

The New Zealand Anglican Church Pension Fund

Trust Deed

The Anglican Church in Aotearoa, New Zealand
and Polynesia

*Te Hāhi Mihinare Ki Aotearoa, Ki Nui Tireni, Ki
Ngā Moutere O Te Moana Nui A Kiwa*



TRUST DEED - THE NEW ZEALAND ANGLICAN CHURCH PENSION FUND

Date: 10 August 2016

PARTIES

The New Zealand Anglican Church Pension Board, an authorised trust board incorporated under the Charitable Trusts Act 1957 (*Trustee*)

INTRODUCTION

- A The New Zealand Anglican Church Pension Fund (*Fund*) is a superannuation scheme registered under the Superannuation Schemes Act 1989 (*Superannuation Act*).
- B The Fund is currently governed by a Trust Deed and Rules dated 22 May 2008 as amended from time to time (*Existing Deed*).
- C The Trustee wishes to amend the Existing Deed by replacing the provisions of the Existing Deed with the provisions of this Deed in order to comply with the requirements of the Financial Markets Conduct Act 2013 (*FMCA*) and the Financial Markets Conduct Regulations 2014 (*FMCR*) and make other minor amendments for the more efficient operation of the Fund.
- D The Trustee is satisfied that no member consents are required under section 9 of the Superannuation Act or Rule 7 of the Existing Deed to the amendments proposed in this Deed.
- E Prior to executing this Deed, the Trustee obtained a certificate from its solicitor as required by section 12(1)(b) of the Superannuation Act.

BY THIS DEED, effective on and from the Effective Date:

- 1 Pursuant to Rule 7.1 of the Existing Deed and an ordinary resolution of the Board dated 23 June 2016, and with the intent that the Fund:
 - (a) will continue being held on the same trusts as before; and
 - (b) will otherwise governed and administered as provided in this Deed,the Existing Deed is amended by substituting the provisions of the Existing Deed with all the provisions of this Deed as set out below.
- 2 The Fund is continued as a restricted employer related workplace savings scheme for the purposes of the FMCA, on the basis set out in this Deed.
- 3 The Trustee continues as the trustee of the Fund upon and subject to the terms and conditions contained or implied in or prescribed pursuant to this Deed, the FMCA and any other applicable legislation (and will observe and perform its obligations under this Deed the FMCA and any other applicable legislation).



IN WITNESS WHEREOF the Board has executed this Deed on the date shown above.

The Common Seal of **The New Zealand Anglican Church Pension Board** was affixed to this Deed in the presence of:



Authorised Signatory



Authorised Signatory





Appendix – Fund Rules



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INTRODUCTORY SECTION

1 NAME

- 1.1 In accordance with Title B, Canon XIV of the Code of Canons of the Anglican Church in Aotearoa, New Zealand and Polynesia (*Canon XIV*), the name of the Fund shall remain *The New Zealand Anglican Church Pension Fund* and the Fund shall continue being administered by The New Zealand Anglican Church Pension Board as provided in Canon XIV.
- 1.2 Subject to compliance with Canon XIV and all legal and regulatory requirements, the Trustee may change the name of the Fund. The Trustee shall notify Members of any change of name of the Fund when next convenient for the Trustee.

2 INTERPRETATION

2.1 Defined terms

Act means the New Zealand Anglican Church Pension Fund Act 1972.

Actuary means a person who is a Fellow of the New Zealand Society of Actuaries.

Administration Manager means the person or company (if any) to whom the Trustee has contracted some or all of the administration of the Fund.

Annuitant means any person who for the time being is in receipt of a pension from (as the context requires) the Defined Benefit Section or the Complying Fund Section.

Annuitisation means the process of converting a lump sum payment into an actuarially calculated pension.

Audited Accounts means accounts certified by the Auditor.

Auditor means the person (being a licensed auditor or registered audit firm under the Auditor Regulation Act 2011) appointed by the Trustee as the auditor of the Fund, or the firm of persons so appointed.

Beneficiary means any person in receipt of any benefit from the Fund or who may receive any such benefit in the future by way of pension, lump sum payment, allowance or grant.

Bishop means any person who:

- (i) is ordained in the Order of Bishop in this Church; or
- (ii) has been ordained or consecrated in other Provinces of the Anglican Communion and is exercising episcopal ministry in this Church.

Board means the board constituted by virtue of Canon XIV.

Canon XIV means Title B, Canon XIV of the Code of Canons of the Anglican Church in Aotearoa, New Zealand and Polynesia.



CFS Commencement Date means 23 May 2008, being the date of establishment of the Complying Fund Section.

Church or the Church means the Anglican Church in Aotearoa, New Zealand and Polynesia.

Clergy means all persons in Holy Orders who hold any spiritual charge or cure or a Bishop's licence or permission to officiate in the Church and includes Bishops.

Commissioner means the Commissioner of Inland Revenue as defined in section 3 of the Tax Administration Act 1994.

Commutation means the process of exchanging future pension payments for an actuarially calculated lump sum.

Complying Fund Rules means complying fund rules as defined in section RD 66 of the Income Tax Act.

Complying Fund Section means the Complying Fund Section of the Fund, the rules for which are contained in Part Three of these Rules.

Complying Fund Section Pension means a pension payable from the Complying Fund Section under Rule 19.

Complying Superannuation Fund means a workplace savings scheme identified as a complying superannuation fund on the register of managed investment schemes (or, if the scheme is identified as a complying superannuation fund in respect of only a section of the scheme, the scheme in respect of that section).

Contribution means any contribution made to the Fund (or, as the context requires, to the Defined Benefit Section or the Complying Fund Section) whether by way of personal subscription, subsidy or otherwise.

Custodian means any person appointed in accordance with Rule 15.4 to hold Fund property.

Date of Election, in relation to a person who has made an election under Rule 29, means the date when that election takes effect.

Deferred DBS Member means a person who was a Subscriber to the Defined Benefit Section but has elected under Rule 29 to become a Subscriber to the Complying Fund Section.

Defined Benefit Section means the Defined Benefit Section of the Fund, the rules for which are contained in Part Two of these Rules.

Effective Date means the date that the Trustee elects under clause 19(1)(a) of Schedule 4 to the FMCA to be the date that the Fund is treated as a registered scheme under that Act.



Equivalent Overseas Scheme means an equivalent overseas retirement scheme as defined in the FMCR¹.

FMA means the Financial Markets Authority or any successor entity.

FMCA means the Financial Markets Conduct Act 2013.

FMCR means the Financial Markets Conduct Regulations 2014.

Fund means the Retirement Scheme governed by this Deed and known as The New Zealand Anglican Church Pension Fund.

General Synod means the duly constituted governing body of the Church and any successors of the said governing body.

Income Tax Act means the Income Tax Act 2007 and includes (other than when used in the context of section references) the Tax Administration Act 1994.

Investment Manager means a person (if any) to whom the Trustee has contracted the investment of some or all of the Fund.

KiwiSaver Act means the KiwiSaver Act 2006.

KiwiSaver Scheme means a KiwiSaver scheme as defined in section 4(1) of the KiwiSaver Act.

KiwiSaver Scheme Rules means the KiwiSaver scheme rules set out in Schedule 1 to the KiwiSaver Act.

Leave of Absence means a period of absence approved under Rule 7.11(b).

Licensed Independent Trustee means a licensed independent trustee who is independent as defined in the FMCA² and whose licence covers the Fund.

Lock-in Facility means a facility established under Rule 38.

Lock-in Rules means the provisions of Rules 38 to 47.

Locked-in Account means, in relation to a Member of the Complying Fund Section, the account maintained for that Member under Rules 32.1(a) and (as applicable) 32.2(a) or 32.3(a).

Locked-in Balance means, in relation to a Member of the Complying Fund Section, the amount comprised from time to time in the Locked-in Account of that Member, comprising:

- (a) Subscriptions paid by the Member to that Member's Locked-in Account; plus

¹ Regulation 82(3).

² Section 131(3).



- (b) subsidies paid by the relevant Paying Authority to that Member's Locked-in Account; plus
- (c) tax credits paid to the Fund in respect of the Member under subpart MK of the Income Tax Act; plus or minus
- (d) returns on the above amounts (which may be negative), as determined by the Trustee; less
- (e) any benefits previously paid from the Member's Locked-in Account; less
- (f) any costs debited to the Member's Locked-in Account under Rule 44.

Locked-in Payment Date means, in relation to a Member of the Complying Fund Section, the later of:

- (a) the date when the Member reaches New Zealand Superannuation Age; and
- (b) the date when the Member has been a member of a Complying Superannuation Fund (or of a Complying Superannuation Fund and a KiwiSaver Scheme) for five years, with membership of the Fund as a Complying Superannuation Fund being, for this purpose, membership of the Complying Fund Section.

Member means any person who:

- (a) is a Subscriber; or
- (b) has a retained interest while on Leave of Absence; or
- (c) is a Retained Member or has otherwise exercised a retained interest option in accordance with the Rules; or
- (d) is in receipt of a pension (other than a dependant's allowance).

New Zealand Superannuation Age means New Zealand superannuation qualification age as defined in section 4(1) of the KiwiSaver Act.

Paying Authority means the body or organisation responsible for the payment of a Member's stipend, the transmission of Contributions to the Fund by and for the benefit of the Member and the payment of taxation involved in these transactions.

PDS means, in relation to the Fund, the most recent product disclosure statement or PDS for the Fund, as defined in the FMCA.

Pension Committees means local groups appointed for the purpose of providing support for and liaison with Subscribers and other Beneficiaries and for such other purposes as may be set out in or appended to these Rules from time to time.

Pensionable Service means equivalent years and months for which Subscriptions and subsidies are paid to the Defined Benefit Section (and to the Fund before the CFS Commencement Date) and/or to the Complying Fund Section, as appropriate. For a Deferred DBS Member:

- (a) *Pensionable Service* for the purposes of Part Two of these Rules means equivalent years and months for which Subscriptions and subsidies were



paid to the Defined Benefit Section (and to the Fund before the CFS Commencement Date) and excludes any period of membership as a Deferred DBS Member; and

- (b) *Pensionable Service* for the purposes of Part Three of these Rules means equivalent years and months for which Subscriptions and subsidies have been paid to the Complying Fund Section, and excludes periods during which Subscriptions and subsidies were paid to the Defined Benefit Section (or paid to the Fund before the CFS Commencement Date).

The maximum 42 year period of Pensionable Service referred to in Rules 22.13, 22.14, 24.1, 24.3 and 25.10 will have deducted from it, for the avoidance of doubt, any period during which Subscriptions and subsidies have been paid to the Complying Fund Section.

Personal Representative means a personal representative as defined in section 4(1) of the KiwiSaver Act.

Register means the register of Beneficiaries maintained for the Fund pursuant to the FMCA.

Related Party has the meaning given to it by the FMCA³.

Related Party Benefit has the meaning given to it by the FMCA⁴.

Retained Member means a Member who has made (or, as the case may be, is deemed to have made) an election under Rule 23.5(a) or Rule 33.5(a).

Retirement Scheme means a retirement scheme as defined in the FMCA.

Rules means these rules.

Serious Illness means serious illness as defined in clause 12(3) of the KiwiSaver Scheme Rules.

Significant Financial Hardship means significant financial hardship as defined in clause 11 of the KiwiSaver Scheme Rules.

SIPO has the meaning given to it by the FMCR⁵.

Standard Stipend means the stipend for Bishops, vicars, deacons and priest assistants or curates domiciled in New Zealand, as determined by the body authorised to make such determinations.

³ Section 172(2).

⁴ Section 171(1).

⁵ Regulation 5.



Subscriber means any person paying regular Subscriptions, or regular Contributions or having regular Contributions made on their behalf, to (as applicable) the Defined Benefit Section or the Complying Fund Section and:

- (a) in Part Two of these Rules, subject to Rule 30.2, *Subscriber* means a Subscriber to the Defined Benefit Section (with the result that periods as a Subscriber for the purposes of Part Two of these Rules exclude all periods as a Subscriber to the Complying Fund Section); and
- (b) in Part Three of these Rules, *Subscriber* means a Subscriber to the Complying Fund Section (with the result that periods as a Subscriber for the purposes of Part Three of these Rules exclude all periods as a Subscriber to the Defined Benefit Section).

Subscription means a personal subscription to the Fund (or, as the context requires, to the Defined Benefit Section or the Complying Fund Section) and does not include a subsidy.

Tax File Number means a tax file number as defined in section YA 1 of the Income Tax Act.

Trustee means the Board or such other body as is for the time being appointed to hold office as trustee pursuant to Rule 5.

Widow/er means a surviving spouse.

2.2 **General rules of construction**

In these Rules:

- (a) the singular includes the plural and vice versa;
- (b) references to any enactment, regulation or other statutory instrument (including any provision of an enactment, regulation or statutory instrument) are references to that enactment, regulation, instrument or provision as from time to time amended or (as the context permits) to any replacement enactment, regulation, instrument or provision;
- (c) headings appear as a matter of convenience and shall not affect construction;
- (d) appendices have the same force and effect as if set out in the body of the Rules;
- (e) a reference to any document or instrument includes that document or instrument as amended or replaced from time to time;
- (f) persons include all bodies and associations corporate or unincorporate, and vice versa;
- (g) where any frameworks or methodologies are specified in notices issued by the FMA under the FMCA which would be applicable to the Fund and are inconsistent with the Rules, the Rules shall be deemed to be modified to the extent necessary to be consistent with such frameworks or methodologies in respect of the Fund;



- (h) terms implied into the Rules under the KiwiSaver Act or the FMCA will apply for so long as they are so implied, despite anything to the contrary in these Rules, and any provision in these Rules that is contrary to any such implied term will be void to the extent that it is contrary;
- (i) footnotes do not form part of the Rules, are a guide only, do not affect interpretation and (where they refer to legislative provisions) are not intended to incorporate those provisions in the Rules;
- (j) any reference to:
 - (i) an action taken or thing done (*Action*) under, in accordance with or pursuant to a provision of the Rules at or in respect of a date before the Effective Date (*Relevant Date*) shall constitute a reference to an equivalent Action taken under, in accordance with or pursuant to a materially corresponding provision in the deed governing the Fund as at the Relevant Date; or
 - (ii) the operation or effect of a provision of the Rules at or in respect of a date before the Effective Date shall constitute a reference to the operation or effect of a materially corresponding provision in the deed governing the Fund as at the Relevant Date;
- (k) notwithstanding any other provision of the Rules, in the event of any inconsistency between the Rules and the FMCA or the FMCR the FMCA and FMCR will prevail; and
- (l) the Rules shall be governed and construed and shall take effect in accordance with the laws of New Zealand (and all parties to this Deed and all beneficiaries shall accept and be subject to the jurisdiction of the Courts of New Zealand); and
- (m) all references to *the Rules* are to these Rules as amended from time to time (and include any supplements executed in accordance with the provisions of these Rules).



PART ONE – GENERAL PROVISIONS

3 PURPOSES OF FUND

The purposes of the Fund are:

- 3.1 to provide lump sums and pensions for Clergy on retirement from service with the Church;
- 3.2 to provide lump sums and pensions for Widows/ers and dependants of Clergy who were on pension or would have been eligible for pension on retiring; and
- 3.3 to provide financial aid for Subscribers and/or their dependants when such Subscribers are partially or wholly unable to carry out clerical duties prior to their becoming eligible for pensions.

4 COMPOSITION OF FUND

The Fund comprises:

- 4.1 the assets of those Diocesan Pension Funds which have been transferred to the Fund by the Diocesan Trust Boards concerned, under the authority of the Act;
- 4.2 funds transferred to it from time to time from the various dioceses which were previously administered by or on behalf of such dioceses for the various purposes for which the Fund was established (and the income from such funds);
- 4.3 such other assets or properties as may be transferred to or acquired by the Trustee from time to time for the purposes of the Fund; and
- 4.4 Subscriptions paid by or on behalf of Subscribers and subsidies thereon, earnings on capital, special offerings, donations, legacies and any other moneys which from time to time may be received by the Board for the purposes of the Fund.

5 TRUSTEE

- 5.1 Subject to the requirements of the FMCA, there shall be one trustee for the Fund, namely The New Zealand Anglican Church Pension Board as constituted under Canon XIV, whose members must include a Licensed Independent Trustee.
- 5.2 The General Synod shall have the power by deed to appoint and remove the trustee of the Fund. The General Synod may remove the trustee on any grounds without being required to give a reason and, if it sees fit, to appoint in its place another trustee subject to the requirements of the FMCA. A trustee must be appointed and removed in accordance with the requirements of the FMCA⁶.
- 5.3 The Trustee is responsible for managing the Fund and (in particular) for performing the functions for which responsibility is attributed to it as manager of the Fund as set out in the FMCA⁷ and must ensure that the Fund and the Trustee meet (and

⁶ Section 185.

⁷ Section 142(1)



continue to meet) all initial and ongoing registration requirements applying to the Fund and the Trustee under the FMCA⁸.

- 5.4 In acting as the trustee of the Fund, the Trustee must comply at all times with the requirements of the FMCA and the duties applicable to it as manager of the Fund⁹.
- 5.5 The Trustee may delegate the performance of all or any of its powers, authorities, functions and discretions under the FMCA or the provisions of the Rules (including, for the avoidance of doubt and without limitation, all or any investment management, registry or other administrative powers, authorities, functions or discretions) to any person, with the same power to sub-delegate, and the Trustee may agree with such delegate the fees that may be charged and the extent to which expenses will be reimbursed as the Trustee may consider suitable having regard to normal commercial terms, provided that the Trustee shall:
- (a) take all reasonable steps to ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Trustee were performing them directly; and
 - (b) take all reasonable steps to monitor the performance of those functions; and monitor the performance of those functions; and
 - (c) at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this Rule¹⁰.
- 5.6 Subject to the requirements of the FMCA, no Subscriber or Annuitant shall have any claim against the Trustee or board members of the Trustee (or against any other Trustee or its directors) individually or collectively, and nor do the Trustee or any board members of the Trustee (or any other Trustee or its directors) incur any personal liability, for anything done or omitted to be done under the Rules in relation to the proper performance of manager duties under the FMCA¹¹. If, contrary to the provisions of this Rule 5.6 the Trustee or any board member of the Trustee (or any other Trustee or its directors) is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Fund or any action taken or omitted for or in connection with the Fund then that person is entitled to indemnity and reimbursement out of the assets of the Fund to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined (including, without limitation, legal fees and disbursements).¹²
- 5.7 No provision of the Rules has the effect of exempting the Trustee or any board member of the Trustee (or any other Trustee or its directors) from, or indemnifying them against, any liability to the extent that doing so would be void under the FMCA or any other statute.

⁸ Sections 130, 131 and 133.

⁹ Sections 142 to 151.

¹⁰ Section 146 of the FMCA.

¹¹ Sections 143(1) and 144

¹² Sections 135(1)(f) and 136 of the FMCA.



5.8 The Trustee may agree:

- (a) to limit the liability (in connection with its services in respect of the Fund) of;
and/or
- (b) to indemnify out of the assets of the Fund;

any Administration Manager, Investment Manager or Custodian appointed in respect of the Fund, to the fullest extent permitted by the FMCA¹³, in respect of any debt, liability or obligation incurred by or on behalf of the Administration Manager, Investment Manager or Custodian in respect of the Fund or any action taken or omitted for or in connection with the Fund (including, without limitation, legal fees and disbursements).

5.9 The Trustee may arrange to have paid from the Fund or be reimbursed from the Fund for any costs or expenses which it may bona fide pay or incur in the administration of the Fund including the fees of any Administration Manager, Investment Manager or Custodian.

5.10 The Trustee shall provide FMA with such reports and information (including, for the avoidance of doubt, in relation to SIPO limit breaks) as are required by the FMCA¹⁴.

5.11 In addition to any other powers granted under this Deed, the FMCA or by law, but subject to the FMCA, the Trustee may do anything the Trustee considers necessary or expedient to enable it to discharge the Trustee's duties under this Deed.¹⁵

6 TRUSTEE'S REMUNERATION AND PAYMENTS

6.1 The Trustee shall not receive from the Fund any commission or other remuneration in respect of its office, but the Trustee:

- (a) shall remunerate the Licensed Independent Trustee as agreed from time to time with the Licensed Independent Trustee; and
- (b) if it thinks fit at any time and from time to time pay such portion of the Licensed Independent Trustee's fees as are referable to the Fund out of the assets of the Fund.

7 MEMBERSHIP

7.1 **Membership prior to 1/1/73:** Every member of the diocesan funds incorporated into the Fund who holds a Bishop's licence and is engaged in full-time, constant and active parochial, diocesan or provincial work shall be (and, subject to these Rules, continue to be) a Member.

7.2 Every member of the diocesan funds incorporated into the Fund who is not engaged in full-time, constant and active ministry but who has exercised an option to continue membership of such diocesan fund, shall have membership confirmed in the Fund in accordance with the option so exercised.

¹³ Section 136(2).

¹⁴ Sections 147 to 151, 167 and 168 of FMCA and regulations 94 to 98 and 100 of FMCR.

¹⁵ Section 135 (1)(k)(iii)



- 7.3 Arrangements for continuing membership entered into with diocesan funds and not specifically provided for in these Rules will be maintained and associated pension rights will be secured and protected.
- 7.4 Every person who is a Member in accordance with Rules 7.1, 7.2 or 7.3 shall be deemed to have applied to the Fund for membership and to have undertaken to abide by the Rules of this Fund.
- 7.5 **Membership subsequent to 1/1/73:** All Clergy holding a Bishop's licence or permission to officiate and engaged in full-time, constant and active work with the Church who became Members before the CFS Commencement Date:
- (a) are Members of the Defined Benefit Section on the same terms and conditions (subject to Rule 29 and related provisions) as the Trustee has determined for their admission to membership of the Fund; and
 - (b) shall continue as Members of the Defined Benefit Section unless and until, when permitted by the Trustee to make such elections, those Members elect in accordance with Rule 29 to become Members of the Complying Fund Section (PROVIDED THAT Clergy of the Diocese of Polynesia shall not be permitted to make such elections).
- 7.6 All Clergy holding a Bishop's licence or permission to officiate and not engaged in full-time, constant and active work with the Church who became Members before the CFS Commencement Date:
- (a) are Members of the Defined Benefit Section on the same terms and conditions (subject to Rule 29 and related provisions) as the Trustee has determined for their admission to membership of the Fund; and
 - (b) shall continue as Members of the Defined Benefit Section unless and until, when permitted by the Trustee to make such elections, those Members elect in accordance with Rule 29 to become Members of the Complying Fund Section (PROVIDED THAT Clergy of the Diocese of Polynesia shall not be permitted to make such elections).
- 7.7 **Membership subsequent to CFS Commencement Date (New Zealand Clergy):** All Clergy (other than Clergy of the Diocese of Polynesia) holding a Bishop's licence or permission to officiate and engaged in full-time, constant and active work with the Church and aged below New Zealand Superannuation Age shall join the Fund as Members of the Complying Fund Section unless granted exemption by the Trustee.
- 7.8 All Clergy (other than Clergy of the Diocese of Polynesia) holding a Bishop's licence or permission to officiate and not engaged in full-time, constant and active work with the Church may with the approval of the Trustee (and if aged below New Zealand Superannuation Age) join the Fund as Members of the Complying Fund Section on such terms and conditions as the Trustee may determine.
- 7.9 **Membership subsequent to CFS Commencement Date (Clergy of the Diocese of Polynesia):** All Clergy of the Diocese of Polynesia holding a Bishop's licence or permission to officiate and engaged in full-time, constant and active work with the



Church shall, unless granted exemption by the Trustee, join the Fund as Members of the Defined Benefit Section (and will not be permitted to join the Complying Fund Section).

- 7.10 All Clergy of the Diocese of Polynesia holding a Bishop's licence or permission to officiate and not engaged in full-time, constant and active work with the Church may, with the approval of the Trustee, join the Fund as Members of the Defined Benefit Section on such terms and conditions as the Trustee has determined for the admission to membership of the Fund (and will not be permitted to join the Complying Fund Section).

Interruptions to Pensionable Service

- 7.11 A Member's period of eligible service need not be continuous, PROVIDED THAT:

- (a) A Member seeking to relinquish temporarily constant and active work with the Church for any reason and for an initial period not exceeding two years shall first have the approval of the Member's Bishop for the period of absence.
- (b) Depending upon the reason for the Member's absence, the recommendation of their Bishop, and such other factors as the Trustee may determine from time to time the Trustee may, at its discretion, approve a total absence at any one time of a period not exceeding four years.
- (c) The Leave of Absence shall not count as Pensionable Service unless Contributions for the period of absence shall have been paid by or on behalf of the Subscriber (and a Subscriber's Contributions during a period of Leave of Absence without pay must not exceed, as to either amount or frequency, the Contributions that the Subscriber was making in accordance with the Rules immediately before commencing Leave of Absence without pay).
- (d) Where Leave of Absence has been granted by the Trustee, the Member's rights in the Fund are maintained, whether Contributions are paid or not (subject to Rule 7.11(c)).
- (e) Should a Member die during such Leave of Absence, the Widow/er's pension shall be calculated upon the deceased Subscriber's past paid and prospective period of Pensionable Service in the Fund up to age 65 and subject to the maximum 42 years' Pensionable Service.
- (f) Should a Member during Leave of Absence have to cease work by reason of ill-health or incapacity, in circumstances which indicate that a return to any full-time work is unlikely, the provisions of Rules 23.3 or Rule 33.3 (as applicable) shall apply and the calculation of Pensionable Service shall take into account Rule 7.11(c).
- (g) If a Member, having been granted Leave of Absence, does not subsequently return to constant and active work with the Church, the Member shall be required to exercise an option under Rule 23.5 or Rule 33.5 (as applicable).
- (h) On return from Leave of Absence the Member may purchase back service in accordance with Rules 22.10 to 22.12 or Rules 31.8 to 31.10 (as applicable).



Membership - General

- 7.12 Before completing an application for membership every person eligible for admission to membership of the Fund shall be given by the appropriate authority information regarding membership as detailed in Rule 13. An application for membership shall be completed and shall be forwarded to the Trustee.
- 7.13 An entrant shall be deemed to have become a Member on the first day of the month of acceptance of his or her application for membership.

8 RULE CHANGES

- 8.1 The Rules may from time to time be amended by ordinary resolution of the Trustee (subject to the restrictions in the Act¹⁶ and any other applicable legislation). All Members shall be advised of any changes made to the Rules and of the purpose of those changes. Amendments to the Rules shall apply from the date of final approval by the Trustee (or on and from an effective date prescribed by the Trustee) and shall be notified to the FMA within 14 days after being made.
- 8.2 By reason of the imposition of tax by the Commissioner on the income of the Trustee the Trustee may reduce current pensions without Members' approval, PROVIDED THAT such reduction does not affect any pension to any extent greater than the loss of income to the Fund as a result of such taxation. Any such amendment is subject to approval by the FMA.

9 ANNUAL REPORT, ACCOUNTS AND RECORDS

- 9.1 The Trustee shall cause to be kept proper books of account for the administration of the Fund containing the information required by the FMCA¹⁷, shall allow for inspection of the accounting records relating to the Fund to the extent required by relevant law¹⁸ and shall cause Audited Accounts of the Fund to be prepared, audited and lodged with the Registrar of Financial Service Providers in respect of the Fund and available for public inspection in accordance with the FMCA¹⁹.
- 9.2 The Trustee shall ensure the preparation and distribution of annual reports for the Fund in accordance with the requirements of the FMCR²⁰.
- 9.3 Copies of the annual report and Audited Accounts of the Fund shall be supplied to Te Pihopatanga o Aotearoa, the Dioceses of New Zealand and the Diocese of Polynesia.
- 9.4 Each Beneficiary shall be given annual confirmation information in accordance with the FMCA²¹ and the FMCR²².

¹⁶ Section 139.

¹⁷ Section 455.

¹⁸ Section 459 of FMCA.

¹⁹ Sections 460 to 461 of the FMCA.

²⁰ Regulations 62 and 63.

²¹ Section 100.

²² Regulations 69 to 71.



- 9.5 The Trustee shall keep records relating to Beneficiaries and the Fund in such form and in such manner as is required by the FMCA, including the full names and addresses of Beneficiaries and the particulars of payments in respect of Beneficiaries.
- 9.6 Without limiting any other provision of the Rules, the Trustee must keep or ensure there are kept and reconciled records that:
- (a) identify the assets of the Fund;
 - (b) show when the assets of the Fund were received; and
 - (c) if any asset of the Fund has been disposed of, show when the asset was disposed of and to whom;
- and have those records audited (and give reports about the assets of the Fund) in accordance with the requirements of the FMCA²³ and the FMCR²⁴.
- 9.7 The Trustee shall ensure that a Register is maintained with respect to the Fund which is kept in the manner, contains the information, is audited and is available for inspection as required by the FMCA and the FMCR²⁵. The Register may be kept electronically²⁶.
- 9.8 The Trustee shall provide Beneficiaries with all information, notices and disclosures required to be given under the FMCA²⁷. Where any Register entry contains a statement to the effect that a document or other information is available from the Trustee on request, the Trustee must (after receiving such a request) provide the document or other information requested as soon as practicable but in any event within five working days.²⁸

10 **ACTUARIAL**

The Actuary appointed by the Trustee shall undertake an actuarial valuation of the Fund at least once in every three years in accordance with the FMCA²⁹ and a copy of the valuation shall be forwarded as soon as possible to:

- (a) the FMA; and
- (b) the Standing Committees of the General Synod/Te Hinota Whanui, Te Pihopatanga o Aotearoa, the Dioceses of New Zealand and the Diocese of Polynesia.

The actuarial report shall be available for perusal by any Member.

²³ Sections 158 and 159.

²⁴ Regulations 86 to 88.

²⁵ Sections 215 to 223 of FMCA and regulations 109 and 110 of FMCR.

²⁶ Section 216(2)(a) FMCA.

²⁷ Sections 96, 97 and 100 of FMCA and regulations 56 and 62 of FMCR.

²⁸ Regulation 53.

²⁹ Section 169.



11 **INALIENABLE BENEFITS**

- 11.1 Except as required by legislation or permitted by Rules 11.2 and 11.3 (but without limiting Rule 47.2) no Subscriber or Annuitant shall be allowed to assign, charge, alienate or borrow against the security of personal benefits from the Fund.
- 11.2 The benefit of any Subscriber or Annuitant (other than any benefit from a Locked-in Account) will, to the maximum extent permitted by law, be subject to forfeiture in the event of the bankruptcy of the Subscriber or Annuitant and, in such event, the Trustee may apply the forfeited benefit towards the support of the Subscriber, Annuitant or dependants.
- 11.3 In the event of any Subscriber or Annuitant being unable to manage their personal or business affairs the Trustee may administer that person's benefits (other than any benefit from a Locked-in Account) on the person's behalf or request a Pension Committee to do so.

12 **TERMINATION**

- 12.1 The Trustee may not amalgamate the assets of the Fund with, or transfer the assets of the Fund to, another fund without the prior approval of the General Synod/Te Hinota Whanui.
- 12.2 The Trustee may only resolve to terminate the Fund if:
- (a) the Church is reconstructed or deconstituted; or
 - (b) there are insufficient Members to make it administratively economic to continue operating the Fund; or
 - (c) the majority of those obliged to do so fail to comply with Rule 22.5 or Rule 31.3; or
 - (d) the Fund is, in the Trustee's opinion, no longer financially viable; or
 - (e) the Fund it is required to be wound up under the FMCA³⁰.
- 12.3 The provisions of the FMCA relating to the winding up of registered schemes and to the way in which a scheme's assets are to be distributed in the event of a wind-up shall apply with effect from the date of that resolution³¹.
- 12.4 Any proposal for termination shall have the approval of the FMA and shall include provisions for maintaining pensions as far as possible for those receiving them and (subject, in the case of Locked-in Balances, to Rule 43.2) for the repayment of Subscriptions/Contributions to Subscribers with an allowance for returns as may be determined by the Trustee. Any remaining trust funds which have been allocated to the Fund for amalgamation or administration in accordance with the Act shall with the prior written consent of FMA be vested in the Trustees of the General Church Trust, for administration for the general purposes of such trusts in accordance with the Anglican Church Trusts Act 1981.

³⁰ Section 211

³¹ Sections 212 and 213.



12.5 If the Trustee resolves to terminate the Fund then (in addition to complying with the requirements of the FMCA) it shall ensure that:

- (a) copies of the final Audited Accounts are forwarded to the Standing Committees of (respectively) the General Synod/Te Hinota Whanui, Te Pihopatanga o Aotearoa, the Dioceses of New Zealand and the Diocese of Polynesia; and
- (b) the Standing Committee of the General Synod and every Diocesan Standing Committee and Te Runanga Whaiti o Te Pihopatanga o Aotearoa are advised of the date on which the distribution of assets was completed.

12.6 In the event of the termination proceeding, the assets of the Fund, other than such trust funds as may be transferred for administration to the Trustees of the General Church Trust as provided in Rule 12.4, shall be distributed among the Members and Beneficiaries of the Fund (subject, in the case of Locked-in Balances, to Rule 43.2) in accordance with a scheme of distribution prepared by the Actuary and approved by the Trustee.

12.7 Where any Member has attained the age of 50 years but not the age of 60 years when the Fund is terminated and has three or fewer years of Pensionable Service, the Trustee may in the scheme of distribution commute or capitalise the whole of any pension that may be payable.

13 MEMBERS' RIGHTS

13.1 Every Member shall have the right to be informed, as soon as practicable after a request, of the amount of the Member's vested benefit entitlements as at the close of the last preceding financial year of the Fund.

13.2 Every person eligible for membership shall be provided, before becoming a Member, with a PDS for the Fund which is prepared pursuant to the FMCA and the FMCR.

13.3 Every Subscriber shall be entitled on request to receive copies of these Rules and of Canon XIV at or after the time of entry and (again on request) to receive copies of any amendments.

13.4 Every Member shall be entitled to receive a copy of the annual report, and/or a copy of the annual accounts, for the Fund.

13.5 Every Member shall be given within four months of the balance date of the Fund a copy of the annual report. Upon payment of such fee as the Trustee may determine, a Member shall receive a copy of the Actuary's latest report (and may inspect a copy of that latest report without payment of any fee, at any reasonable time, at an address specified in the PDS for the Fund).

13.6 Any Member may, upon request, receive a statement of the specific interest, mortality and other assumptions and bases of calculations applied in determining the value of the assets and liabilities of the Fund for the purpose of the Actuary's latest report.



14 GENERAL

The Trustee shall have the right, power, and authority, in the administration of these Rules, to act at its discretion in any matters or circumstances not specifically provided for in these Rules PROVIDED THAT such actions shall not be inconsistent with such Rules, the FMCA or any other relevant statutes or regulations.

15 INVESTMENT

- 15.1 All moneys of the Fund and available for investment shall be invested in accordance with the provisions of the Trustee Act 1956 and the FMCA as to the investment of trust funds and notwithstanding anything to the contrary in the Trustee Act 1956 or the FMCA, the Trustee and any Investment Manager of the Fund shall, in exercising the power of investment, exercise the care, diligence and skill required of that person by the FMCA³².
- 15.2 The Trustee must ensure that there is a SIPO for the Fund which complies with the FMCA³³ (which may be amended or replaced by the Trustee from time to time subject to the requirements of the FMCA) and:
- (a) all moneys available for investment in the Fund shall be invested in accordance with the SIPO; and
 - (b) the Trustee must comply at all times, in relation to the SIPO, with the requirements of the FMCA³⁴.
- 15.3 Without prejudice to the powers conferred upon the Trustee by general law or by Rules 5 and 14 the Trustee shall impose on any Investment Manager appointed under Rule 5.5 a binding obligation that they will, in exercising its powers of investment, exercise the care, diligence and skill required by the FMCA³⁵.
- 15.4 The Trustee may appoint and remove from office a Custodian (which must meet the requirements for such a person under the FMCA³⁶) in respect of the whole or any part of the Fund on such terms and with such duties, powers and discretions as may be agreed between the Trustee and the Custodian (and the Custodian shall be entitled to charge such expenses, fees, charges and costs as are agreed between the Trustee and the Custodian, which shall be paid from the Fund).
- 15.5 Where the Trustee appoints a Custodian under Rule 15.4, the Trustee shall take all reasonable steps to ensure that the custodial functions for the Fund are performed by the Custodian in the same manner and subject to the same duties and restrictions as if the Trustee were performing the custodial functions itself and in a manner which complies with all of the obligations relating to holding the assets of the Fund as Trustee or custodian expressed or implied in this Deed and any applicable legislation.

³² Section 144

³³ Section 164

³⁴ Section 166

³⁵ Section 144

³⁶ Sections 127(1)(f) and 156(2).



16 AUDITOR

- 16.1 The Trustee shall appoint as Auditor of the Fund a person qualified in terms of the FMCA³⁷ and entitled by law to act as such, to provide services in accordance with the requirements of the FMCA and the FMCR.³⁸
- 16.2 The remuneration of the Auditor shall be fixed by the Trustee on an arm's length basis and shall be paid as an expense of the Fund.
- 16.3 The Trustee may at any time and from time to time remove the Auditor. The Auditor may retire upon the expiration of not less than ninety (90) days' notice to the Trustee.
- 16.4 Any vacancy in the office of Auditor occurring under Rule 16.3 shall be filled by the Trustee appointing as Auditor of the Fund a person qualified for appointment in terms of Rule 16.1.

17 TRANSFERS BETWEEN FUNDS

- 17.1 To enable the transfer of any Subscriber's interest, the Trustee may (subject to the FMCA and other applicable laws, including without limitation the Complying Fund Rules) establish reciprocal arrangements with any other Retirement Scheme or overseas superannuation scheme.
- 17.2 Reciprocal arrangements which the Trustee may negotiate with other schemes shall be reviewed periodically and the Trustee shall obtain the Actuary's advice as to whether those arrangements need to be varied in order to ensure that the interests of Subscribers transferring to or from the Fund are maintained.
- 17.3 A Subscriber who is a member of another Retirement Scheme or (at the Trustee's discretion) an overseas superannuation scheme may elect to transfer their benefits to the Fund. The Trustee may accept from that scheme the amount which its manager is authorised to transfer to the Fund in respect of that Member. The amount transferred to the Fund shall be allocated to the Member (subject, where relevant, to the Complying Fund Rules) in such manner as the Trustee shall determine.

18 MEETINGS

When required by the Act, the Trustee must call a meeting of Beneficiaries in the manner and on the basis set out in the FMCA and the FMCR³⁹. A meeting of Members shall be conducted in accordance with the requirements of the FMCA and the FMCR⁴⁰.

³⁷ Section 461E.

³⁸ Section 218 of FMCA and regulations 108 and 109 of FMCR.

³⁹ Sections 161 to 163 of FMCA and regulation 83 of FMCR.

⁴⁰ Sections 162 and 163 of the FMCA and regulations 83 and 91 of (and Schedule 11 to) the FMCR.



19 CALCULATION OF PENSIONS

The rates of pensions, lump sums and allowances payable per year of Pensionable Service pursuant to Rules 23 to 25 and 33 to 35 shall be those which would have been payable under the corresponding provisions in the Existing Deed if the Existing Deed (including Appendices I and II) had continued applying as worded immediately before the Effective Date, PROVIDED THAT in each year the Trustee may at its discretion and effective on and from the next 1 October (*Review Date*) increase on an equitable basis all or any of those pension, lump sum or allowance rates using a methodology determined by it from time to time which takes into account (without limitation):

- (a) the objective of maintaining, as far as practicable, a constant relationship between Fund benefits and Standard Stipends and between Members' incomes before and after retirement;
- (b) the rates of increase in Standard Stipends since the immediately preceding Review Date;
- (c) the percentage, if any, by which the all groups index number of the CPI for the quarter ended on the latest 31 March exceeds the corresponding index number for the quarter ended 31 March in the previous calendar year;
- (d) the rates and amounts of New Zealand superannuation payable under Part 1 of the New Zealand Superannuation and Retirement Income Act 2001, and any increases applied to those rates or amounts since the immediately preceding Review Date;
- (e) the Fund's estimated ratio of assets to accrued benefit liabilities as advised by the Actuary;
- (f) the advice of (and any recommendations from) the Actuary and other suitably qualified persons;
- (g) the nature of the investments and the investment performance of the Fund or and the extent to which gains are realised or unrealised;
- (h) taxation liabilities and provisions;
- (i) the liquidity of investments; and
- (j) such other matters as the Trustee may consider relevant.

20 RELATED PARTY TRANSACTIONS

- 20.1 The Trustee and any Related Party of the Trustee must not enter into a transaction that provides for a Related Party Benefit to be given, except as permitted by the FMCA⁴¹.
- 20.2 The Trustee must not acquire any new in-house asset contrary to the FMCA, and shall sell down any in-house assets held by the Fund to the extent required by the FMCA⁴².

⁴¹ Sections 172 to 175.

⁴² Section 176 and clause 39 of Schedule 4.



- 20.3 Neither the Trustee nor any Related Party shall be liable to account to the Fund or any Member for any profit, loss, fees, brokerage or commissions arising from any transaction entered into in accordance with Rule 20.1.
- 20.4 A failure to comply with Rule 20.1 does not affect the validity of a transaction (subject to any Court order to the contrary)⁴³.
- 20.5 The Trustee must provide the FMA with such reports on transactions that provide for Related Party Benefits as are required by the FMCR and the FMCR⁴⁴.

21 TRANSFERS TO ANOTHER SCHEME

Subject to Rule 42 (but without limiting Rules 43 and 44), if a Member who has become eligible to receive a benefit under these Rules becomes a member, or is eligible to become a member, of another Retirement Scheme or an Equivalent Overseas Scheme (*Transferee Scheme*) the Trustee shall if the Member requests in writing, instead of granting the Member the Benefit to which he or she is entitled under the Fund, transfer to the Transferee Scheme a lump sum equal to the value of that benefit.

⁴³ Section 173(6) of the Act.

⁴⁴ Section 147 and regulation 100.



PART TWO - DEFINED BENEFIT SECTION

22 CONTRIBUTIONS AND PURCHASE OF BACK SERVICE

Contributions

- 22.1 Every Member of the Defined Benefit Section domiciled in New Zealand (including Bishops consecrated prior to 1 January 1993), except those subject to any special conditions of membership (and excluding Deferred DBS Members), shall pay into the Fund each month on account of their membership of the Defined Benefit Section a Subscription calculated at 6% of the current Standard Stipend and deacons and priest assistants shall pay at a rate based on the Standard Stipend for a vicar or priest-in-charge after a period of no more than three years PROVIDED THAT a Bishop in receipt of the Standard Stipend for a vicar may elect to pay a Subscription under this Rule 22.1 based on the Standard Stipend. Every such Member shall be deemed to have authorised the Paying Authority to deduct such Subscription each month from their stipend and forward it to the Trustee.
- 22.2 Bishops ordained after 1 January 1993 who are Members of the Defined Benefit Section (excluding Deferred DBS Members) shall pay into the Fund each month on account of their membership of the Defined Benefit Section a Subscription calculated at 6% of the current Standard Stipend for vicars.
- 22.3 Members of the Fund within the Diocese of Polynesia shall pay into the Fund each month on account of their membership of the Defined Benefit Section a Subscription calculated at 5.5% of the total stipend including any taxable allowances (other than housing allowances) plus 1/12th thereof for housing. Every such Member shall be deemed to have authorised the Paying Authority to deduct such Subscription each month from their stipend and forward it to the Trustee.
- 22.4 Any person ordained a Bishop within the Diocese of Polynesia after 1 January 1993 shall pay a Subscription calculated at the rate of 5.5% of the highest total stipend including any taxable allowances (other than housing allowances) paid to a priest by the Diocese of Polynesia, plus 1/12th thereof for housing.
- 22.5 Every month each Paying Authority shall forward to the Trustee all Subscriptions due under, and a subsidy equal to 150% of each Member's Subscriptions in accordance with, Rules 22.1 to 22.4 (less any tax payable in accordance with the Income Tax Act). Responsibility for deducting and forwarding to the Commissioner any tax payable in accordance with the Income Tax Act rests with the Paying Authority.
- 22.6 Any Member of the Defined Benefit Section (excluding a Deferred DBS Member) not engaged in work with the Church but engaged in work connected with their vocation shall be required to make arrangements with their Paying Authority to pay Subscriptions and subsidies in accordance with whichever of Rules 22.1 to 22.4 applies, based on the Standard Stipend. Responsibility for deducting and forwarding to the Commissioner any tax payable in accordance with the Income Tax Act rests with the Paying Authority.
- 22.7 Where a full stipend is not paid a Member may elect to pay either a half Subscription or a three quarter Subscription. A commensurately reduced subsidy shall be paid to the Trustee in respect of such a Member in accordance with Rule 22.5.



- 22.8 Any Member of the Defined Benefit Section who has exercised the option in Rule 23.5(c) shall be required to pay Subscription and subsidy amounts in advance as determined by the Trustee.
- 22.9 Should payments of Subscription and subsidy under this Rule 22 fall into arrears for more than two years the Subscriber shall automatically become a Retained Member, PROVIDED THAT for Members who joined the Defined Benefit Section on or after 1 July 2007 each such deemed election shall last for a maximum of five years and must then be renewed.

Purchase of additional Pensionable Service

- 22.10 Any Member of the Defined Benefit Section (excluding a Deferred DBS Member) may request to pay, and may with the approval of the Trustee pay, such additional yearly Subscription or such lump sum as is determined by the Actuary, to qualify for receipt of an increased lump sum and pension not exceeding the maximum payable under this Part Two of the Rules (PROVIDED THAT unless such additional amount is deducted from stipend the Trustee must first undertake, with respect to the Member, enhanced customer due diligence as defined in section 10 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009).
- 22.11 If any Member who shall have paid the additional Subscription mentioned in Rule 22.10 retires on pension, or for any reason other than death ceases to serve, before completing the additional Pensionable Service purchase, such Member shall be credited with such additional Pensionable Service as the Trustee shall determine after obtaining the advice of the Actuary.
- 22.12 In the event of the death before retirement of a Member who was paying an additional Subscription under Rule 22.10 for the purchase of additional Pensionable Service under this Rule, such additional Subscription shall be regarded as having been fully paid.

Limits on Pensionable Service

- 22.13 Any Member of the Defined Benefit Section (excluding a Deferred DBS Member) who remains in work after reaching the age of 65 years may continue as a Subscriber until becoming an Annuitant PROVIDED THAT in no case shall the period of Pensionable Service exceed 42 years.
- 22.14 Any Member of the Defined Benefit Section who has made Subscriptions for 42 years of Pensionable Service and not retired may not make any further Contribution.

23 WITHDRAWAL OR RETIREMENT

- 23.1 A Member of the Defined Benefit Section who ceases to hold a Bishop's licence, or to be engaged in work with the Church, may not continue to be a Subscriber except as provided in Rule 23.5 (which specifies the options available, one of which the Member is required to take).
- 23.2 A Member of the Defined Benefit Section may elect to retire and to receive a lump sum and pension on or after attaining age 60. The rates of lump sums and pensions payable under this Part Two of the Rules on retirement at age 60 and on retirement during each subsequent year to age 65 shall be in accordance with Rule 19,



PROVIDED THAT the benefit shall not be less than the Member's own Subscriptions and/or Contributions to the Fund (up to the CFS Commencement Date) and then to the Defined Benefit Section, together with the Member's own subscriptions and/or contributions made to any previous scheme which have been transferred to the Fund before the CFS Commencement Date or for the Member's benefit as a Member of the Defined Benefit Section.

- 23.3 Where cessation of work shall have been by reason of ill health or incapacity and in circumstances which indicate that a return to any full-time work is unlikely, such Member may apply to the Trustee, through the Pension Committee, to receive an early pension. The application shall be accompanied by a recommendation from the Pension Committee and two medical certificates to be sent to a medical referee appointed by the Trustee. The Trustee may take such other medical advice as it sees fit and, if early retirement for ill health before age 65 is approved, may grant a lump sum and pension from the Defined Benefit Section based upon the Member's past and prospective Pensionable Service as determined by the Trustee.
- 23.4 In the event of the Member becoming an Annuitant under Rule 23.3, but later regaining capacity and entering into any full-time work, the annuity will forthwith cease, and membership of the Defined Benefit Section and liability for Subscriptions shall recommence if the Member is eligible under whichever of Rules 7.5, 7.6, 7.9 and 7.10 applies, PROVIDED THAT any subsequent lump sum and pension to be received at retirement on or after attaining age 60 may be adjusted by the Trustee taking into account the lump sum and/or pension payments already made to the Subscriber.
- 23.5 Where cessation of work with the Church has been on grounds other than ill health, or retirement on or after attaining age 60, the Member shall elect one of the following options (as applicable):
- (a) To cease making any further Contributions (if he or she remains a Subscriber) and, upon attaining the age of 60 or any time thereafter, receive a lump sum and pension in accordance with the years of Pensionable Service or Rule 24.8(a);
 - (b) Subject to Rules 23.6 and 23.7, to receive a refund of the Member's own Subscriptions and/or Contributions together with the Member's own personal subscriptions and/or contributions to any previous scheme which have been transferred to the Fund before the CFS Commencement Date, or for the Member's benefit as a Member of the Defined Benefit Section, with an allowance for interest as determined by the Trustee, except that where withdrawal from the Fund occurs when or after the Member has attained 50 years of age, and where the Member's Pensionable Service exceeds three years, the Trustee may if it so determines require that the Member exercise either the option in Rule 23.5(a) or the option in Rule 23.5(c). Any refund provided under this paragraph (b) shall be a complete discharge of the Trustee from any further liability to the Subscriber, or to any claimant on behalf of the Subscriber, from the Defined Benefit Section;
 - (c) Unless the Member is a Deferred DBS Member, to apply to the Trustee to remain a Subscriber to the Defined Benefit Section and continue to pay the Subscription and subsidy amounts required from time to time. The Trustee



shall have the absolute discretion to determine whether a Subscriber will be accepted for continuing membership under this paragraph (c) and a Subscriber wishing to exercise this option must apply to the Trustee within one month of ceasing qualifying employment or within such further period as the Trustee may determine. The Trustee shall advise the Subscriber of its decision; or

- (d) To apply to the Trustee to have such an amount as is actuarially determined in accordance with a standing resolution of the Trustee transferred to any other scheme established for the purpose of providing pensions and to which the Member has elected to belong.

Any Member who fails to make an election within two years from the time of entitlement to do so under the provisions of this Rule shall automatically become a Retained Member.

- 23.6 Any Member who elects to receive a refund of Subscriptions under Rule 23.5(b) shall receive in addition to the value of those Subscriptions a further sum calculated at 5% of that value for every year or part year as a Subscriber not exceeding 20 years.
- 23.7 Whenever a Member ceases contributing to the Defined Benefit Section and has three or fewer years of Pensionable Service the Trustee may if it so determines require the Member to withdraw from the Fund in terms of Rule 23.5(b).

24 LUMP SUM PAYMENTS AND PENSIONS

- 24.1 Where Rule 23.2 applies to a Member:

- (a) the period upon which the pension payable under Rule 23.2 is calculated shall not exceed 42 years; and
- (b) every application to retire on pension shall include a certificate from the applicant's Bishop (or, in the case of a Bishop, from the Primate) stating the date on which such retirement will take effect.

- 24.2 Having commenced receipt of a pension from the Defined Benefit Section an Annuitant may accept any employment and such employment shall not affect the pension.
- 24.3 In the event of a Member of the Defined Benefit Section dying in service or during Leave of Absence before the age of 65 years and being survived by a spouse the lump sum and pension payable from the Defined Benefit Section shall be calculated on the deceased Member's past and prospective period of Pensionable Service up to age 65 and shall be paid to the Widow/er, PROVIDED THAT the period upon which such lump sum and pension shall be calculated shall not exceed 42 years and shall exclude the period from the commencement of Leave of Absence to the date of the Member's death.
- 24.4 If a Member of the Defined Benefit Section shall die in service or during Leave of Absence before the age of 65 years without leaving a Widow/er or any other dependant, there shall be paid to the Member's estate under this Rule 24.4 such sum as the Trustee shall determine from time to time.



- 24.5 Notwithstanding Rule 25.6, if a Member of the Defined Benefit Section shall die in service or during Leave of Absence before the age of 65 years without leaving a Widow/er, but leaving child dependant(s), there shall be paid to or for the benefit of such children under this Rule 24.5 such lump sum and pension amounts (not exceeding in aggregate the amount to which the Member's Widow/er would have been entitled) as the Trustee shall determine in any individual case.
- 24.6 In all cases of death in service, the lump sum shall be payable immediately and the pension shall be payable from the first day of the month during which the Member died.
- 24.7 Where a full stipend was not paid and a Member had elected to pay a half Subscription or a three quarter Subscription for which a subsidy had been paid in accordance with Rule 22.7, a half rate or three quarter rate lump sum and pension shall be paid for those years for which (as applicable) a half Subscription or a three quarter Subscription and subsidy had been paid.
- 24.8 Where an option has been exercised in accordance with Rule 23.5 a Member of the Defined Benefit Section may elect to receive a lump sum and pension from the Defined Benefit Section on or after attaining age 60, calculated on the Member's Pensionable Service and at the rate applying at the date of retirement, but modified (as necessary) as follows:
- (a) Where after retirement from clerical service the Member has paid no further Subscription and subsidy, the lump sum and pension shall be calculated on Pensionable Service PROVIDED THAT such Pensionable Service was not less than three years.
 - (b) Where the Member has continued to pay Subscriptions and subsidies due, the Member shall be entitled to a lump sum and pension in accordance with Rule 24.1.
 - (c) In the case of the death of any Retained Member, the Widow/er and/or dependants shall be entitled to a lump sum and pension paid in accordance with Rules 24.6 and 24.8(a), subject to an actuarial calculation as to the respective amounts of such lump sum and pension.
 - (d) Where a Retained Member is by reason of ill-health or incapacity in circumstances which indicate that a return to any full-time work is unlikely, the Retained Member may apply directly to the Trustee for an early pension from the Defined Benefit Section in accordance with the provisions of Rules 23.3 and 23.4. In the event of the Trustee agreeing to the application, the lump sum payable and the on-going pension shall be actuarially calculated on the basis of the years of Pensionable Service.
 - (e) Where the Member has exercised the option in Rule 23.5(c), and such Contributions are being received, the provisions of Rules 24.8(c) and 24.8(d) shall apply, except that the lump sum and pension receivable by either the Widow/er or the Member shall be based upon the years of Pensionable Service times the current applicable rate for lump sum and pension under Rule 19 as at age 65 irrespective of the age of the deceased or incapacitated Member.



Such lump sum and pension shall be paid in accordance with Rule 24.6 subject to the proviso in Rule 24.8(a).

24.9 Whenever the Trustee shall alter the rates of lump sums and pensions payable from the Defined Benefit Section such alterations shall apply to current and prospective pensions.

- (a) **A Bishop consecrated prior to 1 March 1988** who is a Member of the Defined Benefit Section and who has served not less than ten years as a Bishop at time of retirement shall be paid a lump sum and pension from the Defined Benefit Section both calculated at the Bishops' rate for pension on the years and months of Pensionable Service as a deacon and/or priest and Bishop. If a Bishop has less than ten years' service as a Bishop the lump sum and pension receivable shall be determined by the Trustee, after taking actuarial advice, but shall be not less than the priests' rate.
- (b) **For a Bishop consecrated after 1 March 1988 but before 1 January 1993** - On retirement a Bishop who is a Member of the Defined Benefit Section shall be paid a lump sum and pension from the Defined Benefit Section at the priests' rate for the years of Pensionable Service served as a deacon and/or priest and at the Bishops' rate for the years served as a Bishop.
- (c) **For a Bishop consecrated prior to 1 January 1993** - On retirement a Bishop who is a Member of the Defined Benefit Section and who elects to pay a Subscription at the priests' rate pursuant to Rule 22.1 shall be paid a lump sum and pension calculated at the rate for a priest.
- (d) **For a Bishop ordained after 1 January 1993** - On retirement a Bishop who is a Member of the Defined Benefit Section shall be paid a lump sum and pension at the priests' rate for all years of Pensionable Service.

24.10 Where Contributions have been paid to the Defined Benefit Section in terms of Rule 22.1 or Rule 22.2 in respect of any Subscriber serving overseas under the auspices of any associated body or related organisation (as determined by the Trustee) of the New Zealand Anglican Board of Missions that service shall be treated the same as service in New Zealand for calculation of Pensionable Service.

24.11 The lump sum pursuant to Rule 24.1 shall be payable on a Member's date of retirement. The first instalment of pension shall be payable as from the first day of retirement.

24.12 If a Member of the Defined Benefit Section should retire after attaining the age of 65 years a lump sum and pension shall be paid at the rate applicable at the actual date of retirement.

25 WIDOWS/ERS AND CHILDREN

25.1 The Widow/er of an Annuitant shall receive a pension at a rate calculated in accordance with Rule 19 based on the Annuitant's years of Pensionable Service.



- 25.2 The Widow/er of a deceased subscriber to or annuitant of any incorporated fund who has been in receipt of a widow/er's pension from such fund shall receive a pension at the rate calculated in accordance with Rule 19 based on the deceased subscriber's/annuitant's past and prospective period of service in the incorporated fund up to age 65 and subject to the maximum 42 years. In no case shall the payment be less than that which was being received from the incorporated fund.
- 25.3 In the case of a Subscriber who dies before reaching the retiring age prescribed in Rule 23.2 the Widow/er shall be entitled to a lump sum and pension at a rate calculated in accordance Rule 19, based on the deceased Subscriber's past and prospective Pensionable Service up to age 65 and subject to the maximum 42 years.
- 25.4 The Widow/er of a Subscriber or Annuitant who exercised an option in accordance with Rule 23.5 or a corresponding provision in the rules of any incorporated diocesan fund or who was subject to other special conditions shall be paid a lump sum (if due) and pension in accordance with Rules 24.8 and 25.1.
- 25.5 On the death of an Annuitant who has married after commencing receipt of a pension, the Widow/er shall not receive a pension under Part Two of these Rules except that where an annuitant of an incorporated fund shall have married prior to 1 January 1973 any provision made by that incorporated fund shall be the responsibility of the Trustee.
- 25.6 Each dependent child of a deceased Subscriber or Annuitant shall be paid an allowance (at a rate calculated in accordance with Rule 19) which is calculated:
- (a) in the case of a deceased Subscriber, on his or her past and prospective Pensionable Service up to age 65 (subject to the maximum 42 years); and
 - (b) in the case of a deceased Annuitant, in accordance with the Annuitant's years of Pensionable Service.
- Such allowances shall cease on attaining 18 years of age, commencing full employment, or death, whichever is the earliest, PROVIDED THAT the Trustee in its discretion may extend such aid beyond the age of 18 years and PROVIDED FURTHER that the total of the children's allowances and the Widow/er's pension shall not exceed the deceased Member's prospective pension from the Defined Benefit Section at age 65.
- 25.7 The provisions of Rule 25.6 shall not apply to dependent children arising out of a marriage occurring after commencing receipt of a pension except that where an annuitant of an incorporated fund shall have married prior to 1 January 1973 any provision by that incorporated fund shall be the responsibility of the Trustee.
- 25.8 The Trustee may pay allowances from the Defined Benefit Section in respect of dependent children to any parent or guardian of such children or to any other person or in any other manner as it may think fit according to the circumstances of individual cases.
- 25.9 Whenever the Trustee shall alter the rate of lump sums and pensions payable from the Defined Benefit Section, such alterations shall apply to children's allowances.



25.10 If a Subscriber should die while on Leave of Absence during which payment of Contributions has been suspended, the Widow/er will be entitled to receive a lump sum and a pension from the Defined Benefit Section (under Rule 25.3) calculated upon the deceased Subscriber's past and prospective Pensionable Service up to age 65 and subject to the maximum 42 years (less any period as a Subscriber to the Complying Fund Section) but excluding the period from the commencement of Leave of Absence to the date of the Subscriber's death.

25.11 Notwithstanding Rule 25.6, if an Annuitant shall die without leaving a Widow/er but leaving child dependant(s), there shall be paid to or for the benefit of such children under this Rule 25.11 such lump sum and pension amounts (not exceeding in aggregate the amount to which the Member's Widow/er would have been entitled) as the Trustee shall determine in any individual case.

26 **COMMUTATION**

26.1 Any Member of the Defined Benefit Section may apply, not more than six months prior to being entitled to a pension from the Defined Benefit Section or not more than three months after commencing receipt of a pension from the Defined Benefit Section, to have part of their pension paid as an additional lump sum by way of Commutation PROVIDED THAT such sum is used towards the purchase of a property by the Member intended to be used by the Member as a home, or that such sum is used toward the improvement, alteration or renovation of a property owned by the Member and intended to be used or already used by the Member as a home, or towards the payment of principal, interest, or other monies owing under any mortgage or other encumbrance on such property, or the Commutation is sought for such other purposes as the Trustee may determine and advise to the relevant Members from time to time, and PROVIDED FURTHER that the amount so commuted does not have the effect of reducing the pension otherwise payable by more than 25%, but the Trustee in its absolute discretion may approve an application to commute a higher percentage of the pension.

26.2 Applications for Commutation shall be made through the Pension Committee, which must forward each such application and any appropriate recommendation to the Trustee after ensuring that it is supported by:

- (a) an undertaking (where relevant) to apply the commuted amount exclusively for one or more of the purposes specified in or pursuant to Rule 26.1;
- (b) such further information as may be reasonably expected as a guide to the Trustee; and
- (c) an opinion by a medical practitioner as to the general health of the applicant.

26.3 The Widow/er of a Subscriber or Annuitant may apply for Commutation on the same conditions as prescribed above.

26.4 Having received an application the Trustee shall make a decision about the Commutation on the basis of the applicant's life expectancy, the advice of the Actuary, and any other relevant details.



- 26.5 Having received the required information the Trustee shall send its written decision to the applicant and the Pension Committee as soon as possible.
- 26.6 If the Trustee has offered a Commutation to the applicant it shall be necessary for the applicant to accept the offer within two months of receiving it. Such acceptance shall include a signed undertaking by the applicant in full satisfaction of all claims against the Fund in respect of the proportion of benefits so commuted. Failure to comply with this Rule means the application lapses and the annuity to which the applicant is entitled becomes payable.
- 26.7 When approval has been given to an application for Commutation and the undertaking required in Rule 26.6 has been given, and the applicant dies prior to the commuted amount being paid, the Commutation shall be carried to completion as if the applicant had not died PROVIDED THAT the Trustee may, in consultation with the Pension Committee and at its discretion, vary the decision to commute part of the applicant's pension if such variation will in the Trustee's view be of greater benefit to the applicant's Widow/er and/or dependent children.
- 26.8 The provisions of Rule 25.5 shall apply in respect of the Annuitant's or Widow/er's pension after Commutation.

27 ANNUITISATION

- 27.1 Any Member of the Defined Benefit Section may elect, not more than six months before becoming entitled to a pension or not more than three months after commencing receipt of a pension from the Defined Benefit Section, to have all or part of their lump sum paid as an additional pension by way of Annuitisation.
- 27.2 The Widow/er of a Subscriber may elect, not more than three months after commencing receipt of a pension from the Defined Benefit Section, to have all or part of any lump sum entitlement paid as an additional pension by way of Annuitisation.
- 27.3 Following an election under Rule 27.1 or 27.2 the Trustee shall determine the resulting additional pension amount on the basis of the Member's or the Widow/er's life expectancy, the advice of the Actuary and any other relevant details.
- 27.4 After the additional pension amount has been determined and communicated to the Member or the Widow/er, the Member or the Widow/er (as applicable) must within two months issue a signed undertaking in full satisfaction of all claims against the Fund in respect of the annuitised amount. Failure to comply with this Rule means the election lapses and the relevant lump sum becomes payable in full.
- 27.5 When the undertaking required under Rule 27.4 has been given, and the Member or Widow/er (as applicable) dies prior to any additional pension amount being paid, the Annuitisation shall be carried to completion as if the Member or Widow/er (as applicable) had not died PROVIDED THAT the Trustee may, at its discretion, reverse the Annuitisation if such reversal will in the Trustee's view be of greater benefit to the Widow/er and/or the Member's dependent children.



- 27.6 The provisions of Rule 25.5 shall apply in respect of the Annuitant's or Widow/er's pension after Annuitisation.

28 RECIPROCAL TRANSFERS PRIOR TO 1 JANUARY 1973

- 28.1 Any Subscriber who, prior to transfer to the Fund, has gained or lost periods of pensionable service as a result of reciprocal transfer between the constituent dioceses shall have the pension from the Defined Benefit Section calculated on a basis of actual service, less any period for which pension subscriptions were not received by the appropriate pension fund.
- 28.2 The provisions of this Rule shall not apply to any Subscriber involved in a reciprocal transfer after 1 January 1973 unless such transfer was being negotiated before then and took effect before 31 December 1973.

29 BECOMING COMPLYING FUND SECTION SUBSCRIBERS

- 29.1 Subject to the other provisions of these Rules, Subscribers (other than Clergy of the Diocese of Polynesia) who are below New Zealand Superannuation Age may, if and when permitted by the Trustee to make such elections, elect in accordance with this Rule 29 to cease to be Subscribers to the Defined Benefit Section and to become Subscribers to the Complying Fund Section.
- 29.2 An election under Rule 29.1 shall be made in writing and addressed to the Trustee in such form as the Trustee shall require, and shall take effect on a date determined by the Trustee and notified to the Subscriber (being a date on or after the date when the election is received by the Trustee).
- 29.3 An election made under Rule 29.1 shall be irrevocable.
- 29.4 When an election under Rule 29.1 takes effect:
- (a) the Subscriber will cease to be a Subscriber to the Defined Benefit Section and will become a Deferred DBS Member; and
 - (b) the Subscriber will become a Subscriber to the Complying Fund Section;
- and for the avoidance of doubt the Subscriber's Pensionable Service, for the purposes of this Part Two of the Rules, shall not include any period after the election takes effect.

30 DEFERRED DBS MEMBERS

- 30.1 Deferred DBS Members shall continue to be Members of the Defined Benefit Section, provided that a Deferred DBS Member shall not be entitled to contribute to the Defined Benefit Section after the Date of Election.
- 30.2 A Deferred DBS Member shall be deemed to be a "Subscriber" for the purposes of Rules 25.3, 25.4, 25.6, 25.10, 26.3 and 27.2.



PART THREE - COMPLYING FUND SECTION

31 CONTRIBUTIONS AND PURCHASE OF BACK SERVICE

Contributions

- 31.1 Every Member of the Complying Fund Section (including Bishops consecrated prior to 1 January 1993), except those subject to any special conditions of membership, shall pay into the Fund each month on account of their membership of the Complying Fund Section a Subscription calculated at 6% of the current Standard Stipend and deacons and priest assistants shall pay at a rate based on the Standard Stipend for a vicar or priest-in-charge after a period of no more than three years PROVIDED THAT a Bishop in receipt of the Standard Stipend for a vicar may elect to pay a Subscription under this Rule 31.1 based on the Standard Stipend. Every such Member shall be deemed to have authorised the Paying Authority to deduct such Subscription each month from their stipend and forward it to the Trustee.
- 31.2 Bishops ordained after 1 January 1993 who are Members of the Complying Fund Section shall pay into the Fund each month on account of their membership of the Complying Fund Section a Subscription calculated at 6% of the current Standard Stipend for vicars.
- 31.3 Every month each Paying Authority shall forward to the Trustee all Subscriptions due under, and a subsidy equal to 150% of each Member's Subscriptions in accordance with, Rules 31.1 and 31.2 (less any tax payable in accordance with the Income Tax Act). Responsibility for deducting and forwarding to the Commissioner any tax payable in accordance with the Income Tax Act rests with the Paying Authority.
- 31.4 Any Member of the Complying Fund Section not engaged in work with the Church but engaged in work connected with their vocation shall be required to make arrangements with their Paying Authority to pay Subscriptions and subsidies in accordance with Rule 31.1 based on the Standard Stipend. Responsibility for deducting and forwarding to the Commissioner any tax payable in accordance with the Income Tax Act rests with the Paying Authority.
- 31.5 Where a full stipend is not paid a Member may elect to pay a reduced Subscription as approved by the Trustee PROVIDED THAT 3% of the actual stipend being paid to the Member from time to time shall be the minimum Subscription. Where a reduced Subscription has been approved by the Trustee a commensurately reduced subsidy shall be paid to the Trustee in respect of such a Member in accordance with Rule 31.3.
- 31.6 Any Member of the Complying Fund Section who has exercised the option in Rule 33.5(c) shall be required to pay Subscription and subsidy amounts in advance as determined by the Trustee.
- 31.7 Should payments of Subscription and subsidy under this Rule 31 fall into arrears for more than two years the Subscriber shall then be deemed to have made an election under Rule 33.5(a), PROVIDED THAT each such deemed election shall last for a maximum of five years and must then be renewed.



Purchase of additional Pensionable Service

- 31.8 Any Member of the Complying Fund Section may request to pay, and may with the approval of the Trustee pay, such additional yearly Subscription or such lump sum to the Complying Fund Section as is determined by the Actuary, to qualify for receipt of an increased Complying Fund Section Pension not exceeding the maximum payable under this Part Three of the Rules (PROVIDED THAT unless such additional amount is deducted from stipend the Trustee must first undertake, with respect to the Member, enhanced customer due diligence as defined in section 10 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009).
- 31.9 If any Member of the Complying Fund Section who shall have paid the additional Subscription mentioned in Rule 31.8 retires on pension, or for any reason other than death ceases to serve, before completing the additional Pensionable Service purchase, such Member shall be credited with such additional Pensionable Service as the Trustee shall determine after obtaining the advice of the Actuary.
- 31.10 In the event of the death before retirement of a Member who was paying an additional Subscription under Rule 31.8 for the purchase of additional Pensionable Service under this Rule, such additional Subscription shall be regarded as having been fully paid.

Limits on Pensionable Service

- 31.11 Any Member of the Complying Fund Section who remains in work after reaching the age of 65 years may continue as a Subscriber to the Complying Fund Section until becoming an Annuitant PROVIDED THAT in no case shall the period of Pensionable Service (including, for the purposes of this Rule 31.11, Pensionable Service under Part Two of these Rules) exceed 42 years.
- 31.12 Any Member of the Complying Fund Section who has made Subscriptions for 42 years of Pensionable Service (including, for the purposes of this Rule 31.12, Pensionable Service under Part Two of these Rules) and not retired may not make any further contribution to the Fund, except as may be required by Rule 38.1(b).

32 APPLICATION OF CONTRIBUTIONS

- 32.1 The Trustee shall allocate Subscriptions received from Subscribers to the Complying Fund Section as follows:
- (a) if the Trustee has created and maintains a Lock-in Facility then, subject to Rule 38.2, the portion of each Subscription received equating to 3% of the relevant Standard Stipend (or, if Rule 31.5 applies, 3% of the actual stipend being paid to the Member from time to time) shall be allocated to an account in the Complying Fund Section in the name of the Subscriber called the Locked-in Account; and
 - (b) the balance (if any) of each Subscription received shall be paid to the Fund on an unallocated basis for the purpose of applying a corresponding amount towards paying a Complying Fund Section Pension.
- 32.2 For Subscribers to the Complying Fund Section to whom Rule 32.3 does not apply, the Trustee shall allocate subsidies received from Paying Authorities as follows (with



the rate of pension payable with respect to the relevant period of Pensionable Service being a rate calculated in accordance with Rule 19):

- (a) if the Trustee has created and maintains a Lock-in Facility then, subject to Rule 38.2, the portion of each subsidy received equating to 4% of the relevant Standard Stipend (or, if Rule 31.5 applies and the Member is paying a lesser amount, 4% of the actual stipend being paid to the Member from time to time) shall be allocated to the Locked-in Account maintained for the Subscriber; and
- (b) the balance (if any) of each subsidy received (less any applicable contribution tax) shall be paid to the Fund on an unallocated basis for the purpose of applying a corresponding amount towards paying a Complying Fund Section Pension.

32.3 If a Member first became a Subscriber to the Complying Fund Section on or after 1 April 2009 (or if the Trustee elects that this Rule 32.3 shall apply to the Member) then, effective from the later of the date when the Trustee's election takes effect and the date when the Member first becomes a Subscriber to the Complying Fund Section, the Trustee shall allocate the subsidy received from the relevant Paying Authority in relation to that Member as follows:

- (a) if the Trustee maintains a Lock-in Facility then, subject to Rule 38.2, the portion of each subsidy received equating to 3% of the relevant Standard Stipend (or, if Rule 31.5 applies, 3% of the actual stipend being paid to the Member from time to time) shall be allocated to the Locked-in Account maintained for the Subscriber; and
- (b) the balance (if any) of each subsidy received (less any applicable contribution tax) shall be paid to the Fund on an unallocated basis for the purpose of applying a corresponding amount towards paying a Complying Fund Section Pension.

33 **WITHDRAWAL OR RETIREMENT**

33.1 Any Member of the Complying Fund Section who ceases to hold a Bishop's licence, or to be engaged in work with the Church, may not continue to be a Subscriber except as provided in Rule 33.5 (which specifies the options available, one of which the Member is required to take).

33.2 A Member of the Complying Fund Section may elect to retire and to commence a pension on or after attaining age 60. The rates of pensions payable under this Part Three of the Rules on retirement at age 60 and on retirement during each subsequent year to age 65 shall be calculated in accordance with Rule 19, PROVIDED THAT the pension benefit shall not be less than:

- (a) the Member's own Subscriptions and/or Contributions to the Complying Fund Section; together with
- (b) the Member's own subscriptions and/or contributions made to any previous scheme which have been transferred to the Complying Fund Section;

excluding, in each case, those allocated to the Member's Locked-in Account.



- 33.3 Where cessation of work shall have been by reason of ill health or incapacity and in circumstances which indicate that a return to any full-time work is unlikely, such Member may apply to the Trustee, through the Pension Committee, to receive an early pension. The application shall be accompanied by a recommendation from the Pension Committee and two medical certificates to be sent to a medical referee appointed by the Trustee. The Trustee may take such other medical advice as it sees fit and, if early retirement for ill health before age 65 is approved, may grant a pension from the Complying Fund Section based upon the Member's past and prospective Pensionable Service as determined by the Trustee.
- 33.4 In the event of the Member becoming an Annuitant under Rule 33.3, but later regaining capacity and entering into any full-time work, the annuity will forthwith cease, and Membership of the Complying Fund Section and liability for Subscriptions shall recommence if the Member is eligible under either of Rules 7.7 and 7.8, PROVIDED THAT any subsequent pension to be received at normal retirement age may be adjusted by the Trustee taking into account the pension payments already made to the Subscriber.
- 33.5 Where cessation of work with the Church has been on grounds other than ill health or retirement, the Member shall elect one of the following options:
- (a) To cease making any further Contributions to the Complying Fund Section and, upon attaining the age of 60 or any time thereafter, receive a pension in accordance with the years of Pensionable Service or Rule 34.8(a);
 - (b) Subject to Rules 33.6 and 33.7, to receive a refund of the Member's own Subscriptions and/or Contributions (excluding those allocated to the Member's Locked-in Account) together with the Member's own personal subscriptions and/or contributions to any previous scheme which have been transferred to the Complying Fund Section (excluding those allocated to the Member's Locked-in Account), with an allowance for interest as determined by the Trustee, except that where cessation of work occurs when or after the Member has attained age 50, and where the Member's Pensionable Service exceeds three years, the Trustee may if it so determines require that the Member exercise either the option in Rule 33.5(a) or the option in Rule 33.5(c). Any refund provided under this paragraph (c) shall be a complete discharge of the Trustee from any further liability to the Subscriber, or to any claimant on behalf of the Subscriber, from the Complying Fund Section;
 - (c) To apply to the Trustee to remain a Subscriber to the Complying Fund Section and continue to pay the Subscription and subsidy amounts applying from time to time with respect to the provision of Complying Fund Section Pensions. The Trustee shall have the absolute discretion to determine whether a Subscriber will be accepted for continuing membership under paragraph (c) and a Subscriber wishing to exercise this option must apply to the Trustee within one month of ceasing qualifying employment or within such further period as the Trustee may determine. The Trustee shall advise the Subscriber of its decision;
 - (d) To apply to the Trustee to have such an amount as is actuarially determined in accordance with a standing resolution of the Trustee (excluding any of the



Member's Locked-in Balance) transferred to any other scheme established for the purposes of providing pensions and to which the Member has elected to belong.

Any Member who fails to make an election within two years from the time of entitlement to do so under the provisions of this Rule shall be deemed to have made an election under Rule 33.5(a).

33.6 Any Member who elects to receive a refund of Subscriptions under Rule 33.5(b) shall receive in addition to the value of those Subscriptions a further sum calculated at 5% of that value for every year or part year of subscribing membership under this Part Three of the Rules but not exceeding 20 years.

33.7 Whenever a Member ceases contributing to the Complying Fund Section and has three or fewer years of Pensionable Service the Trustee may if it so determines require the Member to withdraw from the Fund in the terms of Rule 33.5(b).

34 **PENSIONS**

34.1 Where Rule 33.2 applies to a Member:

- (a) the period upon which the pension payable under Rule 33.2 is calculated shall not exceed 42 years; and
- (b) every application to retire on pension shall include a certificate from the applicant's Bishop (or, in the case of a Bishop, from the Primate) stating the date on which such retirement will take effect.

34.2 Having commenced receipt of a pension from the Complying Fund Section, an Annuitant may accept any employment and such employment shall not affect the pension.

34.3 In the event of a Member of the Complying Fund Section dying in service or during Leave of Absence before the age of 65 years and being survived by a spouse the pension payable from the Complying Fund Section shall be calculated on the deceased Member's past and prospective Pensionable Service up to age 65 and shall be paid to the Widow/er, PROVIDED THAT the period upon which such lump sum and pension shall be calculated shall not exceed 42 years and shall exclude the period from the commencement of Leave of Absence to the date of the Member's death.

34.4 If a Member of the Complying Fund Section shall die in service or during Leave of Absence before the age of 65 years without leaving a Widow/er or any other dependant, there shall be paid to the Member's estate from the Complying Fund Section (in addition to the Member's Locked-in Balance) such sum as the Trustee shall determine from time to time.

34.5 Notwithstanding Rule 35.5, if a Member of the Complying Fund Section shall die in service or during Leave of Absence before the age of 65 years without leaving a Widow/er, but leaving child dependant(s), there shall be paid to or for the benefit of such children from the Complying Fund Section such pension amount(s) (not



exceeding in aggregate the amount to which the Member's Widow/er would have been entitled) as the Trustee shall determine in any individual case.

- 34.6 In all cases of death in service, the lump sum shall be payable immediately and the pension shall be payable from the first day of the month during which the Member died.
- 34.7 Where a full stipend was not paid and a Member had elected to pay a reduced Subscription under Rule 31.5 for which a subsidy had been paid, a proportionately reduced pension shall be paid for those years for which a lesser Subscription and subsidy had been paid towards a Complying Fund Section Pension, as determined by the Trustee, and no pension shall be paid for those years for which no Subscription or subsidy has been paid under this Part Three of the Rules other than to the Member's Locked-in Account.
- 34.8 Where an option has been exercised in accordance with Rule 33.5 a Member may elect to receive a pension from the Complying Fund Section on or after attaining age 60, calculated on the Member's Pensionable Service and at the rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Member) applying at the date of retirement, but modified (as necessary) as follows:
- (a) Where after retirement from clerical service the Member has paid no further Subscription and subsidy, the pension shall be calculated on Pensionable Service PROVIDED THAT such Pensionable Service was not less than three years;
 - (b) Where the Member has continued to pay Subscriptions and subsidies due, the Member shall be entitled to a pension in accordance with Rule 34.1;
 - (c) In the case of the death of any Retained Member, the Widow/er and/or dependants shall be entitled to a pension paid in accordance with Rules 34.6 and 34.8(a), subject to an actuarial calculation as to the amount of such pension;
 - (d) Where a Retained Member is by reason of ill-health or incapacity in circumstances which indicate that a return to any full-time work is unlikely, the Retained Member may apply directly to the Trustee for an early pension from the Complying Fund Section in accordance with the provisions of Rules 33.3 and 33.4. In the event of the Trustee agreeing to the application, the pension shall be actuarially calculated on the basis of the years of Pensionable Service;
 - (e) Where the Member has exercised the option in Rule 33.5(c), and such Contributions are being received, the provisions of Rules 34.8(c) and 34.8(d) shall apply, except that the pension receivable by either the Widow/er or the Member shall be based upon the years of Pensionable Service times the current applicable pension rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Member) calculated in accordance with Rule 19 as at age 65 irrespective of the age of the deceased or incapacitated Member. Such pension shall be paid in accordance with Rule 34.6, subject to the proviso in Rule 34.8(a).



- 34.9 Whenever the Trustee shall alter the rates of pensions payable from the Complying Fund Section such alterations shall apply to current and prospective pensions.
- 34.10 **A Bishop consecrated prior to 1 March 1988** - who is a Member of the Complying Fund Section and has served not less than ten years as a Bishop at the time of retirement shall be paid a pension from the Complying Fund Section calculated at the Bishops' rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Member) for pension on the years and months of Pensionable Service as a deacon and/or priest and Bishop. If a Bishop has less than ten years' service as a Bishop the pension receivable shall be determined by the Trustee, after taking actuarial advice, but shall be not less than the priests' rate.
- 34.11 **For a Bishop consecrated after 1 March 1988 but before 1 January 1993** - On retirement a Bishop who is a Member of the Complying Fund Section shall be paid a pension from the Complying Fund Section at the priests' rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Member) for the years of Pensionable Service served as a deacon and/or priest and at the Bishops' rate for the years served as a Bishop.
- 34.12 **For a Bishop consecrated prior to 1 January 1993** - On retirement a Bishop who is a Member of the Complying Fund Section and who elects to pay a Subscription to the Complying Fund Section at the priests' rate pursuant to Rule 31.1 shall be paid a pension calculated at the rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Member) for a priest.
- 34.13 **For a Bishop ordained after 1 January 1993** - On retirement a Bishop shall be paid a pension at the priests' rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Member) for all years of Pensionable Service.
- 34.14 Where Contributions have been paid to the Complying Fund Section in terms of Rule 31.1 or Rule 31.2 in respect of any Subscriber serving overseas under the auspices of any associated body or related organisation (as determined by the Trustee) of the New Zealand Anglican Board of Missions that service shall be treated the same as service in New Zealand for calculation of Pensionable Service.
- 34.15 The first instalment of pension payable pursuant to Rule 34.1 shall be payable as from the first day of retirement.
- 34.16 If a Member of the Complying Fund Section should retire after attaining the age of 65 years a pension shall be paid at the rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Member) applicable at the actual date of retirement.

35 **WIDOWS/ERS AND CHILDREN**

- 35.1 The Widow/er of an Annuitant shall receive a pension at the rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Annuitant) calculated in accordance with Rule 19 based on the Annuitant's years of Pensionable Service.



- 35.2 In the case of a Subscriber who dies before reaching the retiring age prescribed in Rule 33.2 the Widow/er shall be entitled to a pension at the rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Subscriber) calculated in accordance with Rule 19 and based on the deceased Subscriber's past and prospective Pensionable Service up to age 65 and subject to the maximum 42 years (less any period as a Subscriber to the Fund other than under this Part Three of the Rules).
- 35.3 The Widow/er of a Subscriber or Annuitant who exercised an option in accordance with Rule 33.5 shall be paid a pension from the Complying Fund Section in accordance with Rules 34.8 and 35.1.
- 35.4 On the death of an Annuitant who has married after commencing receipt of a pension, the Widow/er shall not receive a pension under Part Three of these Rules.
- 35.5 Each dependent child of a deceased Subscriber or Annuitant shall be paid an allowance, at a rate (or blended rate, where two or more of Rules 32.2(a), 32.3(a) and 38.2 have applied to the Member) calculated in accordance with Rule 19, which is based:
- (a) in the case of a deceased Subscriber, on his or her past and prospective Pensionable Service up to age 65 (subject to the maximum 42 years, less any period as a Subscriber to the Fund other than under this Part Three of the Rules); and
 - (b) in the case of a deceased Annuitant, on the Annuitant's years of Pensionable Service.
- Such allowances shall cease on attaining 18 years of age, commencing full employment, or death, whichever is the earliest, PROVIDED THAT the Trustee in its discretion may extend such aid beyond the age of 18 years and PROVIDED FURTHER that the total of the children's allowances and the Widow/er's pension shall not exceed the deceased Member's prospective pension from the Complying Fund Section at age 65.
- 35.6 The provisions of Rule 35.5 shall not apply to dependent children arising out of a marriage occurring after commencing receipt of a pension.
- 35.7 The Trustee may pay allowances from the Complying Fund Section in respect of dependent children to any parent or guardian of such children or to any other person or in any other manner as it may think fit according to the circumstances of individual cases.
- 35.8 Whenever the Trustee shall alter the rates of pensions payable from the Complying Fund Section, such alterations shall apply to children's allowances.
- 35.9 If a Subscriber should die while on Leave of Absence during which payment of Contributions has been suspended, the Widow/er will be entitled to receive a pension from the Complying Fund Section (under Rule 35.2) calculated upon the deceased Subscriber's past and prospective Pensionable Service up to age 65 and subject to the maximum 42 years (less any period as a Subscriber to the Fund other



than under this Part Three of the Rules) but excluding the period from the commencement of Leave of Absence to the date of the Subscriber's death.

- 35.10 Notwithstanding Rule 35.5, if an Annuitant shall die without leaving a Widow/er but leaving child dependant(s), there shall be paid to or for the benefit of such children under this Rule 35.10 such pension amounts (not exceeding in aggregate the amount to which the Member's Widow/er would have been entitled) as the Trustee shall determine in any individual case.

36 **COMMUTATION**

- 36.1 Any Member of the Complying Fund Section may apply, not more than six months prior to being entitled to a Complying Fund Section Pension or not more than three months after commencing receipt of a Complying Fund Section Pension, to have part of that pension paid as an additional lump sum by way of Commutation PROVIDED THAT such sum is used towards the purchase of a property by the Member intended to be used by the Member as a home, or that such sum is used toward the improvement, alteration or renovation of a property owned by the Member and intended to be used or already used by the Member as a home, or towards the payment of principal, interest, or other monies owing under any mortgage or other encumbrance on such property, or the Commutation is sought for such other purposes as the Trustee may determine and advise to the relevant Members from time to time, and PROVIDED FURTHER that the amount so commuted does not have the effect of reducing the pension otherwise payable by more than 25%, but the Trustee in its absolute discretion may approve an application to commute a higher percentage of the pension.
- 36.2 Applications for Commutation shall be made through the Pension Committee, which must forward each such application and any appropriate recommendation to the Trustee after ensuring that it is supported by:
- (a) an undertaking to apply the commuted amount exclusively for one or more of the purposes specified in or pursuant to Rule 36.1;
 - (b) such further information as may be reasonably expected as a guide to the Trustee; and
 - (c) an opinion by a medical practitioner as to the general health of the applicant.
- 36.3 The Widow/er of a Subscriber or Annuitant may apply for Commutation on the same conditions as prescribed above.
- 36.4 Having received an application the Trustee shall make a decision about the Commutation on the basis of the applicant's life expectancy, the advice of the Actuary, and any other relevant details.
- 36.5 Having received the required information the Trustee shall send its written decision to the applicant and the Pension Committee as soon as possible.
- 36.6 If the Trustee has offered a Commutation to the applicant it shall be necessary for the applicant to accept the offer within two months of receiving it. Such acceptance shall include a signed undertaking by the applicant in full satisfaction of all claims



against the Fund in respect of the proportion of benefits so commuted. Failure to comply with this Rule means the application lapses and the annuity to which the applicant is entitled becomes payable.

- 36.7 When approval has been given to an application for Commutation and the undertaking required in Rule 36.6 has been given, and the applicant dies prior to the commuted amount being paid, the Commutation shall be carried to completion as if the applicant had not died PROVIDED THAT the Trustee may, in consultation with the Pension Committee and at its discretion, vary the decision to commute part of the applicant's pension if such variation will in the Trustee's view be of greater benefit to the applicant's Widow/er and/or dependent children.
- 36.8 The provisions of Rule 35.4 shall apply in respect of the Annuitant's or Widow/er's pension after Commutation.

37 ANNUITISATION OF LOCKED-IN BENEFITS

- 37.1 Any Member of the Complying Fund Section may elect, not more than six months before becoming entitled to a lump sum from their Locked-in Account (and no later than five working days before the date when that lump sum becomes payable), to have all or part of that lump sum paid as an additional pension by way of Annuitisation.
- 37.2 Following an election under Rule 37.1 the Trustee shall determine the resulting additional pension amount on the basis of the Member's life expectancy, the advice of the Actuary, and any other relevant details.
- 37.3 After the pension amount has been determined and communicated to the Member, the Member must within two months issue a signed undertaking in full satisfaction of all claims against the Fund in respect of the annuitised amount. Failure to comply with this Rule means the application lapses and the relevant lump sum becomes payable in full.
- 37.4 When the undertaking required under Rule 37.3 has been given, and the Member dies prior to any additional pension amount being paid, the Annuitisation shall not proceed and a lump sum comprising the Member's Locked-in Balance shall be paid to the Member's estate.

38 LOCK-IN FACILITY

- 38.1 While the Fund is a Complying Superannuation Fund, the Trustee may at any time and from time to time create and maintain a facility whereby a Member who joins the Complying Fund Section is deemed to have agreed forthwith with the Member's Paying Authority that:
- (a) the portions of (respectively) the Subscriptions and the subsidy paid to the Fund or credited for that Member's benefit that are described in Rules 32.1(a) and (as applicable) 32.2(a) and 32.3(a) will be subject to the Lock-in Rules; and
 - (b) the Contributions paid or credited to the Member's Locked-in Account will comprise (to the maximum extent permitted by law) any compulsory



employer contributions required to be paid or credited for the benefit of that Member under the KiwiSaver Act.

- 38.2 The total amount of Subscriptions and subsidies credited to a Member's Locked-in Account must not be less than the minimum amount or rate required to be contributed to a Complying Superannuation Fund under the Complying Fund Rules (as amended or replaced from time to time).
- 38.3 The Subscriptions and subsidies paid to a Member's Locked-in Account will be used to fund benefits that are calculated only by reference to the amount of the Locked-in Balance from time to time.
- 38.4 After determining the net market value of the assets held for Members' Locked-in Accounts using a methodology determined by it from time to time, the Trustee shall determine from time to time (but no less frequently than as at quarterly intervals) a rate of investment earnings to apply to each Member's Locked-in Balance from time to time (whether positive, negative or zero) using a methodology determined by the Trustee from time to time and taking into account (without limitation):
- (a) the nature of the investments and the investment performance of the Fund and the extent to which gains are realised or unrealised;
 - (b) any taxation liabilities and provisions;
 - (c) the liquidity of investments; and
 - (d) such other matters as the Trustee may consider relevant;
- and after deducting any amounts that the Trustee considers appropriate to provide for expenses, fees, charges or costs associated with the operation and administration of the Fund and the investments of the Fund.
- 38.5 A Member may with the agreement of the Trustee (and subject to such conditions as the Trustee may impose) contribute to his or her Locked-in Account from time to time a lump sum or lump sums of any amount, PROVIDED THAT:
- (a) the total amount of contributions made by the Member under this Rule 38.5 in any year (as defined in section MK 1(3) of the Income Tax Act), when combined with the contributions deducted from the Member's stipend during that year, shall not exceed the amount which generates the Member's maximum tax credit for that year under section MK 4 of the Income Tax Act; and
 - (b) the contributions made by a Member under this Rule 38.5 shall not attract any additional subsidy payments from the Member's Paying Authority.
- 38.6 When a Member becomes entitled to withdraw an amount from their Locked-in Account:
- (a) returns as determined by the Trustee shall be credited or debited in respect of the benefit then payable (using a methodology determined by the Trustee from time to time) for the period between:
 - (i) the last date at which returns were credited or debited with returns in accordance with Rule 38.4; and



- (ii) the date on which the entitlement to the benefit arose; and
- (b) earnings as determined by the Trustee may, at the Trustee's discretion, be credited or debited in respect of the benefit then payable (using a methodology determined by the Trustee from time to time) for the period between:
 - (i) the date on which the entitlement to the benefit arose; and
 - (ii) the date on which the benefit is paid.

39 **RATE OF RETURN CORRECTIONS**

39.1 The Trustee shall to the extent required by the FMCA⁴⁵ and the FMCR⁴⁶:

- (a) correct any material error or non-compliance in the returns applied to Members' Locked-in Balances from time to time pursuant to Rule 38.4 or Rule 38.6; and
- (b) take any steps prescribed in that regard by any applicable law;

PROVIDED THAT if the amount of any reimbursement or compensation required (after all relevant earnings adjustments have been made) is less than such minimum level of reimbursement or compensation as the Trustee may determine from time to time then no reimbursement or compensation shall be required to be provided.

39.2 The Trustee shall report to the FMA any material error in the returns applied to Members' Locked-in Balances from time pursuant to Rule 38.4 or Rule 38.6, or any material non-compliance with an FMA notice relating to pricing methodology, to the extent required by law⁴⁷.

39.3 The Trustee shall, as soon as is reasonably practicable, take all reasonable steps (in consultation with FMA) to notify disadvantaged current or former Members of any such error, and of any action that has been taken to compensate or reimburse those persons, to the extent required by the FMCA⁴⁸.

40 **PAYMENTS AND WITHDRAWALS FROM LOCKED-IN ACCOUNTS**

40.1 Subject to the other provisions of this Rule 40, a Member may not make a withdrawal from the Member's Locked-in Account before the Locked-in Payment Date, or a date after that date. Any withdrawal under this Rule 40 is payable as a lump sum unless the Member elects and is permitted to annuitise all or any of that lump sum in accordance with Rule 38.

Release of Locked-in Balance on or after Locked-in Payment Date

40.2 A Member is entitled to withdraw all or any of the Member's Locked-in Balance on or after the Locked-in Payment Date.

⁴⁵ Section 168.

⁴⁶ Regulations 97 to 99.

⁴⁷ Section 168 FMCA and regulations 97 to 99 of FMCR.

⁴⁸ Section 168 of FMCA and regulations 97 to 99 of FMCR.



- 40.3 Nothing in Rule 40.2 requires a Member to withdraw all or any of the Locked-in Balance on or after the Locked-in Payment Date.

Release of Locked-in Balance under legislation

- 40.4 The Trustee must comply with the provisions of any enactment requiring it to release funds from a Member's Locked-in Account (up to a maximum of the Locked-in Balance) in accordance with that statute.
- 40.5 The requirement under Rule 40.4 includes a requirement by order of any court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

Release of Locked-in Balance on death

- 40.6 If a Member dies then the Trustee must, on application by that Member's Personal Representative, pay to that person an amount that is equal to the Member's Locked-in Balance at the date on which the application is accepted as part of the Member's estate.

Release of Locked-in Balance for purpose of home purchase

- 40.7 A Member may apply to the Trustee to withdraw a lump sum comprising some of the Member's Locked-in Balance if the Member intends to purchase an estate in land in a circumstance specified in clause 8 of the KiwiSaver Scheme Rules.
- 40.8 The Trustee in its absolute discretion may permit such withdrawal if, treating the period during which the Member was a member of the Complying Fund Section and/or one or more KiwiSaver Schemes as membership of a KiwiSaver Scheme, the Trustee is satisfied, based on whatever supporting evidence it may reasonably require, that clause 8 of the KiwiSaver Scheme Rules would enable the withdrawal.

Release of Locked-in Balance in cases of Significant Financial Hardship

- 40.9 In cases of Significant Financial Hardship a Member may apply to the Trustee to withdraw a lump sum comprising some or all of the Member's Locked-in Balance.
- 40.10 The Trustee may in its absolute discretion permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Member's membership of the Complying Fund Section were membership of a KiwiSaver Scheme, clause 10 of the KiwiSaver Scheme Rules would enable the withdrawal.

Release of Locked-in Balance in cases of Serious Illness

- 40.11 A Member who has a Serious Illness may apply to the Trustee to withdraw a lump sum comprising some or all of the Member's Locked-in Balance.
- 40.12 The Trustee may in its absolute discretion permit such withdrawal if reasonably satisfied (based on whatever supporting evidence it may reasonably require) that the Member has a Serious Illness.

Release of Locked-in Balance in cases of permanent emigration

- 40.13 A Member may apply to the Trustee to withdraw some or all of the Member's Locked-in Balance, or to transfer the Member's Locked-in Balance to an overseas Retirement Scheme, in the case of permanent emigration from New Zealand.



40.14 The Trustee may in its absolute discretion permit such withdrawal or transfer if satisfied (based on whatever supporting evidence it may reasonably require) that, if the Member's membership of the Fund was membership of a KiwiSaver Scheme, clause 14 of the KiwiSaver Scheme Rules would enable the withdrawal of transfer.

Procedure for applications

40.15 Any application under this Rule 40 shall be in writing, addressed and delivered or posted to the Trustee or an authorised representative of the Trustee, and shall be accompanied by whatever supporting evidence the Trustee may reasonably require.

General

40.16 If a Member will be entitled within two months to withdraw an amount under Rule 40.2 the Trustee must send a notice to the Commissioner stating the date on which the Member will be entitled to withdraw.

40.17 This Rule 40 is subject to Rule 45.

41 TRANSFERS - GENERAL

41.1 The Trustee may only transfer all or part of a Member's Locked-in Balance to another Retirement Scheme if that scheme is a KiwiSaver Scheme or a Complying Superannuation Fund, and:

- (a) in the case of a transfer to a KiwiSaver Scheme, any requirements imposed on the Trustee by the KiwiSaver Act with respect to the transfer are met; and
- (b) in the case of a transfer to a Complying Superannuation Fund, the manager of the Complying Superannuation Fund has notified the Trustee that the amount transferred will be subject to Complying Fund Rules;

provided that consent to the transfer shall first be obtained from the manager of the other scheme (the "new fund provider").

41.2 If any amount is transferred out of the Fund under Rule 42 or Rule 43, then:

- (a) the receipt of the trustees of the KiwiSaver Scheme or of the other Complying Superannuation Fund shall be a complete discharge to the Trustee of all liability in respect of the transferred amount; and
- (b) the Trustee shall bear no liability in relation to the application of the amount transferred.

41.3 The new fund provider must be given notice of:

- (a) any written evidence provided to the Trustee by the Member under subpart MK of the Income Tax Act;
- (b) the amounts of tax credits received by the Trustee under subpart MK of the Income Tax Act; and
- (c) any information held by the Trustee that would be relevant to the new fund provider making a claim under section 68C of the Tax Administration Act 1994, including information as to the periods for which claims have already been made.



42 VOLUNTARY TRANSFER

Without limiting Rule 41.1, while the Complying Fund Rules require such transfers (with the intent that this Rule 42 will not otherwise apply), the Trustee shall transfer all or part of a Member's Locked-in Balance to another Complying Superannuation Fund or to a KiwiSaver Scheme if the Member requests the transfer.

43 INVOLUNTARY TRANSFER

- 43.1 The Trustee may require a Member to transfer the Member's Locked-in Balance to a KiwiSaver Scheme, unless the Member requests a transfer under Rule 42, if the Member ceases before the Locked-in Payment Date to be eligible for any Complying Fund Section Pension.
- 43.2 If the Fund is terminated under Rule 12 before the Locked-in Payment Date, the Member's share of the assets of the Fund determined pursuant to Rule 12.6, to the extent that such share comprises or is attributable to the Member's Locked-in Balance, shall be transferred to a KiwiSaver Scheme.
- 43.3 The Trustee shall transfer a Member's Locked-in Balance to a KiwiSaver Scheme if:
- (a) the FMA revokes the Fund's approval as a Complying Superannuation Fund; and
 - (b) the Member's Locked-in Balance is not transferred to another Complying Superannuation Fund where it remains subject to Complying Fund Rules.
- 43.4 If the Trustee is required or decides under this Rule 43 to transfer any amount to a KiwiSaver Scheme, then:
- (a) the Trustee shall notify the Commissioner accordingly; and
 - (b) that notice must include the relevant Member's name, address and Tax File Number, the relevant Paying Authority's name and address and the Fund's name and Tax File Number, with the intent that when the Commissioner receives that notice the relevant portion of the transferred amount will be dealt with in accordance with section 57(1)(d) of the KiwiSaver Act.

44 COSTS

- 44.1 Any expenses, fees, charges or costs associated with establishing and maintaining a Locked-in Balance for a Member of the Complying Fund Section may at the Trustee's discretion be debited from that Member's Locked-in Account at times and in a manner determined by the Trustee.
- 44.2 Clause 2 of the KiwiSaver Scheme Rules applies to Locked-in Accounts as if the Fund was a KiwiSaver Scheme.

45 RELEASE OF TAX CREDITS

- 45.1 The amount of any Crown contribution (as defined in the KiwiSaver Act) arising from a tax credit under section MK 3 of the Income Tax Act (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution) may not be withdrawn:



- (a) before the Member gives the Trustee a statutory declaration stating the periods for which the person has had their principal place of residence in New Zealand since 1 April 2008; or
- (b) to the extent to which the Trustee has notice that the Member's claim for a tax credit is wrong, because the number of included days under section MK 4 of the Income Tax Act is or was wrong; or
- (c) in circumstances in which the withdrawal of that amount is not permitted under the relevant provision of the KiwiSaver Scheme Rules.

46 **TAX CREDITS**

46.1 For the purposes of obtaining and administering tax credits payable under subpart MK of the Income Tax Act to the Fund in respect of Members of the Complying Fund Section, the Trustee shall (for the avoidance of doubt) have the following powers and discretions:

- (a) to make claims for such tax credits in accordance with section 68C of the Tax Administration Act 1994;
- (b) to apply such tax credits as are paid to the Fund in respect of a Member to that Member's Locked-in Account, taking into account the requirements of section MK 7 of the Income Tax Act if necessary; and
- (c) to calculate and pay to the Commissioner any amount required to be paid to the Commissioner in respect of a Member under section MK 8 of the Income Tax Act and to make any consequential adjustment, on such basis as the Trustee determines in its complete discretion, to the Member's Locked-in Balance to reflect the amount of that payment.

47 **NON-ASSIGNABILITY**

- 47.1 Notwithstanding any other provision of these Rules, a Member's Locked-in Balance must not be assigned, charged or pass to any other person (whether by way of security, operation of law or any other means).
- 47.2 Nothing in Rule 47.1 prevents a Member's Locked-in Balance from being released, assigned or charged or from passing to any other person if that is required by the provisions of any enactment, including a requirement by order of court under any enactment (such as an order made under section 31 of the Property (Relationships) Act 1976).