

# Regulatory Impact Statement

## KiwiSaver opt-out for minors

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by Inland Revenue.

It provides an analysis of options to address the incorrect enrolment of minors into the KiwiSaver scheme.

This analysis includes a review of the legal rights and obligations granted and imposed on KiwiSaver members, KiwiSaver providers and employers in respect of the enrolment of minors. Statistical analysis of enrolment data since the inception of KiwiSaver has been undertaken to measure the extent of the issue. As there have been no documented cases of complaints from KiwiSaver members who had been enrolled as minors, it was not possible to measure the impacts at an individual level.

Workplace Savings NZ, who represent most KiwiSaver providers, were briefed on the issue and the options. In general, feedback received indicated that there was a need for Inland Revenue to take a greater role in verifying the age of new enrolments. Some providers also felt that an open ended opt-out provision that would allow an incorrectly enrolled member to annul their membership at any time would create too much uncertainty in the sector. Such a policy would mean that schemes would have a portion of their members that could, at any time, exit without further notice. These views have been taken into consideration when making the final recommendation.

None of the options in this statement would:

- impose additional costs on businesses;
- impair private property rights, restrict market competition, or reduce the incentives on businesses to innovate and invest; or
- override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).



Keith Taylor  
Policy Manager, Policy and Strategy  
Inland Revenue

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## STATUS QUO AND PROBLEM DEFINITION

1. KiwiSaver is a workplace savings scheme that is open to all New Zealand residents under the age of 65. People can join KiwiSaver by contracting directly with a KiwiSaver provider, electing to join through their employer, or through automatic enrolment when they start a new job.
2. Minors (children under the age of 18) can only join KiwiSaver if they have the consent of all of their legal guardians (if under 16 years) or co-sign with a guardian (if 16 – 17 years of age). These restrictions recognise that joining KiwiSaver, which locks in funds until the member is 65, is a serious undertaking and minors should be protected while they are vulnerable and supported as they get older. For this reason, minors are only able to join KiwiSaver by directly contracting with a KiwiSaver provider. As the providers will be processing an application to join KiwiSaver, these providers are best equipped to receive and review the necessary parental consent.
3. When a person enrolls in KiwiSaver through their employer, either by electing to join or through auto enrolment, the employer sends the person's information to Inland Revenue through the existing PAYE system. Inland Revenue then passes that information on to a KiwiSaver provider. Inland Revenue does not perform any checks on the enrolment data to test whether the person is a minor or not.
4. Recent analysis of KiwiSaver enrolments has uncovered that as of April 2015 approximately 56,000 minors have been incorrectly enrolled in KiwiSaver through their employers, predominantly via auto-enrolment. Around 10,000 of these minors were under the age of 16 at the time of enrolment.
5. To date Inland Revenue has not received any complaints from minors who have been incorrectly enrolled into KiwiSaver through their employers. Furthermore, approximately 27,000 of the affected members have since transferred their KiwiSaver funds from one provider to another. However, should a member challenge their enrolment there is no remedy available under the KiwiSaver Act 2006 that will allow the member to exit the scheme.
6. Unlike a person over 65 or a non-resident, a minor is entitled to join KiwiSaver, albeit only by contracting directly with a provider. The current provisions available to reverse an invalid enrolment are only applicable to members who are not entitled to join KiwiSaver, not members who are entitled to join, but were enrolled through the wrong mechanism.
7. The Minors' Contract Act 1969 does provide that a person who has entered into a contract as a minor can apply to the court to have that contract nullified. We are not aware of any minors making use of this provision at this point. While this does provide some protection it comes at considerable cost to the applicant and potentially the provider who may have to argue the application in court.
8. This RIS addresses the question of whether the KiwiSaver Act should be amended to allow minors that have been incorrectly enrolled to annul their membership.

## OBJECTIVES

9. The key objectives are:
- a) Provide clearer protection to members who have been incorrectly enrolled in KiwiSaver when they were minors and who wish to annul their membership.
  - b) Reduce the compliance costs incurred by KiwiSaver members who were incorrectly enrolled and who wish to annul their membership.
  - c) Prevent the incorrect enrolment of minors.
  - d) Minimise disruption for those KiwiSaver members who have been enrolled incorrectly but who do not object to the enrolment.
  - e) Minimise the impact on the key objective of KiwiSaver – to encourage a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in pre-retirement

## REGULATORY IMPACT ANALYSIS

10. Four options were considered as alternatives to the status quo. Options 2 and 3 would address future incorrect enrolments only, whereas options 4 and 5 would address historic cases as well. The options are:

- Option 1 (status quo): Inland Revenue takes no additional actions to prevent incorrect enrolments. KiwiSaver members who were enrolled as minors cannot annul their membership without applying to the courts under the Minors' Contract Act 1969.
- Option 2: Inland Revenue highlights to employers and KiwiSaver providers that minors can only enrol directly with a provider. (*Officials' preferred short-term administrative option*)
- Option 3: Inland Revenue develops a system to automatically check employer enrolments received and reject enrolments for minors. (*Officials' preferred long-term administrative option*)
- Option 4: A new opt-out provision is introduced so that members who have been enrolled incorrectly can end their membership.
- Option 5: A new opt-out provision is introduced so that members who have been enrolled incorrectly can end their membership at any time before their 19<sup>th</sup> birthday. (*Officials' preferred policy option*)

11. These options are not exclusive, for example options 2, 4 and 5 could be concurrently implemented.

### ***Option 1: Status quo***

12. Under the status quo:

- Inland Revenue does not monitor enrolments for minors.
- Employers incorrectly enrol minors into KiwiSaver and providers incorrectly accept those enrolments.
- Members who have been incorrectly enrolled have no access to redress under the KiwiSaver Act 2006 to annul their membership.
- Members who wish to annul their membership must apply to the court under the Minors' Contract Act 1969.

13. While there have been no complaints from incorrectly enrolled minors to date there is also no cost effective remedy should a member wish to exit the scheme. Members and providers in this situation would incur costs should the member wish to take the matter up under the Minors' Contract Act 1969.

### ***Option 2 – additional communications to employers and providers***

14. Under this option:

- Inland Revenue communicates with employers and KiwiSaver providers to highlight their obligations in respect of minors and the KiwiSaver enrolment rules.
- Resources and guides are reviewed to ensure these rules are sufficiently explained.
- Employers are advised on how minors can enrol so that they can pass this on to their employees who want to join KiwiSaver.

15. The main advantages of this option are that it imposes only minimal additional cost on Inland Revenue, no additional compliance costs on employers or providers and requires no legislative change.

16. The main disadvantage is that it is unlikely to be fully effective (that is some minors would continue to be incorrectly enrolled) and it does not provide an effective remedy for incorrectly enrolled minors wishing to exit the scheme.

### ***Option 3 – Inland Revenue checks all enrolments for minors***

17. Under this option:

- Inland Revenue implements a new system where all enrolments received are checked to ensure the person is not a minor.
- If the person is a minor a message would be sent back to the employer advising them that the enrolment is invalid. No information would be sent to the provider.

18. The main advantage of this option is that it would provide the best on-going protection for minors as it would, in the majority of cases, prevent them from being enrolled.

19. The disadvantages are:

- Inland Revenue would need to invest in system enhancements which would rely on legacy systems.
- Inland Revenue would need to release taxpayer confidential information back to the employer (i.e. that their employee is a minor).
- Inland Revenue's date of birth records are not 100 percent accurate so some incorrect rejections would be expected.
- No cost effective remedy is provided for the 55,000 already incorrectly enrolled minors if any of them should wish to exit the scheme.

***Option 4 – Opt out members incorrectly enrolled as minors – no restriction***

20. Under this option:

- The KiwiSaver Act 2006 is amended so that members who have been incorrectly enrolled can opt out of the scheme.
- Opt-outs would only be available if the member had not subsequently directly contracted with a provider and given the necessary consent.
- If a member opted out then they would have their contributions returned to them, their Government contributions returned to the Crown and their compulsory employer contributions returned to their employer.
- There would be no restriction on when this opt out could occur.

21. The advantages of this option are:

- Administration costs on Inland Revenue are minimised. The systems for unwinding the member's enrolment are already in place for incorrectly enrolled non-residents or pensioners.
- Members who were incorrectly enrolled are offered a cost effective remedy and can exit the scheme. Members who do not wish to exit the scheme are not disrupted.
- Reduces compliance costs by eliminating the need for incorrectly enrolled members to apply under the Minors' Contract Act 1969 should they wish to exit the scheme.

22. The disadvantages of this option are:

- Does not prevent the incorrect enrolment of minors.
- May encourage members to annul their membership when it is not in their long term interests to do so.

23. This last disadvantage is particularly relevant for members that were incorrectly enrolled but have since become adults and may have been contributing to their savings for several years. In these instances they would be able to withdraw all of the contributions they had made but they would lose the benefit of the crown contributions and their employers' compulsory contributions. This could be attractive in the short term but may be detrimental in respect of longer term objectives such as providing for retirement.

***Option 5 – Opt out members incorrectly enrolled as minors until 19<sup>th</sup> birthday***

24. Under this option:

- The KiwiSaver Act 2006 is amended so that members who have been incorrectly enrolled can opt out of the scheme at any time before their 19<sup>th</sup> birthday.
- Opt outs would only be available if the member had not subsequently directly contracted with a provider and given the necessary consent.
- If a member opted out then they would have their contributions returned to them, their Crown contributions (i.e. the kick-start payment and member tax credits) returned to the Crown and their compulsory employer contributions returned to their employer.

25. The opt-out would be available until the member has turned 19 so that they have at least one year as an adult to consider their situation.

26. The advantages of this option are

- Administration costs on Inland Revenue are minimised. The systems for unwinding the member's enrolment are already in place for incorrectly enrolled non-residents or pensioners.
- Members who were incorrectly enrolled are offered an effective remedy and can exit the scheme up until their 19<sup>th</sup> birthday. Members who do not wish to exit the scheme are not disrupted.
- Reduces compliance costs by eliminating the need for incorrectly enrolled members who have yet to turn 19 to apply under the Minors' Contract Act 1969 if they wish to exit the scheme.

27. The disadvantages of this option are:

- Does not prevent the incorrect enrolment of minors.
- Members who have been incorrectly enrolled and who wish to exit the scheme but have turned 19 would still have to apply under the Minors' Contract Act 1969.
- May encourage members to annul their membership when it is not in their long term interests to do so.

28. This last disadvantage is less relevant for this option as the members do not qualify for Crown contributions until they turn 18 and so at most would have a years' worth of Crown contributions that could be forgone.

## **Summary of impact analysis**

29. The table below summarises our analysis of the options (including the status quo).



<i>Option</i>	<i>Meets objectives a, b, c, d or e?</i>	<i>Impacts</i>			<i>Net impact</i>
		<i>Economic / revenue impact</i>	<i>Administrative impact</i>	<i>Compliance impact</i>	
Option 1 (Status quo): KiwiSaver members who were enrolled as minors cannot annul their membership without applying to the courts under the Minors' Contract Act 1969	Does not meet (a), (b) or (c).  Fully meets (d) and (e).	No impact	No impact	Members and providers would incur costs should an incorrectly enrolled member wish to exit the scheme via the Minors' Contract Act 1969. As no cases have been taken as yet it is not possible to estimate the costs.	Does not address the problem definition and fully meets only one of the four objectives
Option 2: Inland Revenue sends additional communications to employers and KiwiSaver providers stressing that minors cannot be enrolled through their employer	Does not meet (a). Partially meets (b) and (c). Fully meets (d) and (e).	No impact	Developing and releasing additional communication material. This is expected to be incorporated in business as usual activities and promotions at marginal cost.	Members and providers would incur costs should an incorrectly enrolled member wish to exit the scheme via the Minors' Contract Act 1969 however the incidence of this would be reduced in the future	Does not address the problem definition and fully meets only one of the four objectives
Option 3: Inland Revenue develops a system to automatically check employer enrolments received to ensure they are for adults only and reject enrolments for minors	Does not meet (a). Partially meets (b) and (c). Fully meets (d) and (e).	No impact	Investment in new application based on legacy systems required. This has not been costed.	Members and providers would still incur costs should an incorrectly enrolled member wish to exit the scheme via the Minors' Contract Act 1969 however the incidence of this would be reduced in the future.	Addresses the problem definition partially, going forward, and fully meets only one of the four objectives
Option 4: A new opt-out provision is introduced so that members who have been enrolled incorrectly can end their membership	Does not meet (c) or (e). Fully meets (a), (b) and (d).	No impact	No impact	Compliance costs arising from reliance on the Minors' Contact Act 1969 would be eliminated.	Addresses the problem definition and fully meets three of the four objectives.
Option 5: A new opt-out provision is introduced so that members who have been enrolled incorrectly can end their membership up until their 19th birthday	Does not meet (c). Partially meets (b). Fully meets (a) and (d) and (e).	No impact	No impact	Compliance costs arising from reliance on the Minors' Contact Act 1969 would be reduced.	Addresses the problem definition and fully meets three of the four objectives.



## **Other impacts**

30. The options have no social, cultural or environmental impacts.

## **CONSULTATION**

31. Workplace Savings NZ, who represent most KiwiSaver providers, were consulted. Comments received from providers both through Workplace Savings NZ and directly emphasised the need for Inland Revenue to play a more active role in policing the age requirements for employer enrolments.

32. The Treasury and the Ministry of Building, Innovation and Employment were consulted and supported the recommended options.

## **CONCLUSIONS AND RECOMMENDATIONS**

33. We support option 5. This would address to some extent the number of incorrect enrolments being made and provides a clear but limited ability for incorrectly enrolled members to easily exit the scheme. In the short term we also recommend option 2 be adopted – that is, Inland Revenue should send additional communications to employers and KiwiSaver providers stressing that minors cannot be enrolled through their employer. In the longer term, as part of Inland Revenue’s Business Transformation programme of systemic change, we recommend that option 3 should be explored as a priority.

## **IMPLEMENTATION**

34. Options 1 and 2 do not require legislation to implement. Legislative change is required to implement options 3, 4 and 5.

35. Any legislative amendments can be included in the proposed Taxation (Business Transformation and Simplification) Bill, which is scheduled for introduction in June 2015, and could be implemented from the date of enactment. Additional communications to employers and providers highlighting the current enrolment rules will be made later this year.

36. Inland Revenue will communicate any legislative changes to members, employers and providers through its existing channels, such as [www.kiwisaver.govt.nz](http://www.kiwisaver.govt.nz), the Tax Information Bulletin and by updating its guides

## **MONITORING, EVALUATION AND REVIEW**

37. There are no specific plans to monitor, evaluate and review any of the policy proposals in this analysis. The number of incorrectly enrolled minors will continue to be measured and the impact of any additional communications to employers and providers will be monitored. If any detailed concerns are raised in relation to these changes, Inland Revenue will determine whether there are substantive grounds for review under the Generic Tax Policy Process (GTPP).