satisfied that it is proper to do so, pay the unallocated amount to any or all of the following in such proportions as the Board considers proper—

(a) the spouse of the member at the time of the member's death;

(b) a parent or child of the member;

(c) an individual who was financially dependent on the member at the time of the member's death.

(4) Amounts of an FNPF member's preserved and general entitlements on the member's death that are not paid under subsections (1) to (3) are to be paid to the member's personal representative.

Housing finance assistance

60. Subject to this law, amounts in respect of an FNPF member are payable, out of the member's preserved entitlement, for housing finance assistance in accordance with Schedule 3.

Early withdrawals

61.–(1) The Board may make rules making provision for the withdrawal of amounts of FNPF members' general entitlement by way of assistance—

(a) for any of the following—

(i) medical expenses;

(ii) education expenses;

(iii) funeral expenses;

(iv) other matters prescribed in regulations;

in respect of the FNPF member concerned or in respect of any of the member's parents, spouse or children; or

(b) by way of housing assistance.

(2) The Board must publicise rules made under subsection (1).

(3) If the Board, on application by an FNPF member, approves, in accordance with rules made under subsection (1), the withdrawal of an amount from the member's general entitlement, the amount is payable to the member out of the FNPF.

Withdrawals amounts invested for certain minors

62. If—

(a) a person is an FNPF member because of subsection 36(4); and

(b) the person applies to the Board, within 2 years after turning 21, for payment of an amount from the person's preserved or general entitlement (or both); and

(c) at the time of the application, the person is not employed by a registered employer;

the amount is payable to the person—

(d) out of the person's general entitlement; and

(e) to the extent that the general entitlement is insufficient—out of the person's preserved entitlement.

PART 6— RETIREMENT INCOME PRODUCTS

Division 1—Board to provide retirement income products

Board to provide certain retirement income products

63.–(1) The Board must provide the following ("basic annuities")—

(a) a single life annuity, which provides annuity payments in respect of 1 person for his or her life;

(b) a joint life annuity, which provides—

(i) an annuity for a person for his or her life; and

(ii) after the person's death, for his or her spouse for the spouse's life (which need not be the same amount as the amount under subparagraph (i));

(c) a term annuity, which provides an annuity in respect of 1 person for a specified period (which must be at least 5 years and not more than 15 years).

(2) For subparagraph (1)*(b)*(ii), the reference to the person's spouse is reference to his or her spouse at the time when the annuity was purchased.

(3) The terms on which those annuities are provided must comply with any requirements of Schedule 4. The Board may determine other terms, not inconsistent with those in Schedule 4, for a basic annuity.

(4) The Board must review the conversion factors for basic annuities at least once a year, and may review them more frequently, to ensure that they are sustainable and will not imperil the solvency of the Retirement Income Fund or the FNPF.

(5) The Board may, by written instrument, amend the conversion factors. The Board must not do so unless the actuary has determined that the amendment is necessary to ensure that solvency of the Retirement Income Fund and the solvency of the FNPF will not be imperilled.

(6) The Board must publish any amendment to conversions in the Gazette, and otherwise publicise the amendment.

(7) An instrument amending conversion factors comes into force—

(a) on the date of its Gazettal; or

(b) if a later date is specified in the instrument as the date on which it comes into force—that later date.

(8) An instrument amending conversion factors is not a legislative instrument for the purposes of the Interpretation Act (Cap. 7).

Other retirement income products

64. The Board may provide additional retirement income products, in accordance with Division 4.

Division 2—Retirement Income Fund

Retirement Income Fund

65.–(1) The Board must, as soon as practicable after the commencement of this Part, establish a fund to be called the Retirement Income Fund.

(2) The principal purpose of the Retirement Income Fund is to support the obligations of the Board to make payments under basic annuities.

(3) The Board must keep and administer the Retirement Income Fund in accordance with this law.

(4) The assets of the Retirement Income Fund are property of the Board.

What must be credited to the Retirement Income Fund

66. The following are to be credited to the Retirement Income Fund —

(a) amounts withdrawn from the FNPF and used to buy basic annuities;

(b) amounts of interest, profits and other returns from investments or property of the Board, to the extent that the investments were made or the property acquired with money or other property of the Retirement Income Fund;

(c) amounts that another provision of this law requires to be paid to the Retirement Income Fund;

(d) amount recovered as overpayments in respect of basic annuities;

(e) amounts paid to the Board for the purposes of the Retirement Income Fund.

Application of the Retirement Income Fund

67. Amounts standing to the credit of the Retirement Income Fund are to be applied only as follows—

(a) in making payments under basic annuities;

(b) in making investments authorised under this law;

(c) in meeting the expenses of the Board properly incurred in managing and administering the Retirement Income Fund;

(d) by transferring surplus in the Retirement Income Fund to the FNPF in accordance with the regulations;

(e) in repaying amounts paid in error into the Retirement Income Fund.

Division 3—Additional retirement income products

Approval of additional retirement income products

68.–(1) The Reserve Bank may, on application by a person who proposes to provide a retirement income product (the "proposed provider"), approve the product for the purposes of this law.

(2) The person must be—

(a) the Board; or

(b) a bank licensed under the Banking Act 1995; or

(c) an insurer as defined in the Insurance Act 1998; or

(d) a prescribed person.

(3) The Reserve Bank may determine requirements and processes for applications under subsection (1).

(4) The Reserve Bank may require an applicant to give it additional information in connection with the application, including reports from an actuary or an auditor in relation to the application. The Reserve Bank is not bound to deal further with the application until the requirement is satisfied.

(5) The Reserve Bank is not to approve a retirement income product unless satisfied that—

(a) the proposed provider—

(i) in providing the product, will act with integrity, prudence and professional skill; and

(ii) has and will maintain a sound financial position and not cause or promote instability in Fiji's financial system; and

(iii) has sufficient capital, or has made arrangements satisfactory to the Reserve Bank, to ensure that it can meet its payment obligations in respect of the product; and

(b) the proposed provider otherwise meets and will continue to meet the requirements of the prudential standards; and

(c) the arrangements for administering the retirement income product (including for maintaining accounts and delivering payments to annuitants) are adequate and appropriate; and

(d) the terms on which the retirement income product is to be provided—

(i) meet the requirements of the prudential standards; and

(ii) are otherwise reasonable and appropriate.

(6) Paragraph (5)*(a)* does not apply to the Board.

(7) A prudential standard may prescribe additional criteria, not inconsistent with this law, for approvals.

(8) An approval of a retirement income product may be subject to conditions specified in the instrument of approval. The conditions may include—

(a) a condition that the proposed provider establish and maintain a fund, in accordance with the requirements of the Reserve Bank, to support its obligations referable to the product; and

(b) a condition that the proposed provider adopt the Code of Fair Practice, with modifications (if any) specified in the instrument of approval, and include in the terms on which the product is provided an undertaking by the provider to comply with its obligations under the Code of Fair Practice.

(9) If—

(a) the Board is the proposed provider for a proposed retirement income product; and

(b) the Reserve Bank requires a fund to be established as mentioned in subsection (8) in respect of the product; and

(c) after considering a report from the actuary on the matter, the Reserve Bank approves a transfer of a specified amount from the FNPF to the proposed fund;

the specified amount is payable out of the FNPF to the proposed fund.

Suspension or revocation of approval on request

69. The Reserve Bank may, on written request by the person to whom the approval of a retirement income product was given, by notice to the person —

(a) suspend the approval for the period specified in the notice; or

(b) revoke the approval.

Suspension or revocation of approval

70.–(1) This section applies if it appears to the Reserve Bank that—

(a) the provider of an approved retirement income product—

(i) has not provided the product within 12 months after the date of the approval; or

(ii) in providing the product, is not acting act with integrity, prudence and professional skill; or

(iii) does not have a sound financial position or may cause or promote instability in Fiji's financial system; or

(iv) does not or will not have sufficient capital, and has not made arrangements, satisfactory to the Reserve Bank, to ensure that it can meet its payment obligations in respect of the product; or

(v) does not meet or will not meet a requirement of the prudential standards; or

(vi) gave false or misleading information in relation to the application for approval or in relation to the product (either before or after the approval);

(b) the arrangements for administering an approved retirement income product (including for maintaining accounts and delivering payments to annuitants) are not adequate or appropriate; or

(c) the terms on which an retirement income product is to be provided—

(i) do not meet the requirements of this law or the prudential standards; or

(ii) are not otherwise reasonable and appropriate;

(d) an event or circumstance prescribed for this section has occurred in relation to an approved retirement income product.

(2) The Reserve Bank may, by notice to the provider of the approved retirement income product—

(a) suspend the approval of the product for the period specified in the notice; or

(b) revoke the approval;

but must not do so unless—

(c) it has given the provider written notice—

(i) of its intention to take the proposed action; and

(ii) stating the reasons for the proposed action; and

(iii) requiring the provider to show cause within a specified period (at least 21 days) why the action should not be taken; and

(d) it has taken into account any representations made by or for the provider.

(3) The Reserve Bank may suspend an approval without giving notice as required by paragraph (2)*(c)* if satisfied on reasonable grounds that it is necessary to do so urgently to prevent or mitigate damage to the interests of financial institutions, clients of financial institutions, potential buyers of the retirement income product or Fiji's financial system, but the Reserve Bank must—

(a) give the provider the notice as soon as practicable; and

(b) having considered any representations made by or for the provider—rescind the action taken, or take any action that may be taken under subsection (2).

Existing rights on suspension or revocation

71.–(1) A revocation or suspension of approval of an approved retirement income product does not affect the retirement income product provider's obligations in relation to the product assumed before the revocation or suspension.

(2) If the Reserve Bank suspends or revokes the approval of an approved retirement income product, it must also give such directions to the provider as are, in the opinion of the Reserve Bank, necessary or desirable to protect the interests of the annuitants.

(3) The provider must comply with the directions.

Penalty—100 penalty units.

Notice of approvals, suspensions and revocations

72. The Reserve Bank must notify all approvals, and all suspensions and revocations of approvals, under this Division in the Gazette, as soon after the event as practicable.

Division 4—Disclosure obligations and unfair practices

Disclosure requirements

73.–(1) If—

(a) a person (the "provider") provides an approved retirement income product to another person; and

(b) the provider did not, at least 7 days before providing the product, give the other person a current key features statement for the product;

the provider commits an offence.

Penalty—200 penalty units.

(2) If—

(a) a person (the "provider") provides an approved retirement income product to another person; and

(b) the provider gave the other person a key features statement for the product that did not comply with the requirements of the regulations;

the provider commits an offence.

Penalty—200 penalty units.

(3) Strict liability applies to subsections (1) and (2).

(4) In a prosecution for an offence under subsection (2), if it is established that that the defendant—

(a) made all inquiries that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the key features statement complied with the requirements of the regulations;

the court must find that the key features statement complied with the requirements of the regulations.

Requirements for applications for approved retirement income products

74.–(1) A person must not provide an approved retirement income product to another person except on written application by the other person.

Penalty—200 penalty units.

(2) A person must not provide an approved retirement income product to another person unless the application form used for the application for the product was a form attached to or formed part of a current key features statement for the product.

Penalty—200 penalty units.

Prohibition of false and misleading statements

75.–(1) A person commits an offence if—

(a) the person engages in conduct in relation to an approved annuity; and

(b) the conduct is misleading or deceptive or is likely to mislead or deceive.

Penalty—100 penalty units.

(2) Strict liability applies to paragraph (1)*(b)*.

(3) Without limiting subsection (1), the following conduct in relation to an approved retirement income product is misleading or deceptive—

(a) falsely representing that the product is of a particular standard, quality, value or grade;

(b) falsely representing that a particular person has agreed to acquire the product;

(c) representing that the product has a sponsorship, approval, performance characteristics, use or benefits that it does not have;

(d) representing that the product has a sponsorship, approval or affiliation that it does not have;

(e) making a false or misleading representation with respect to the cost of the product;

(f) making a false or misleading representation concerning the need for the product; or

(g) making a false or misleading representation concerning the existence, exclusion or effect of a condition, warranty, guarantee, right or remedy in relation to the product.

Code of Fair Practice

76.–(1) The Board must formulate a Code of Fair Practice in accordance with the requirements of Schedule 5.

(2) The Code must be consistent with this and other laws.

(3) The Board must submit the Code to the Reserve Bank for approval.

(4) If the Reserve Bank approves the Code, the Board must—

(a) publicise the Code; and

(b) comply with the Code.

(5) The Board must review the Code at least once every 3 years, but must not amend the Code without the Reserve Bank's approval. The Board must publicise any approved amendments to the Code.

(6) If an FNPF member or an annuitant suffers loss because of a failure by the Board to comply with an obligation under the approved Code, the member or annuitant may recover the amount of the loss from the Board by action in a court of competent jurisdiction.

(7) The amount recoverable by an FNPF member or an annuitant under subsection (6)—

(a) is reduced to the extent that the loss was caused by an act or omission of the member or annuitant; and

(b) is payable out of the FNPF.

Unfair practices

77.–(1) The Reserve Bank may, by notice in the Gazette, determine that a specified practice in relation to an approved retirement income product is an unfair practice.

(2) The Reserve Bank must not do so unless satisfied that the practice is unfair to annuitants or prospective annuitants, or is misleading or deceptive.

(3) A person commits an offence if—

(a) the person engages in a practice; and

(b) the conduct is an unfair practice.

Penalty—100 penalty units.

(4) Strict liability applies to paragraph (3)*(b)*.

Repayments of amounts paid for approved retirement income products

78.–(1) This section applies if—

(a) a person (the "provider") issues an approved retirement income product to a person (the "annuitant"); and

(b) either—

(i) the key features statement provided to the annuitant in relation to the provision of the product did not comply with the requirements of this law; or

(ii) the annuitant was induced to acquire the product by conduct that contravened section 75 or subsection 77(3).

(2) The annuitant has a right to cancel the approved retirement income product.

(3) The annuitant may only exercise the right by giving the provider written notice within 2 months after the annuitant becomes aware, or should reasonably have become aware, that the key features statement did not comply, or that the conduct contravened section 75 or subsection 77(3), whichever is relevant. The right expires at the end of 3 years after the product was acquired.

(4) If the annuitant cancels the retirement income product, the provider must repay the amount paid to acquire the product, and must do so within 1 month after it receives the notice of cancellation.

(5) The annuitant is not to be subject to any liability in respect of exercising a right to cancel the retirement income product.

(6) If the provider is a company and does not repay the amount as required by subsection (4), then, in addition to the provider, each executive officer of the provider is personally liable to repay the amount.

(7) The annuitant may, by action in a court of competent jurisdiction, recover from the provider, and from any person involved in the contravention referred to in paragraph (1)*(b)*, the amount of any loss that the annuitant suffers because of the contravention.

PART 7—SPECIAL DEATH BENEFITS

Special death benefit premiums etc

79.–(1) For each financial year, the Board must determine, in accordance with the regulations and on the advice of the actuary—

(a) the amount of special death benefit in respect of the financial year; and

(b) amounts or rates of special death benefit premium for the financial year; and

(c) the instalments by which the amount of the special death benefit premium is to be deducted from FNPF members' entitlements.

(2) Different amounts of special death benefit may be determined for different circumstances or different classes of FNPF members.

(3) Amounts of special death benefits premium so determined must be deducted from FNPF members' general entitlement and credited to the Special Death Benefits Fund.

Special death benefits

80.–(1) Subject to this law, special death benefit is payable, in accordance with the Board's determination under section 79 for the relevant financial year, in respect an FNPF member who dies and who, immediately before he or she died, met the prescribed eligibility criteria.

(2) Special death benefits in respect of an FNPF member are payable in the same way as entitlements on the death of the member are payable.

The Special Death Benefits Fund

81.–(1) The Board must, as soon as practicable after the commencement of this Part, establish a fund to be called the Special Death Benefits Fund.

(2) The principal purpose of the Special Death Benefits Fund is to support the obligations of the Board in respect of special death benefits under this law.

(3) The Board must keep and administer the Special Death Benefits Fund.

(4) The Board must allocate to the Special Death Benefits Fund such of the assets of the Board as will ensure that that actuary is able to issue a funding and solvency certificate for the fund.

(5) The assets of the Special Death Benefits Fund are property of the Board.

What must be credited to the Special Death Benefits Fund

82. The following are to be credited to the Special Death Benefits Fund —

(a) amounts deducted from FNPF members' general entitlement as special death benefits premium;

(b) interest, profits and other returns from investments or property of the Board, to the extent that the investments were made or the property acquired with money or other property of the Special Death Benefits Fund;

(c) amounts paid to the Board as fees or charges for services provided by the Board in relation to the Special Death Benefits Fund;

(d) amounts that another provision of this law requires to be paid to the Special Death Benefits Fund;

(e) amounts paid to the Board for the purposes of the Special Death Benefits Fund.

Application of the Special Death Benefits Fund

83. Amounts standing to the credit of the Special Death Benefits Fund are to be applied only as follows—

(a) in paying special death benefit as provided in this law;

(b) in making investments authorised under this law;

(c) by transferring surplus in the Special Death Benefits Fund to the FNPF in accordance with the regulations;

(d) in meeting the costs necessarily and properly incurred by the Board in managing and administering the Special Death Benefits Fund;

(e) in repaying amounts paid in error into the Special Death Benefits Fund.

Board not an insurer

84. The Board is not an insurer for the purposes of the Insurance Act 1998 merely because it provides special death benefits in accordance with this Part.

Special death benefit not to be considered in certain cases

85. An amount paid as special death benefit in respect of an FNPF member must not be taken into consideration in assessing compensation or damages payable to the dependants or beneficiaries of the member under the Compensation to Relatives Act (Cap. 29).

PART 8—OTHER PROVISIONS APPLICABLE TO FUNDS

Supplementary Fund

86.–(1) The Board must, as soon as practicable after the commencement of this Part, establish a fund to be called the Supplementary Fund.

(2) The Board must keep and administer the Supplementary Fund.

(3) The Board must allocate to the Supplementary Fund any assets that a written law provides are to be allocated to the Fund.

(4) The assets of the Supplementary Fund are property of the Board.

What must be credited to the Supplementary Fund

87. The following are to be credited to the Supplementary Fund —

(a) amounts required by this or another written law to be credited to the Supplementary Fund;

(b) amounts of interest, profits and other returns from investments or property of the Board, to the extent that the investments were made or the property acquired with money or other property of the Supplementary Fund;

(c) amounts paid to the Board for the purposes of the Supplementary Fund.

Application of the Supplementary Fund

88. Amounts standing to the credit of the Supplementary Fund are to be applied only as follows—

(a) in making payments authorised or required by this or another written law to be paid from the Supplementary Fund;

(b) in making investments authorised under this law;

(c) in meeting the expenses of the Board properly incurred in managing and administering the Supplementary Fund;

(d) by transferring surplus in the Supplementary Fund to the FNPF in accordance with the regulations;

(e) in repaying amounts paid in error into the Supplementary Fund.

Estimates of liabilities

89.—(1) For each fund (not the FNPF), the actuary must prepare estimates of the Board's liabilities referable the fund.

(2) The estimates must be as at—

(a) the date of the fund's establishment; and

(b) the date of each later funding and solvency certificate for the fund.

(3) In making an estimate for a fund, the actuary must—

(a) apply relevant professional standards and actuarial principles; and

(b) take into account—

(i) the fund's investment guidelines;

(ii) the nature and quality of the assets of the fund;

(iii) the likely financial position of the fund and the payment obligations of the fund over time; and

(iv) any other matter that a prudent actuary would take into account.

Funding and solvency certificates

90.–(1) The Board must ensure that there is in force at all times, for each fund (not the FNPF), a funding and solvency certificate from the actuary.

(2) A funding and solvency certificate for a fund is a certificate that—

(a) certifies that, in the actuary's opinion, the value of the assets of the fund as at the date of the certificate, together with other assets that the actuary considers will become assets of the fund while the certificate is in force, will be sufficient to enable the Board to meet the Board's liabilities referable to the fund, including under a range of adverse conditions specified by the actuary;

(b) states the period for which it is in force; and

(c) otherwise complies with the requirements of the regulations.

(3) A funding and solvency certificate ceases to be in force for—

(a) at the end of 3 years from the date of its issue; or

(b) if the certificate specifies a shorter period for the certificate—at the end of the specified period;

(c) if a prudential standard specifies a shorter period for the certificate—at the end of the specified period; or

(d) if the certificate states that a specified event will require the solvency of the fund to be re-examined—if the event occurs.

(4) In determining whether to issue a funding and solvency certificate for a fund, the actuary must—

(a) apply relevant professional standards and actuarial principles; and

(b) take into account—

(i) the fund's investment guidelines;