b).

(2) Every self-employed person and shareholder employee shall pay contributions on the amount of their earnings in accordance with section 39(1)(a).

(3) A self employed person shall in addition to the contribution required to be paid under subsection (2) pay a contribution on the amount of those earnings in accordance with section 39(1)(b).

(4) The amount of payment so required to be made shall constitute a debt payable to the Fund by the employer, self-employed person, or shareholder employee, as the case may be, and shall be recoverable in the name of the Fund by the Board accordingly.

(5) An employer's contributions paid in accordance with subsections (1) and (3) shall be an allowable deduction for the purposes of section 68 of the Income Tax Act 1997.

45. **Amount of deductions deemed to be received by employee** – Where any amount of an employee's contribution has been deducted from the earnings of employee the amount so deducted shall,-

- (a) as between the employer and the employee, be deemed to have been received by the employee; and
- (b) for all purposes be deemed to have been derived by the employee at the same time and in the same way as the residue of the earnings to which the deduction relates.

46. **Agreements not to make deductions to be void** – Where a deduction is required to be made under the provisions of this Part, any agreement not to make the deduction in accordance with those provisions shall be void.

47. **Payment of contributions to the Fund** – (1) Where any contribution or contribution deduction or penalty is payable to the Fund by any person under this Act, it shall be paid to the Trustee or any administration manager or agent of the Trustee or any administration manager or any agent of the Board on behalf of the Fund and any money paid to an agent shall be deemed for the purposes of this Act to be paid to the Fund.

(2) All contributions, when received, shall immediately be paid into the Fund.

Statements of Contributions

48. **Payment of contributions and contribution deductions** – (1) Every person who is an employer on or after the commencement date of this Part shall, not later than the 20th day of the month next after the month in which any earnings became payable by the employer, pay into the Fund the amount of the employer's contribution thereon, and

the amount of the employee's contribution deducted therefrom, and deliver to the Board a monthly statement of employer contributions and employee contributions in the form prescribed by the Board.

(2) Every such employer shall give to each employee at the time specified in the Income Tax Act 1997 for the delivery of a tax deduction certificate under and for the purposes of that Act after the end of each year, or upon the sooner termination of the employment of the employee, a contribution deduction certificate signed by the employer showing the total amount of all earnings as an employee paid or payable by the employer to the employee in the preceding year or period of employment to which the certificate relates (not including payments included in a contribution deduction certificate previously delivered to the employee) and the total amount of the employee's contribution made therefrom.

(3) Every person who is a self-employed person or shareholder employee on or after the commencement date of this Act shall, not later than the times specified in the Income Tax Act 1997 for the payment of provisional tax, pay provisional contributions (in the same proportions of the total expected to be due as is applicable to provisional tax) in respect of his earnings in respect of which provisional tax is due, and shall deliver a statement in the form prescribed by the Board showing the contributions being made on the earnings on which they are calculated.

(4) Every self-employed person or shareholder employee shall, not later than the date specified in the Income Tax Act 1997 for the supply of his return of income pay any balance of contributions due in respect of their earnings in respect of which a return of income is due, and shall supply a signed statement in the form prescribed by the Board showing their earnings for that period and a reconciliation of the contributions due and paid thereon.

(5) Every certificate or statement shall contain such information identifying the employee, employer, self-employed person, or shareholder employee as the Board shall from time to time require.

49. **Power of the Board to grant dispensations and exemptions** - Notwithstanding anything in this Act, the Board may, in its discretion and on such terms and conditions as it thinks fit,-

- (a) agree with any person to accept from that person statements or certificates for periods other than those required by the provisions of this Part;
- (b) in any case or class of cases where, in the opinion of the Board, it is expedient to do so, modify or relax the requirements of this Part concerning the delivery or giving of statements or certificates or the furnishing of returns.

50. **Powers to determine nature of earnings and to assess contributions** - (1) The Board may determine -

- (a) whether any income derived by any person constitutes earnings pursuant to this Act; and
- (b) such other matters as it considers relevant for the purpose of assessing any amount to be paid pursuant to this Act.

(2) Subject to section 55, a notice in writing of any such determination given to the person concerned, shall be binding on that person.

(3) Where –

- (a) any person makes default in delivering or furnishing any statement or return required to be delivered or furnished by that person pursuant to this Part; or
- (b) the Board is not satisfied with any such statement or certificate or return delivered or furnished; or
- (c) the Board is not satisfied that the amount of any contributions or contribution deductions paid by any employer pursuant to the provisions of this Part or the amount paid pursuant to this Act is the correct amount; or
- (d) the Board has reason to suppose that any person, although that person has not delivered or furnished a statement or certificate or return required to be delivered or furnished is liable to pay any amount pursuant to this Act, -

the Board may make an assessment of the earnings on which, in its opinion, that amount should be paid and of the amount which should be paid by that person pursuant to this Act, and may from time to time and at any time or times make all such alterations in or additions to that assessment as appear to the Board to be necessary to ensure the correctness thereof, notwithstanding that payments in whole or in part in respect of such amount, may have been paid.

(4) Where any person has delivered or furnished a statement or a certificate or a return in respect of any period and has paid or been assessed for employer's contributions or employee's contributions, or for further employer's contributions or further employer's contributions in respect of that period, it shall not be lawful for the Board where an assessment has not been made, to make an assessment, or where an assessment has been made, to alter the assessment so as to increase the amount thereof, after the expiration of 7 years from the end of the calendar year in which the statement or certificate or return was delivered or furnished, unless in the opinion of the Board the statement or certificate or return so delivered or furnished was fraudulent or willfully misleading.

(5) As soon as convenient after an assessment or amended assessment is made under subsection (3), the Board shall cause notice to be given to the affected person of the assessment or amended assessment and of the date or respective dates on or before which payment of the assessed amount or so much thereof as has not already been paid became or becomes due, and of the amount of any penalty or penalties which are or may become payable pursuant to section 67 in respect thereof, and any such person shall, upon such notice being given in accordance with section 68, be liable to pay or be deemed to have been liable to pay, in accordance with the notice, the assessed amount and the penalty or penalties specified in the notice, subject to the provisions of section 55.

- (6) The validity of an assessment or amended assessment made pursuant to subsection (3) –
- (a) shall not be affected by reason that any of the provisions of this Act have not been complied with; and
 - (b) subject to section 55, shall not be disputed in the High Court or in any proceedings; and
 - (c) subject to section 55 shall be conclusively deemed and taken to be correct and the liability of the person assessed shall be determined accordingly.
- (7) The production of any document under the hand of any authorised officer of the Board purporting to be a copy of or extract from any statement, certificate, return, assessment or amended assessment made under this Act, shall in the High Court and all proceedings be sufficient evidence of the original of the statement, certificate, return, assessment, or amended assessment, and the High Court shall in all proceedings take judicial notice of the signature of any authorised officer of the Board.
- (8) Notwithstanding anything to the contrary in this Act, the Board, may, in its discretion, refrain from making any assessment or amended assessment pursuant to this section if the amount involved does not exceed \$100.

Recovery of Contribution Deductions

51. **Recovery of employer and employee contributions from employers** – (1) The amount of every contribution required to be made under this Part shall from the time that the payment of the relevant earnings was made or should have been made and for as long as the amount remains unpaid to the Board on behalf of the Fund be deemed to be held in trust by the employer for the Board on behalf of the Fund. Any amount so held in trust by the employer shall not be the property of the employer liable to execution, and, in the event of the insolvency, bankruptcy or liquidation of the employer or of an assignment for the benefit of the employer's creditors, shall remain apart, and form no part of the estate of the insolvent employer or the estate in bankruptcy, liquidation, or assignment.
- (2) Where the employer has failed to deal with the amount of the contribution or any part thereof in the manner required by subsection (1) or the other provisions of this Part the amount of the contribution for the time being unpaid to the Board shall, in the application of the assets of the employer, rank as follows –
- (a) where the employer is an individual, upon his insolvency or bankruptcy or upon his making an assignment for the benefit of his creditors, the amount of the employee's contribution and of the employer's contribution shall rank without limitation in amount, and notwithstanding anything in any other Act, in order of priority immediately after preferential claims for wages or other sums payable to or on account of any servant or worker or apprentice, and in priority to all other claims, including claims under the Value Added Tax Act 1997 and Income Tax Act 1997;

- (b) where the employer is a company, upon the liquidation of the company or upon the appointment of a receiver the amount of the employee's contribution together with the amount of the employer's contribution shall rank immediately after the debts referred to in subsection (1) of section 308 of the Companies Act 1955 of the New Zealand Parliament, as applied to the Cook Islands by the Companies Act 1970-71, such debts being limited as provided in subsection (2) of section 308, and so far as the assets of the company available for payment of general creditors are insufficient to meet the amount of the employee's contribution and of the employer's contribution, it shall have priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge, and in priority to tax deductions from employees made or required to be made pursuant to the Income Tax Act 1997 and any value added tax liability under the Value Added Tax Act 1997.

52. **Employer failing to make contribution deductions** – (1) Where an employer fails to make any employee contribution the amount in respect of which default has been made shall constitute a debt payable by the employer to the Board on behalf of the Fund, and shall be deemed to have become due and payable by the employer to the Fund, on the date on which payment of the earnings was made or should have been made, and shall be recoverable accordingly.

(2) The right of the Board to recover from the employer the amount in respect of which default has been made shall be in addition to any right of the Board to recover that amount from the employee under this Part; and nothing in this Part shall be construed as preventing the Board from taking such steps as the Board thinks fit to recover that amount from the employer and from the employee concurrently, or from recovering that amount wholly or partly from each but the Board shall not be entitled to recover the same amount from both the employer and employee.

(3) Where any amount payable in accordance with this Part by the employee is in fact paid by the employer on behalf of the employee, the amount so paid may be recovered by the employer from the employee.

(4) Where a penalty under section 67 is imposed on an amount in respect of which default has been made, that penalty shall upon recovery be applied for the benefit of the contributor on whose behalf the employee contribution should have been made to the extent and as if the employee contribution were made and interest accrued thereon, and any balance thereafter shall be paid to the reserve account of the Fund.

Preservations of rights

53. **Withdrawal** – (1) Subject to the provisions of this Act and the provisions of the Trust Deed not inconsistent with this Act, a contributor shall not be entitled to withdraw any amount to that persons credit in the Fund.

(2) Where a person is resident in the Cook Islands for the sole purpose of being employed under a contract of service of not more than 3 years and all of that persons employee contributions for the time being to the credit of that person were made in respect of earnings paid under that contract of service then that person shall be entitled to receive a refund equal to the aggregate of those employee contributions on the persons permanent departure from the Cook Islands, subject to the provision of such evidence as the Board may require that the persons departure will be permanent.

(3) Where a person is paid his or her employees contributions under subsection (2) then, the employers contributions shall be transferred to the reserve account within the Fund.

54. **Preservation of rights** – Except as otherwise provided, where at any time a person ceases contributing to the Fund, the amount to the credit of that person shall continue to attract interest until it is applied to provide a benefit from the Fund.

PART V
APPEALS AND GENERAL PROVISIONS

55. **Appeals against decisions** – (1) Any person who is dissatisfied with a decision made by the Board in the exercise of its powers, functions, and discretions under this Act may appeal to the Appeal Authority established under section 56.

(2) The obligation to pay and the right to receive and recover any contributions or contribution deductions, including penalties and amounts payable under this Act shall not be suspended by any appeal.

56. **Appeal Authority** – (1) There is hereby established an appeal Authority to be called the Cook Islands Superannuation Appeal Authority.

(2) The Appeal Authority shall consist of a chairman and two other members. The two other members shall have such professional qualifications or appropriate experience relevant to the functions of the Appeal Authority.

(3) The members of the Appeal Authority shall be appointed by the Queen's Representative on the recommendation of the Minister.

(4) The chairman of the Appeal Authority shall be a Judge of the High Court of the Cook Islands. The office of chairman of the Appeal Authority may be held concurrently with any other office.

(5) Every member of the Appeal Authority shall hold office for a term of 3 years, but shall be eligible for reappointment from time to time.

(6) Any member of the Appeal Authority may at any time be removed from office by the Queen's Representative for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Queen's Representative, or may at any time resign his office by writing addressed to the Minister.

(7) If any member of the Appeal Authority dies, or resigns, or is removed from office, the vacancy then created shall be filled by the appointment in the manner prescribed by subsection (3) of a person qualified for appointment to the office. If the term of the vacating member has not expired at the time of the appointment, the person so appointed shall be appointed for the residue of the term for which the vacating member was appointed.

(8) The powers of the Appeal Authority shall not be affected by a vacancy in its membership.

(9) The decision of any two members of the Appeal authority shall constitute a decision of the Appeal Authority.

(10) The Appeal Authority shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1966 and subject to this Act all the provisions of that Act, except sections 2, 10, 11, and 12 shall apply accordingly.

(11) There shall be paid to the chairman and other members of the Appeal Authority, out of the money appropriated by Parliament for the purposes such remuneration by way of fees or allowances and travelling allowances and expenses as shall be determined by the Queen's Representative by Order in Executive Council.

(12) The Secretary of Justice shall appoint an officer of the Department of Justice to be Registrar of the Appeal Authority, who shall provide such secretarial, recording, and clerical services as may be necessary to enable the Appeal Authority to discharge its functions.

(13) The Appeal Authority shall have a seal, which shall be judicially noticed by all Courts for all purposes.

57. **Procedure for Appeal** – (1) Every appeal shall be by notice of appeal in writing, and shall be lodged with the Registrar of the Appeal Authority, together with a duplicate of that notice, within the period of 28 days commencing on the date on which the notice is given to the appellant of the decision of the Board, or within such further period as the Appeal Authority may allow on application made either before or after the expiration of the period of 28 days.

(2) The notice of appeal shall state with particularity the ground of appeal and the relief sought.

(3) Either before or immediately after the lodging of the notice of appeal, the appellant shall leave with or send to the Board a copy of that notice.

(4) As soon as possible after the receipt of the copy of the notice of appeal by the Board it shall send to the Registrar of the Appeal Authority such papers and documents in its possession as relate directly to the decision appealed against.

(5) The Board may also, if it thinks fit, and shall if the Appeal Authority so directs, lodge with the Registrar a report setting out the considerations taken into account in making the decision appealed against, including any material indicating the effect that the decision might have on the objects or general administration of the Act, and any other matters relevant to the decision or the objects or general administration of the Act to which the Board wishes to draw the attention of the Appeal Authority.

(6) Where any such report is so lodged, the Appeal Authority may direct that a further report be lodged.

(7) A copy of any report lodged pursuant to subsections (5) and (6) shall be given or sent by the Registrar to any party to the appeal, and thereafter that party may be heard and tender evidence on any matter referred to in the report.

(8) As soon as conveniently may be after the receipt of any appeal, the Appeal Authority shall fix a time and place for the hearing of the appeal, and shall give not less than 10 clear days' notice thereof to the parties.

(9) At the hearing of any appeal any party may be represented personally or by counsel or any duly authorised representative.

(10) Proceedings before the Appeal Authority shall not be held bad for want of form.

(11) Except as provided by this Act and regulations prescribed for the purpose, the procedure of the Appeal Authority shall be such as the Appeal Authority may determine.

58. **Hearing and determination of appeal** – (1) The Appeal Authority shall have full discretionary power to hear and receive evidence or further evidence on questions of fact, either by oral evidence or by affidavit.

(2) The Appeal Authority shall also have regard to any report lodged under subsection (5) or subsection (6) of section 57 and to any matters referred to therein and for any evidence tendered thereon, whether or not those matters would be otherwise admissible in evidence.

(3) In the determination of any appeal, the Appeal Authority may confirm, modify, or reverse the decision appealed against.

(4) Notwithstanding the provisions of subsection (3), the Appeal Authority may refer to the Board for further consideration, the whole or any part of the objection to which the appeal relates, and, where any such reference is so made, the Appeal authority shall advise the reasons for so referring, and shall give such direction as it thinks just as to the reconsideration or otherwise of the whole or part of the objection that is so referred.

(5) The hearing of an appeal before the Appeal Authority shall be open to the public.

(6) The Appeal Authority may, in any case if it considers it in the interest of the parties to the appeal and of all other persons concerned, order that the sitting or any part thereof shall be held in private.

(7) If there is no appearance of the appellant or his counsel or representative at the time appointed for hearing the appeal, the appeal shall be dismissed unless the Appeal Authority is satisfied that there is good cause for the failure to appear.

(8) The Appeal Authority may at any time dismiss any appeal if it is satisfied that the appeal is not prosecuted with due diligence or is frivolous or vexatious or one that ought not to have been brought.

(9) Proceedings before the Appeal Authority shall not abate by reason of the death of the objector, and the legal personal representative of the deceased objector shall be substituted in his stead.

(10) On the determination of the appeal, the Registrar shall send to the parties a memorandum of the Appeal Authority's decision, and the parties shall forthwith take all necessary steps to carry into effect the decision of the Appeal Authority.

(11) The determination of the Appeal Authority on any appeal shall be final.

(12) Where an appeal is allowed in whole or in part, the Appeal Authority may allow the appellant the costs of bringing the appeal or any part thereof.

(13) Where any appeal is not allowed, no award of costs shall be awarded against the appellant unless in the opinion of the Authority the appeal was frivolous or vexatious or one that ought not to have been brought.

(14) The amount of costs awarded, and the person by whom they are to be paid, shall be stated in the order of the Appeal Authority.

(15) Where under this section an award of costs is made and any sums remain unpaid, the person in whose favour the award or order was made may obtain from the Registrar of the Appeal Authority a certificate under seal of the sum awarded. Any such certificate filed in the High Court may be enforced by the High Court as to the amount specified therein that is still owing as if it were a judgment of that Court.

(16) The Appeal Authority may from time to time compile and publish reports of matters brought before it and of its decisions thereon, or the Appeal Authority or the chairman may authorise any person to compile and publish such reports, but no such report relating to a hearing which has not been open to the public shall contain the name of the appellant or other particulars which are likely to identify the appellant and which, in the opinion of the Appeal Authority or the chairman, can be omitted from the report without affecting its usefulness or value.

General Provisions

59. **Money paid without lawful authority** – Subject to section 99 of the Judicature Act 1980-81, all payments received by any person under this Act without that person being lawfully entitled thereto may be recovered as a debt due to the Board and when so recovered shall be repaid into the Fund.

60. **The Trustee's power to set off or write off** – (1) The Trustee may set off against the entitlement of any person to any benefit under the Trust Deed amounts owing to the Fund by that person, including penalties payable by that person and amounts repayable by reason of over payment of any benefit paid.

(2) The Board may write off any amount owing to the Fund or if in the opinion of the Board the recovery of the amount would create undue hardship, or if in the opinion of the Board the amount is irrecoverable or cannot without the risk of disproportionate expense be recovered, whether by reason of the circumstances of the person from whom the amount is recoverable or for any other reason. The Board shall advise the Trustee of any decision under this section.

61. **Refund of payments made in excess** – (1) Subject to subsection (2), in any case where the Board is satisfied that any amount paid into the Fund is in excess of the amount properly payable, the Board shall require the Trustee to refund the amount paid in excess.

(2) The Board may, in its discretion, determine that any amount so paid in excess in respect of any contribution or amount or penalty, or any portion of that amount shall, instead of being refunded, be credited in whole or in part on account against any amount payable under Part IV or any penalty payable under this Part by the person in respect of whom the payment in excess was made.

62. **Benefits exempt from taxation** - Any benefit paid to person from the Fund shall be exempt from taxation under the Income Tax Act 1997.

63. **Benefits not alienable** - Except as expressly provided in this Act or the Trust Deed, in no event shall any benefit be in any way assigned or charged or attached or passed to any creditor of a contributor by operation of law, nor shall any money payable on the death of any contributor be assets for the payment of the deceased contributor's debts or liabilities.

64. **Investigation of statements and provision of information** - (1) Any statement, certificate, or return required, in accordance with this Act to be delivered or furnished to the Board or the Trustee by any person shall be in the form approved by the Board, and shall, in addition to showing the particular information required by this Act, contain such further information as the Board or Trustee may require for the purposes of this Act.

(2) The Board or the Trustee, may investigate the correctness of any statement, certificate, or return delivered or furnished to it pursuant to this Act and of any contributions shown as having been paid in respect of or in relation to any earnings required to be shown in any such statement, certificate, or return and of any contributions shown as being payable or as having been paid in respect of any contributor, and may also investigate any failure to deliver or furnish to it any such statement, certificate, or return.

(3) Notwithstanding section 7 of the Income Tax Act 1997, the Board may require the Collector of Inland Revenue to provide to the Board at such times as the Board may stipulate the names of employers, employees and self-employed persons in the Cook Islands and to provide such other information as the Board may stipulate for the purpose of enabling or assisting the Board to carry out its functions under this Act.

(4) The Board may require the Principal Immigration Officer to provide at such intervals as the Board may stipulate, the names of persons leaving the Cook Islands and such other information relating to such persons as the Board may stipulate for the purpose of enabling or assisting the Board to carry out its functions under this Act.

65. **Secrecy and privilege** - (1) The Board and every officer and employee of the Board and manager and if a manager is a body corporate every director of that manager, and every officer or employee of that manager shall maintain and aid in maintaining the secrecy of all matters relating to this Act which come to their knowledge, and shall not, either while they are or after they ceases to be the holder of the office or a Board member, officer or employee of the Board, communicate any such matters to any person except for the purpose of carrying this Act into effect.

(2) Every person to whom this section applies who willfully acts in contravention of the provisions of this section commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$2,000 or to both.

66. **Offences** – (1) Every person commits an offence against this Act who –

- (a) being an employer or other person by whom a payment of earnings is made to an employee, fails wholly or in part to make a contribution deduction therefrom in accordance with his obligations under Part IV of this Act; or
- (b) fails to pay any contribution in accordance with this Act;
- (c) knowingly applies or permits to be applied the amount of any contribution or any part thereof for any purpose other than the payment of the contribution into the Fund; or
- (d) wilfully or recklessly makes and delivers to the Board or an agent thereof a false or misleading statement or gives any false information to, or misleads or attempts to mislead, the Board or any agent thereof or any employer or other person, in relation to any matter or thing affecting a contribution or amount to which this Act applies or to any other person's claim for a benefit from the Fund; or
- (e) in contravention of this Act, obtains or attempts to obtain for his own advantage or benefit or credit with respect to, or a payment of, the whole or any part of an amount paid into the Fund under this Act by another person; or
- (f) refuses or fails to deliver any statement or copy of certificate or to furnish any return or to give any certificate as and when required by or under this Act; or
- (g) in contravention of or, without law justification or excuse, fails to comply in any respect with any provision of this Act; or
- (h) aids, abets, or incites any other person to commit any offence against this Act.

(2) Every person who commits an offence against paragraph (b) of subsection (1) is liable, on conviction before a Judge of the High Court, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$4,000 or to both.

(3) For the purposes of paragraph (b) of subsection (1), a contribution shall be deemed not to have been made if and when payment is made to an employee of any earnings, and the amount of the contribution is applied for a purpose other than being duly paid into the Fund.

(4) No person shall be convicted of an offence under paragraph (b) of subsection (1) if that person satisfies the Court that the amount of the contribution deduction has been accounted for, or that his failure to account for it within the prescribed time was due to illness, accident, or other cause beyond his control.

(5) Every person who commits an offence against this Act for which no penalty is provided is liable on conviction to a fine not exceeding \$1,000.

(6) Where a company commits an offence against this Act, every officer of the company who knowingly and wilfully authorises or permits the offence himself commits an offence against this Act.

(7) Any information may charge the defendant with any number of offences against this Act, if those offences are founded on the same set of facts, or form or are part of a series of offences of the same or similar character.

(8) Where any information charges more than one such offence, particulars of each offence charged shall be set out separately in the information.

(9) All such charges shall be heard together unless the Court either before or at any time during the hearing, considers it just that any charge should be heard separately and makes an order to that effect.

(10) Any information in respect of any offence against this Act may be laid at any time within 7 years after the termination of the year in which the offence was committed.

67. **Penalty of 10 percent for certain defaults** – (1) Where –

- (a) any employer or other person by whom any earnings are paid fails wholly or in part to make a contribution deduction therefrom in accordance with his obligations under Part II of this Act; or
- (b) any person who has made a contribution deduction or who is liable to pay a contribution, fails wholly or in part to pay any such contribution deduction or contribution to the Fund on or before the last day allowed for payment thereof, or to pay any contribution in respect of which the Board causes notice of an assessment or amended assessment to be given under section 50 on or before the last day allowed for the payment thereof; or
- (c) any person who is liable to pay to the Board any amount under this Act fails wholly or in part to pay the amount on or before the last day allowed for payment thereof, or to pay any amount in respect of which the Board causes notice of an assessment or amended assessment to be given under section 50 on or before the last day allowed for payment thereof, -

that employer or other person shall be liable, without conviction, in addition to any other penalty to which the employer may be liable, to a penalty equal to 10 percent of the amount in respect of which default has been made together with one percent on that amount for each month from the date of default down to the date that the amount is paid to the Fund.

(2) The Board may remit all or any part of any such penalty if, in the special circumstances of any such case it thinks it fair and reasonable to do so. If the amount so remitted has been paid, it shall be dealt with in accordance with section 60 in such manner provided for by that section as the Board thinks fit.

(3) For the purposes of paragraph (b) of subsection (1), a contribution deduction shall be deemed to have been made if and when payment is made of any earnings.

(4) A penalty imposed under this section shall, for the purposes of payment thereof, be deemed to be of the same nature as the amount in respect of which, under subsection (1) of this section, default has been made and the penalty has been imposed, and shall be recoverable accordingly.

68. **Other general provisions** – (1) Subject to subsection (2) the delivery of any notice addressed to a person, body, company, or authority at his or its usual or last known address shall be sufficient service of notice for the purposes of this Act.

(2) A notice, application, instrument, or document required by this Act to be delivered, given, or sent to the Board or any agent of the Board may be delivered to the usual address of and addressed to the Board, or the agent of the Board, as appropriate.

(3) A statement, certificate return, or other form shall be deemed not to have been delivered or furnished to the Board unless and until that form containing a full, true and complete statement of matters required to be stated therein and signed by the person by or on whose behalf such form is required to be supplied to the Board together with all balance sheets, accounts reconciliations, statements, certificates, copies of certificates, notices reports, and other documents which are required to accompany such form have been received at the place where or by the body or person to which or to whom under this Act the statement, certificate return or other form is required to be delivered or furnished.

(4) Any statement, certificate, return or other form required in accordance with this Act to be delivered or furnished to the Board by any person shall be in the appropriate form approved by the Board and shall, in addition to showing the particular information required by this Act, contain such further information as the Board may require for the purpose of this Act.

(5) Notwithstanding anything hereinbefore contained, a statement, certificate, return, or other form which is substantially in accordance with the appropriate form approved by the Board may be accepted notwithstanding slight deviations from that form.

(6) In any proceedings against a person, body, company, or authority for refusing or failing to deliver or furnish any statements, certificates, return or other form, or any information as and when required by this Act, or by the Board a certificate in writing signed by the Board certifying that the statement, or the certificate, or the return, or the form, or the information so required has not been received from that person, or that body, or that company, or that authority at the place where or by the Board or the person to whom the statement, or the certificate, or the return, or the form, or the information should have been furnished, shall, in the absence of proof to the contrary be sufficient evidence that the defendant has refused or failed to deliver or furnish the statement, or the certificate, or the return, or the form, or the information.

69. **Reciprocal arrangements with Governments of other countries or international organisations** – The Queen's Representative may from time to time, by Order in Executive Council, declare that arrangements that have been made with the Government of any other country or any international body with a view to providing reciprocity in matters relating to superannuation, shall have effect notwithstanding anything to the contrary in this Act or any other enactment; and every such Order in Executive Council shall have effect according to its tenor.

70. **Regulations** - The Queen's Representative may, by Order in Executive Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

This Act shall be administered by the National Superannuation Board.

Section 25(2)

FIRST SCHEDULE

- (a) A statement of numerical changes in the membership of the Fund during the financial year;
- (b) The accounts of the Fund in respect of the financial year;
- (c) The auditor's report on the accounts of the Fund;
- (d) A statement by the Board as to whether all the contributions required to be made to the Fund in accordance with the terms of the Act have been made;
- (e) A certificate by the Trustee as to whether all the benefits required to be paid from the Fund in accordance with the terms of the trust deed have been paid;
- (f) A certificate by the Trustee as to whether the market value of the assets of the Fund at the close of the financial year exceeded the total value of benefits that would have been payable had all contributors to the Fund ceased to be contributors at that date and had provision been made for the continued payment of all benefits being paid to contributors and other beneficiaries as at the close of the financial year;
- (g) A notification by the Trustee if more than 5% of the market value of the assets of the Fund at any time during the year was invested directly or indirectly (in a way in which it was reasonable for the Trustee to be aware) in any employer who is a party to the Fund or in any company or entity associated with any such employer and if so, details of all such investments held during the year;
- (h) Where an examination of the financial position and report of an actuary is required under section 26 of this Act –
 - (i) a statement as to whether the rates or amounts of contributions paid are in accordance with the recommendations contained in the most recent report of the actuary; and
 - (ii) a summary of any such report received by the Trustee since the date of the last annual report of the Trustee;
- (i) A summary of any amendments to the trust deed that have been made since the date of the last annual report of the Trustee;
- (j) The names of, and any changes since the last annual report in, the Trustee and every administration manager, investment manager, and insurer, and of any actuaries, auditors, and solicitors of the Fund (either by reference to their own names or the names of their firms);
- (k) The name and address of the person to whom all correspondence from the contributors to the Board and the Trustee should be sent.