



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Withdrawal of KiwiSaver for life-shortening congenital conditions	Date to be published	21 July 2019

List of documents that have been proactively released

Date	Title	Author
1 July 2019	<i>Withdrawal of KiwiSaver for life-shortening congenital conditions</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
26 June 2019	<i>DEV-19-MIN-0176</i>	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982.

In Confidence

Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Economic Development Committee

Withdrawal of KiwiSaver for life-shortening congenital conditions

Proposal

1. I am seeking the Committee's agreement to amend the KiwiSaver Act 2006 in order to allow people with life-shortening congenital conditions to withdraw their KiwiSaver savings early.

Executive Summary

2. I am proposing to create a new withdrawal category in the KiwiSaver Act that would allow people with life-shortening congenital conditions (a condition they are born with) to withdraw their savings early. It is important for people with these conditions to have the opportunity to use KiwiSaver to save for their retirement and to access their savings at a point that would allow them to spend a reasonable amount of their adult life in retirement.
3. Currently KiwiSaver is not an appropriate product for people with life-shortening congenital conditions. The majority of people in these circumstances would be advised not to join KiwiSaver and therefore they miss out on the benefits that are specific to KiwiSaver, notably the Government contribution and compulsory employer contributions.
4. The existing serious illness withdrawal category is not useful for people with life-shortening congenital conditions because withdrawal can only be made on the basis of imminent risk of death or permanent incapacity to work.
5. The new withdrawal category would establish a set list of conditions named in regulations that would automatically qualify for withdrawal. An alternative process would also be available to people that have a life-shortening congenital condition that is not named in the regulations to apply to their KiwiSaver provider for withdrawal.

Background

6. People with life-shortening congenital conditions can join KiwiSaver to save for their retirement but under the current withdrawal settings cannot access their savings before the lock-in date of 65 years old (being the age of qualification for New Zealand superannuation). Having such a condition means a person may not live until 65 years old and will not be able to use their KiwiSaver savings to support their financial wellbeing in retirement. Therefore, the majority of people with life-shortening congenital conditions would be advised not to join KiwiSaver.
7. This issue was brought to my attention last year when Tim Fairhall and his mother Joan Fairhall wrote to me raising concerns that the current withdrawal provisions in KiwiSaver discriminate against people with Down syndrome. Tim Fairhall has Down syndrome and an effect of this condition is that he is aging prematurely. His life expectancy is approximately 57 years. He has been contributing to KiwiSaver for a number of years, but under the current withdrawal settings, Mr Fairhall may not live long enough to gain access to those savings. Tim and Joan Fairhall then made a submission to the Finance and Expenditure Committee on the Taxation (Annual Rates for 2018-19, Modernising Tax

Administration, and Remedial Matters) Act 2019 to this effect.

8. There is an existing serious illness withdrawal category in the KiwiSaver Act but it would not be useful for Mr Fairhall and others with life-shortening congenital conditions. Withdrawal under the serious illness category can only be made on the basis that a person is totally and permanently unable to engage in work for which they are suited or has a condition that poses a serious and imminent risk of death. This withdrawal category would not allow people with life-shortening congenital conditions to withdraw their KiwiSaver at a point that would allow them to spend a reasonable portion of their adult life in retirement.

A new KiwiSaver withdrawal category for life-shortening congenital conditions

9. I propose to create a new withdrawal category in the KiwiSaver Act allowing people with life-shortening congenital conditions to withdraw their savings before the age of 65. I believe that it is important that these people have an opportunity to have a positive retirement and to support their financial wellbeing in retirement through KiwiSaver.
10. It is particularly important for KiwiSaver to work for these New Zealanders because there are some benefits that are specific to KiwiSaver that cannot be accessed through privately run retirement savings schemes, notably the Government contribution and compulsory employer contributions.
11. These changes will also apply to complying superannuation funds. Complying superannuation funds are retirement savings schemes that have similar benefits to KiwiSaver funds (the Government contribution and compulsory employer contribution) because savings are locked-in until a person is 65. They are typically workplace savings schemes like those run by the Fire Service or New Zealand Post.

Details of how the new withdrawal category would work

12. The KiwiSaver Act's purpose is to support saving for retirement. To preserve this purpose there are a limited number of situations where a person can make a withdrawal before the age of 65. I have taken care to create a withdrawal category that is sufficiently targeted to those it is intending to serve and make it relatively easy to administer. Targeting the withdrawal category also mitigates the impact a broad withdrawal category might have on the purpose of KiwiSaver as a retirement savings vehicle. KiwiSaver is designed so that the majority of people will access their funds once they are 65 years old.

A set list of conditions would trigger withdrawal and there would be flexibility to apply for other congenital conditions not on the set list

13. In order to define who would be eligible for withdrawal under the new category a set list of life-shortening congenital conditions would be established through regulations allowing a person to withdraw their retirement savings before the age of 65. This list would be limited to congenital conditions where it is known the condition is likely to shorten a person's life below the age of 65. The list of set conditions is being developed by officials in consultation with the medical profession. The list would also be subject to review to ensure it stays up-to-date.
14. Establishing a set list of conditions that qualify for withdrawal will give certainty to people with those conditions about their ability to withdraw their KiwiSaver savings. It also provides clarity to KiwiSaver providers about the types of conditions that will typically form

the basis of the majority of applications and make the administration process a relatively simple task.

15. There would also be a process where a person could apply to their KiwiSaver provider for withdrawal for a life-shortening congenital condition that is not on the set list. This flexibility is needed because this is a complex area. This alternative process would be appropriate for people with rare congenital conditions that shorten their life below the age of 65.
16. I consider the proposed administrative process for the new withdrawal category provides certainty about who can apply for withdrawal in the majority of cases, and flexibility for other conditions to be considered for withdrawal.

Discretion to choose a retirement date

17. The new category would allow the individual to choose the age at which they retire. Whilst this discretion would be unusual in the context of how KiwiSaver currently operates, I consider it is appropriate for these circumstances. Two individuals with the same condition may have very different life expectancies due to the severity of their condition and a number of other influencing factors. Because of this variation in life expectancy I believe it is appropriate to allow those with life-shortening congenital conditions to withdraw their KiwiSaver at the point at which they choose to retire.

Process for withdrawal

18. To apply for withdrawal a person with a life-shortening congenital condition would go through a similar process to the current serious illness withdrawal process.
19. In the case of a person that has a condition named on the set list, they would:
 - a. Apply in writing to their KiwiSaver supervisor or manager with accompanying medical evidence verifying that they have a life-shortening condition named in the regulations.
 - b. Supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver savings.
 - c. Supply any additional information that the KiwiSaver supervisor or manager requires to reasonably satisfy themselves that the person has a condition qualifying for withdrawal.
20. In the case of a person that has a life-shortening congenital condition that is not on the set list, they would:
 - a. Apply in writing to their KiwiSaver supervisor or manager stating that they have a congenital condition with medical evidence verifying that the condition is expected to reduce their life below the age at which funds are locked-in under the KiwiSaver Act.
 - b. Supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver savings.
 - c. Supply any additional information that the KiwiSaver supervisor or manager requires to reasonably satisfy themselves that the person has a condition qualifying for

withdrawal.

21. In regards to the set list of conditions named in regulations, I propose that these would be subject to review. I do not propose a set review period, instead I would expect that the information gained through the alternative process for application – namely the frequency with which other congenital conditions are being granted access – would inform the need for a review.

Partial retirement

22. I propose that following approval of withdrawal under this new category a person could continue to contribute to KiwiSaver if they decide to stay in some form of employment, or decide to resume employment at a later date. I believe this is consistent with allowing people the opportunity to have a positive retirement. They would also have the ability to make immediate withdrawals on these savings.
23. I am also proposing that if a person continues to contribute to KiwiSaver during partial retirement then they would not be eligible for the Government and compulsory employer contributions. This is consistent with how other KiwiSaver members are treated when withdrawing for the purpose of retirement.

Impact on social assistance

24. Once KiwiSaver funds are no longer 'locked-in' they are treated as an available asset for the purpose of social assistance, and income earned from that asset is treated as income. Therefore if people withdraw their KiwiSaver savings under the new category their funds are 'unlocked' and it will most likely reduce or stop any social assistance they are eligible to receive. The effect of this is that a person with a life-shortening congenital condition may actually be made worse-off if they withdraw their KiwiSaver relative to a person retiring at age 65.
25. The issue outlined above is related to other questions about how the early withdrawal of KiwiSaver funds interacts with asset and income tests under the social assistance regulations. Early withdrawal of KiwiSaver for significant financial hardship, serious illness and first home withdrawal can impact on the amount of social assistance a person is entitled to receive. Work will be undertaken to investigate the 'interface issues' between early withdrawal of KiwiSaver and social assistance regulations, and any recommendations for change will be made Confidential advice to Government

Consultation

26. In order to scope the problem and to seek advice on possible solutions a report was commissioned from two independent advisers: Dr Claire Matthews of Massey University and Donna Mitchell from IHC. In formulating their report they undertook a range of targeted consultation with people that have health and disability knowledge and expertise, and those within the KiwiSaver industry. The majority of those consulted expressed 'in principle support' for a new withdrawal category to be created for people with life-shortening congenital conditions.
27. There will also be an opportunity for further public consultation through the Select Committee process.
28. The following agencies and departments have been consulted the Treasury, Inland

Revenue, the Ministry of Social Development, the Financial Markets Authority, the Commission for Financial Capability and the Ministry of Justice.

29. The Department of the Prime Minister and Cabinet has been informed.

Financial Implications

30. The purpose of the proposed changes is to make KiwiSaver an appropriate retirement savings vehicle for a larger number of New Zealanders. As a result, there would likely be a small increase on the total amount of Government contribution made towards KiwiSaver.
31. As noted above, work will be undertaken to assess how the early withdrawal of KiwiSaver interacts with eligibility for social assistance. If changes are made to the way in which early withdrawal of KiwiSaver funds are treated for the purpose of asset and income tests relating to assessments for social assistance then this could increase the amount of social assistance spending.

Legislative Implications

32. Changes to the KiwiSaver Act will be required to implement the proposals. These changes will be made through a Supplementary Order Paper to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill which is scheduled for introduction at the end of June 2019. It holds a category 3 priority on the 2019 Legislation Programme.
33. Associated changes to the KiwiSaver Regulations 2006 will also be required in order to specify the list of conditions that qualify for withdrawal. A regulation making power will need to be inserted into the KiwiSaver Act in order to enable this.
34. To apply the changes to complying superannuation funds, changes will also be required to the Income Tax Act 2007.

Impact Analysis

35. The Ministry of Business, Innovation and Employment's (MBIE) Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the criteria necessary for Ministers to make informed decisions on proposals in this paper. This is because there has been limited consultation on the proposal which may mean that the potential consequences identified in the Regulatory Impact Statement are not fully understood.

Human Rights

36. This policy seeks to positively discriminate for people with life-shortening congenital conditions so that KiwiSaver becomes a viable retirement savings vehicle for them by allowing them to withdraw their savings at a point that would allow them to have a positive retirement.
37. Creating a withdrawal category that names certain conditions as qualifying for withdrawal could have discriminatory effects upon those people that also have a life-shortening congenital condition that is not on the named list because the evidence burden may be higher under the alternative process for withdrawal. However the policy is seeking to

provide certainty for the majority of people that will utilise this withdrawal category whilst still providing an avenue for people with other life-shortening congenital conditions to also withdraw their KiwiSaver for early retirement.

38. There are also potential discriminatory effects for people that have a non-congenital life-shortening condition. The existing serious illness withdrawal category can be relied upon by people in these circumstances. However the proposed changes may raise questions about the current scope of the serious illness category. There may be reasons to reconsider the existing serious illness withdrawal provisions in the future.

Gender Implications

39. There are no gender implications arising from the policy proposals in this paper.

Disability Perspective

40. The proposals in this paper seek to positively influence the wellbeing of people with disabilities in retirement.
41. The advice provided to me has been informed by people with knowledge of intellectual disability, health and disability experts, a legal expert specialising in health and disability, and further consultation with Tim Fairhall and his mother Joan Fairhall.

Publicity

42. Subject to Cabinet's agreement to the recommendations in this paper, I intend to issue a press release announcing Cabinet's decisions.

Proactive Release

43. I intend to release the paper proactively in whole within 30 days. MBIE will publish a copy of this paper on its website.

Recommendations

The Minister for Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that the majority of New Zealanders are able to withdraw their KiwiSaver savings at the time they qualify for New Zealand superannuation.
- 2 **note** that there are currently a limited number of situations where a person can withdraw their savings before the age of 65, being first home withdrawal, serious illness and financial hardship, and permanent emigration.
- 3 **agree** that a new withdrawal category will be created in the KiwiSaver Act 2006 allowing people with life-shortening congenital conditions to withdraw their savings before the lock-in date specified in the KiwiSaver Act, being the New Zealand superannuation qualification age.
- 4 **note** that the new category has been designed with the specific needs of those with life-shortening congenital conditions in mind.
- 5 **agree** that the withdrawal category allow the individual applying for withdrawal to determine their date of withdrawal.

- 6 **agree** a set list of congenital conditions be specified as guaranteeing withdrawal established through regulations under the KiwiSaver Act 2006.
- 7 **note** that the list of congenital conditions to be detailed in regulations is being developed by officials in consultation with the medical profession and that these will be finalised through the drafting process.
- 8 **agree** that individuals that have a congenital condition that is not on the set list named in regulations may also apply for withdrawal.
- 9 **note** that making a withdrawal under the new category does not prevent a person from continuing in paid employment.
- 10 **agree** that a person who has made a withdrawal under the new category may continue to keep contributing to KiwiSaver.
- 11 **agree** that the process for withdrawal for a person that has a congenital condition named in the regulations will be:
- 11.1 apply in writing to the KiwiSaver manager or supervisor with accompanying medical evidence verifying that they have a life-shortening condition named in the regulations;
 - 11.2 supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver savings; and
 - 11.3 supply any additional information that the KiwiSaver manager or supervisor requires to reasonably satisfy themselves that the person has a condition qualifying for withdrawal.
- 12 **agree** that the process for withdrawal for a person that has a life-shortening congenital condition that is not named in the regulations will be:
- 12.1 apply in writing to the KiwiSaver manager or supervisor stating that they have a congenital condition with medical evidence verifying that the condition is expected to reduce their life below the New Zealand superannuation qualification age;
 - 12.2 supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver saving; and
 - 12.3 supply any additional information that the KiwiSaver manager or supervisor requires to reasonably satisfy themselves that the person has a condition qualifying for withdrawal.
- 13 **agree** that the amount that can be withdrawn by a person that qualifies for withdrawal under the new category described in recommendation 3 above may be up to the value of the KiwiSaver member's accumulation.
- 14 **agree** that a regulation making power will be inserted into the KiwiSaver Act 2006 to allow for a list of congenital conditions to be specified in regulations.
- 15 **agree** that these changes will be made through a Supplementary Order Paper to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill.

- 16 **note** that work will be undertaken to examine the interface issues between early withdrawal of KiwiSaver and asset and income tests for the purpose of eligibility for social assistance under social assistance regulations.
- 17 **authorise** the Minister of Revenue to issue drafting instructions to Inland Revenue to give effect to the above recommendations.
- 18 **authorise** the Minister of Commerce and Consumer Affairs to release exposure drafts of the legislative amendments and regulations for targeted consultation as required.
- 19 **authorise** the Minister of Commerce and Consumer Affairs and the Minister of Revenue the power to make decisions consistent with the policy proposals in this paper on minor issues that arise during the drafting process.

Authorised for lodgement
Hon Kris Faafoi
Minister of Commerce and Consumer Affairs

PROACTIVELY RELEASED



Coversheet: Withdrawal of KiwiSaver due to life-shortening congenital conditions

Advising agencies	<i>Ministry of Business, Innovation and Employment</i>
Decision sought	<i>Policy decisions relating to the creation of a new early withdrawal category in the KiwiSaver Act 2006</i>
Proposing Ministers	<i>Minister of Commerce and Consumer Affairs</i>

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

People with life-shortening congenital conditions (a condition a person is born with) can join KiwiSaver to save for their retirement but, under current settings, cannot access their savings before the age of 65. Having such a condition means a person may not live until 65 years old. This means that either:

- people with life-shortening congenital conditions are not joining KiwiSaver because they are aware it is unsuitable for them as a retirement savings product, or
- people with life-shortening congenital conditions have contributed money to KiwiSaver and cannot withdraw their money.

In both of these cases, people with life-shortening congenital conditions cannot use KiwiSaver to save for their retirement and so are missing out on the particular benefits associated with KiwiSaver that do not come with other privately-run retirement savings schemes.

The withdrawal settings are dictated by the KiwiSaver Act 2006 and supporting regulations. Changes to the Act would be required to allow people with life-shortening congenital conditions to access their savings to support their financial wellbeing in retirement.

Proposed Approach

How will government intervention work to bring about the desired change? How is this the best option?

We propose a new withdrawal category in the KiwiSaver Act allowing people with life-shortening congenital conditions to withdraw their savings at a time they choose to retire.

Allowing people to establish their own retirement date under this new category should almost guarantee that people with life-shortening congenital conditions will be able to access their KiwiSaver to support a positive retirement.

Giving people discretion to choose a withdrawal date acknowledges that there is a wide range of life expectancies associated with certain conditions, depending on the severity of the condition and other associated medical conditions.

A set list of conditions in regulations would trigger withdrawal, providing clarity and certainty about the new category in the majority of cases. An alternative process would also be established where a person whose congenital condition is not on the set list could apply to their KiwiSaver provider for withdrawal, with supporting medical evidence. We consider the process for withdrawal outlined above provides:

- certainty about who the new category will apply to
- flexibility for (perhaps rare) conditions that have not been caught by the set list.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The main beneficiaries will be people with life-shortening congenital conditions as KiwiSaver will now be an appropriate retirement savings vehicle for them. They will be able to access the specific benefits available through KiwiSaver that do not come with other retirement savings schemes.

Where do the costs fall?

In order to qualify for withdrawal under the new category we are proposing that people will have to supply medical certification (and perhaps other medical evidence if required) in support of their application. There will be costs to the individual in obtaining this information.

There will be administration costs for KiwiSaver providers in processing these applications.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The proposal to create an early withdrawal category in KiwiSaver for people with life-shortening congenital conditions for the purpose of early retirement seeks to address an existing inconsistency between people that have life-shortening congenital conditions and people that have a normal life expectancy.

In seeking to address an existing inconsistency in KiwiSaver, a new inconsistency is generated and questions could be raised about how people with non-congenital life-shortening conditions are treated in terms of KiwiSaver withdrawal.

There is an existing serious illness category in the Act that can be relied upon in cases of imminent death (guidance produced by the KiwiSaver industry takes this to be that a person would have 12 months or less to live) or permanent incapacity to work. However the serious illness category does not capture situations where a person may want to retire early due to a non-congenital life-shortening condition.

The work on life-shortening congenital conditions may spur calls for the scope of the proposed withdrawal category to be considered again. This is a risk because of the complicated nature of medically-related reasons for withdrawal. In order to create any additional withdrawal categories, a line would need to be drawn to establish what conditions are likely to qualify for withdrawal. Due to the complexity associated with medical conditions it is likely that no matter where you 'draw the line' it would introduce some form of inconsistency or inequity relative to other conditions that might have been included.

The alternative would be to have a reasonably broad withdrawal category allowing for early withdrawal for non-congenital conditions. This is also a risk because the current design of the KiwiSaver Act restricts early withdrawal to a limited number of circumstances in order to ensure that, for most New Zealanders, their savings will be available for them in retirement. Introducing a withdrawal category with a broad scope increases the number of people that could potentially withdraw their money before the age of 65 and risks undermining KiwiSaver as a retirement savings vehicle.

The risk of undermining KiwiSaver as a retirement savings vehicle for the majority of New Zealanders has been managed through the current policy process by tightly defining the scope of the proposed withdrawal category. We are seeking to address a particular issue in relation to people that are born with a condition that means they have a shortened life expectancy. In regards to further calls for change to the early withdrawal categories, MBIE will monitor the feedback received as part of its regulatory stewardship obligations. Further detail on this is provided below.

Identify any significant incompatibility with the government's 'Expectations for the design of regulatory systems'.

Allowing withdrawal of KiwiSaver for people with life-shortening congenital conditions raises questions about the treatment of non-congenital life-shortening conditions. MBIE will monitor the feedback on this point from the industry and from the public as part of its ongoing regulatory stewardship activities. Any work would need to be undertaken with the broader purpose of KiwiSaver as a retirement savings vehicle in mind. As noted above, the current design of the KiwiSaver Act restricts early withdrawal to a limited number of circumstances in order to ensure that, for most New Zealanders, their savings will be available to them for use in retirement.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

There are some gaps in the evidence base.

To inform the scoping of the problem and to provide advice on possible solutions, MBIE commissioned a report on the issue of withdrawal from KiwiSaver for people with life-shortening conditions from two independent advisers. In the generation of that advice the authors created a list of congenital conditions that are recognised as being associated with a shortened life expectancy.

To compile that list the authors drew on a wide literature search and the institutional knowledge of IHC Advocacy, IDEA Services and the associated library teams.

However, whilst the search was extensive, the authors acknowledged that there may be other congenital conditions that are less common or unknown that could also have an impact on a person's life expectancy. Furthermore the authors noted that the data available about incidence rates of certain conditions is scarce, and in a number of cases they relied upon overseas evidence to infer incidence rates for New Zealand.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Ministry of Business, Innovation and Employment

Quality Assurance Assessment:

MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the criteria necessary for Ministers to make informed decisions on proposals in this paper. This is because there has been limited consultation on the proposal which may mean that the potential consequences identified in the Regulatory Impact Statement are not fully understood.

Reviewer Comments and Recommendations:

RIARP confirms that its feedback is reflected in the Regulatory Impact Statement. The Regulatory Impact Statement has undergone moderate changes as a result of the RIARP process.

Full Impact Summary: Withdrawal of KiwiSaver due to life-shortening congenital conditions

Section 1: General information

Purpose

The Ministry of Business, Innovation and Employment (**MBIE**) is solely responsible for the analysis and advice set out in this Regulatory Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet.

Key Limitations or Constraints on Analysis

This RIS addresses the problem of early withdrawal for people with life-shortening congenital conditions. We have been directed by Ministers to address this specific problem and we have not considered changing the early withdrawal categories in the KiwiSaver Act for any other reason, including for life-shortening conditions that are not congenital. The existing serious illness withdrawal category aims to provide a mechanism for non-congenital life-shortening conditions and it is beyond the scope of this project to consider how this withdrawal category is functioning.

The analysis in this RIS relies upon the work undertaken by two independent advisers commissioned by MBIE in order to scope the scale of the problem in relation to KiwiSaver and life-shortening conditions and to seek advice on possible solutions. The Report, 'Possible Changes to the KiwiSaver Act 2006 in relation to members with life-shortening congenital conditions' authored by Dr Claire Matthews and Ms Donna Mitchell, has heavily informed the analysis in this RIS. The approach to establishing a set list of congenital conditions in regulations, and what conditions should be included in that list, has been developed on the basis of recommendations made in that Report.

We are also relying on the targeted consultation that was undertaken as part of the development of the Report and have not undertaken full public consultation. Limited consultation is not ideal from a policy development perspective as it means that the proposals have been developed with the specific views of key interest groups incorporated but have not been subject to full public consultation. We do not have reliable data about the number of people that are impacted by this problem. The Report noted above used the available (and sometimes incomplete) data from New Zealand sources and also drew on international evidence to determine incidence rates for particular conditions. Despite the gaps in evidence, we are assuming that the problem impacts a relatively small section of New Zealand's population.

We are relying on the anecdotal evidence of one individual, Tim Fairhall, to determine the impact

that the problem has at an individual level. We have assumed that Mr Fairhall's experience informs us of the impact the problem has on people that have already started contributing to KiwiSaver.

We do not have any anecdotal evidence about the impact the problem is having on people that have not joined KiwiSaver because they have determined it is not an appropriate retirement savings vehicle for them because of their shortened life expectancy.

Responsible Manager

Authorised by:

Sharon Corbett
Financial Markets Policy
Ministry of Business, Innovation and Employment

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Proposed new withdrawal category in KiwiSaver Act 2006

KiwiSaver is a voluntary, work-based retirement savings scheme. Individuals are automatically enrolled in KiwiSaver when they start a new job (when this happens, you do have an opportunity to opt out within eight weeks). Equally, individuals can choose to join KiwiSaver through a KiwiSaver provider or through their employer.

KiwiSaver is designed to help New Zealanders with their long-term saving for retirement. Withdrawals for retirement can be made from the age of 65.

The KiwiSaver Act provides certain limited situations in which a member can withdraw KiwiSaver funds before they reach the age of 65. These include withdrawing money for your first home, moving overseas permanently, suffering significant financial hardship and serious illness.

Counterfactual:

If we do not make any changes to the withdrawal categories then the majority of KiwiSaver members would need to wait until the age of 65 to withdraw their money (typically taken to be the point at which they retire, although some people do choose to continue in paid employment after this age).

The situations where people could withdraw their money before the age of 65 years old would remain the same.

Some people have a life-shortening congenital condition that reduces their life-expectancy below 65 years. The current withdrawal categories are not supporting these people to access their savings for retirement.

2.2 What regulatory system, or systems, are already in place?

KiwiSaver is one of a number of government initiatives aimed at increasing private retirement savings

Money contributed to KiwiSaver accounts is for the purpose of private retirement savings. The purpose of the KiwiSaver Act 2006 is 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. The Act aims to increase individuals’ well-being and financial independence, particularly in retirement, and to provide retirement benefits.” The Act “provides for schemes (KiwiSaver schemes) to facilitate individuals’ savings, principally through the workplace.”

There are also other government measures designed to support the accumulation of individual retirement savings. The Commission for Financial Capability is funded by the Crown to undertake a number of measures aimed at improving levels of financial capability and wellbeing, and increasing the numbers of people that are financially equipped for retirement. It does this through initiatives like education programmes in schools and in the community. It also has a number of online resources that directly link to KiwiSaver, notably the KiwiSaver Fund finder that helps people select the right KiwiSaver provider and fund for their particular circumstances.

The governance of KiwiSaver sits within the financial markets regulatory system

The Financial Markets Authority’s substantive role in relation to KiwiSaver is as the conduct regulator in financial markets. Money contributed to KiwiSaver is invested in managed funds that are invested on behalf of the individual KiwiSaver member by an investment manager. The managed investment schemes are privately run and their operation is governed by the Financial Markets Conduct Act 2013. The Financial Markets Authority also produces educational material relating to KiwiSaver that seeks to guide New Zealanders into active decisions about their KiwiSaver investments.

2.3 What is the policy problem or opportunity?

People with life-shortening congenital conditions can join and save through KiwiSaver but cannot access their savings

People with life-shortening congenital conditions (a condition a person is born with) can join KiwiSaver to save for their retirement but under current settings cannot access their savings before the age of 65. Having such a condition means a person may not live until 65 years old. This means that either:

- People with life-shortening congenital conditions are not joining KiwiSaver because they are aware it is unsuitable for them as a retirement savings product
- Or, people with life-shortening congenital conditions have contributed money to KiwiSaver and cannot withdraw their money.

There are other privately run retirement savings schemes where individuals can withdraw their savings before the age of 65. However there are some benefits specific to KiwiSaver, notably the Government contribution and compulsory employer contributions, that are not available through other privately run retirement savings schemes. People with life-shortening congenital conditions are missing out on these additional benefits.

Existing serious illness withdrawal category does not allow withdrawal in these circumstances

The existing serious illness withdrawal category is not appropriate to address this problem. This category can only be accessed on the basis that a person is totally and permanently unable to engage in work for which they are suited, or has a condition that poses a serious and imminent risk of death.

Extent of the problem

Incidence rates would ultimately be determined by the definition of what is taken to be a life-shortening congenital condition for the purposes of withdrawal from KiwiSaver. However, even given this qualification the information we do have about certain conditions is not complete, and is often based on international evidence. Based on what we do know, we are assuming a relatively small number of people may be affected by this problem with the KiwiSaver withdrawal categories.

Whilst the incidence rates may be low, the impact at an individual level is significant. The evidence relating to the impact this problem has at an individual level is anecdotal in nature. The problem was initially scoped on the basis of a submission from Tim and Joan Fairhall to the Finance and Expenditure Select Committee on the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill. Tim Fairhall has Down syndrome and an effect of this condition is that he is aging prematurely. His life expectancy is approximately 57 years of age. He has been contributing to KiwiSaver for a number of years, but under the current withdrawal settings, Mr Fairhall may not live long enough to gain access to those savings.

There are also likely people with life-shortening congenital conditions that have not joined KiwiSaver because they have established that it would not be a suitable retirement savings vehicle for them. We do not have data about the numbers of people that would fall within this category.

2.4 Are there any constraints on the scope for the decision making?

Ministers have committed to address the concern that KiwiSaver does not currently work for people born with life-shortening congenital conditions that have a life expectancy below the age of 65.

2.5 What do stakeholders think?

Targeted consultation was undertaken by Dr Matthews and Ms Mitchell during the process of generating their Report. They undertook a range of consultation with people and groups that would have an interest in the outcome of this work and those that could provide expertise in formulating the problem definition and possible solutions.

Consultation was undertaken with:

- KiwiSaver trustees (trustees and supervisors are the decision-making body for the existing serious hardship and terminal illness withdrawal category)
- KiwiSaver scheme providers (providers have an interest as there may be additional administration costs associated with any new withdrawal category)
- health and disability experts (including a legal expert who specialises in the area of health and disability)
- Tim Fairhall, and his mother, Joan Fairhall
- actuaries in relation to life expectancy

The majority of those consulted expressed general 'in principle support' for there to be a new withdrawal category created for people with life-shortening congenital conditions.

Section 3: Options identification

3.1 What options have been considered?

Policy objectives

Overarching policy objective: Ensure that the KiwiSaver settings are designed in a way that makes KiwiSaver an appropriate retirement savings vehicle for New Zealanders.

We have identified the following objectives that are specific to the problem of access to KiwiSaver for people with life-shortening congenital conditions:

Objective one: KiwiSaver is a suitable retirement savings vehicle for people with life-shortening congenital conditions with the aim of supporting a positive retirement.

This objective specifically addresses the problem definition. We are seeking a solution that would allow people with life-shortening conditions to access their KiwiSaver in order to spend a reasonable portion of their adult life in retirement.

This objective has the highest priority in the analysis of the options because it directly addresses the problem we are intending to solve.

Objective two: KiwiSaver withdrawal settings support the primary purpose of saving for retirement.

The current withdrawal criteria are tightly defined so as to preserve the principal purpose of KiwiSaver as a retirement savings vehicle. There are a limited number of current circumstances that allow withdrawal before the age of 65.

Objective three: The costs associated with administering any new withdrawal category are reasonable.

We are seeking an option that does not result in unreasonable costs for both the individual KiwiSaver member applying for withdrawal and the KiwiSaver provider administering the application.

Options

Option One: Allow people with a life-shortening congenital condition (one they are born with) to withdraw their savings at a set age, specific to the type of condition the person has.

Under this option a set list of life-shortening congenital conditions would be established through regulations allowing a person to withdraw their retirement savings before the age of 65.

The list would have a review period (timeframe for this to be determined) so that the list is not limited to currently known conditions, and where medical advances mean a condition is no longer life-shortening, it can be removed.

There would also be a process whereby a person could apply to their KiwiSaver provider for withdrawal for a congenital condition that is not on the set list. The process for this would be similar

to that of the current serious illness withdrawal provisions in that the person would provide a medical certificate with supporting evidence as to why withdrawal should be granted despite the fact that the person does not have a named condition.

For each life shortening condition a specific age of withdrawal would be determined. That age would be based on the average life expectancy for those with the specific condition, allowing for an equivalent expected retirement period as a KiwiSaver member who does not have a life-shortening condition (this is taken to be 25% as a proportion of adult life from the age of 18).

This option fulfils the objectives by:

- **KiwiSaver is a suitable retirement savings vehicle for people with life-shortening congenital conditions with the aim of supporting a positive retirement.**

This option partially fulfils the objective relating to the availability of KiwiSaver as a suitable retirement savings vehicle for people with life-shortening congenital conditions. The likelihood that a person with a life-shortening congenital condition can access their savings to support a positive retirement is higher under this option compared to the status quo.

However, establishing a set retirement age for each condition based on the average life expectancy for people with that condition risks some people not gaining access to their KiwiSaver at a time that is appropriate to support a positive retirement. This is based on the fact that life expectancy and quality of life can vary greatly for people with the same condition. If a retirement withdrawal age is set for all people with the same condition then some people may not be able to withdraw their KiwiSaver despite their readiness and intention to retire. Therefore, it may not improve access to KiwiSaver for all people with a life-shortening congenital condition to support a positive retirement.

- **KiwiSaver withdrawal settings support the primary purpose of saving for retirement.**

This option would be consistent with the existing design of the withdrawal criteria in the KiwiSaver Act. Setting a prescribed list of life-shortening congenital conditions would appropriately target the withdrawal criteria to the group it is intending to serve. The process for allowing people that have a life-shortening congenital condition to apply to their KiwiSaver provider for withdrawal where their condition is not included in the set list is consistent with the application for withdrawal under the serious illness category.

Setting a date of withdrawal for each condition is also consistent with the current design of KiwiSaver. The set withdrawal age mirrors the existing provision that people can withdraw their savings at 65 years old, but adjusts for the average life expectancy of the person's congenital condition.

- **The costs associated with administering any new withdrawal category are reasonable.**

This option partially fulfils the objective of reasonable costs. The costs associated with this option for the individual are likely to be similar to that of the serious illness withdrawal category. It is proposed that in order to apply for withdrawal, an individual must supply medical certification confirming that they have a life-shortening congenital condition named in the set list of conditions (or through the alternative process if their condition is not included on the list).

In terms of associated costs for KiwiSaver providers, it is intended that the set list of conditions would remove the discretion in the decision-making process and therefore limit the administration time needed to process applications. There would be greater administration associated with applications that are not on the named list, but requiring medical certification and evidence should place some reasonable limits around the administration process.

Option two:

Allow people that have a life-shortening congenital condition (one they have been born with) to access their retirement savings at a date determined by them.

This option would be the same as the option above except the end payment date would be determined by the individual member at the point at which they choose to retire.

This option recognises that the impact a particular condition has upon an individual can vary greatly depending on the severity of their condition and influencing factors such as associated medical conditions. Two people with the same condition will likely have a different quality of life and life expectancy and this recognises that two people with the same condition may have different preferred retirement dates.

This option fulfils the objectives by:

- **KiwiSaver is a suitable retirement savings vehicle for people with life-shortening congenital conditions with the aim of supporting a positive retirement.**

This option fulfils the objective relating to the availability of KiwiSaver as a suitable retirement savings vehicle for people with life-shortening congenital conditions. As people with life-shortening congenital conditions can determine a retirement date that suits their circumstances, there is a very high likelihood that they will be able to access those savings to support a positive retirement.

- **KiwiSaver withdrawal settings support the primary purpose of saving for retirement.**

This option is less consistent with the design of KiwiSaver because rather than setting a withdrawal age (mirroring the retirement age in the KiwiSaver Act) it allows individuals flexibility to set their own retirement date. This discretion would be unusual in the context of the KiwiSaver Act.

- **The costs associated with administering any new withdrawal category are reasonable.**

This option is the same as Option One in terms of associated costs.

3.2 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

KiwiSaver is a suitable retirement savings vehicle for people with life-shortening congenital conditions with the aim of supporting a positive retirement.

- **Access:** KiwiSaver is open to all New Zealanders to join, however it does not allow people with life-shortening congenital conditions to **access** their savings at a point that would allow them to spend a reasonable amount of their adult life in retirement, thus supporting a positive retirement.

KiwiSaver withdrawal settings support the primary purpose of saving for retirement.

- **Targeted:** Scope of withdrawal category is sufficiently **targeted** to people with life-shortening congenital conditions and is not so wide as to potentially undermine the primary purpose of retirement savings.
- **Consistent design:** any new withdrawal category would be **consistent** with the overall purpose of

KiwiSaver and the **design** of the existing withdrawal categories.

The costs of administering any new withdrawal category would be reasonable.

- **Costs** to KiwiSaver providers are reasonable.
- **Costs** to KiwiSaver members seeking to apply for a withdrawal are reasonable.

3.3 What other options have been ruled out of scope, or not considered, and why?

No other options have been considered to address the problem of access to KiwiSaver for people with life-shortening congenital conditions.

Section 4: Impact Analysis

4.1 How does each of the options compare with the counterfactual			
	No action	Option One Access determined by a set list of conditions and defined age of retirement	Option Two Access determined by a set list of conditions and self-selected age of retirement
Access (criteria with highest priority)	0	<p>+</p> <p>For some people, determining an age of access would allow them to access their savings at the point they want to retire.</p>	<p>++</p> <p>Allowing people to determine the date they want to retire - and access their KiwiSaver from that date - should allow access for all people with a congenital life-shortening condition.</p>
Targeted	0	<p>++</p> <p>Setting a list of conditions that allows access places clear boundaries about who the withdrawal category applies to.</p>	<p>++</p> <p>Setting a list of conditions that allows access places clear boundaries about who the withdrawal category applies to.</p>
Consistent design	0	<p>++</p> <p>Setting an age of withdrawal for each condition is consistent with the retirement age withdrawal of 65 years.</p> <p>The withdrawal process (medical certification) would be consistent with the existing serious illness withdrawal process.</p>	<p>+</p> <p>Allowing people to self-select the age that they choose to retire would be unusual in the context of the existing withdrawal categories.</p> <p>The withdrawal process (medical certification) would be consistent with the existing serious illness withdrawal process.</p>
Costs to KiwiSaver members	0	<p>-</p> <p>There will be some administration costs but we do not consider these to be unreasonable.</p>	<p>-</p> <p>There will be some administration costs but we do not consider these to be unreasonable.</p>
Costs to providers	0	<p>-</p> <p>There will be some administration costs but we do not consider these to be unreasonable.</p>	<p>-</p> <p>There will be some administration costs but we do not consider these to be unreasonable.</p>

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Our preferred option is option two: Allow people that have a life-shortening congenital condition (one they have been born with) to access their retirement savings at a date determined by them.

This option is preferred because it offers a much greater opportunity for people with life-shortening congenital conditions to access their KiwiSaver to support a positive retirement.

Whilst the design of the category is unusual within the design of KiwiSaver in that it gives discretion to the individual to decide on a retirement date, it is still preferable because it almost guarantees access to KiwiSaver for people with life-shortening congenital conditions. If a retirement date is set for a particular condition it does not take into account the potential for wide variation in retirement age of those with the same condition.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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Additional costs of proposed approach, compared to taking no action

KiwiSaver members with life-shortening congenital conditions	Costs associated with gaining medical certification to apply under the withdrawal category.	Actual dollar amounts are unknown, but we are assuming they will be similar to the cost of going to the doctor.	low
KiwiSaver providers	Administration costs	Actual dollar amounts are unknown, but we are assuming they will be similar to the administration costs associated with the serious illness withdrawal category.	low
Total Monetised Cost		<i>Unknown, but assessment modelled on existing costs within the system.</i>	<i>Low</i>
Non-monetised costs		<i>Low</i>	<i>Low</i>

Expected benefits of proposed approach, compared to taking no action			
KiwiSaver members with life-shortening congenital conditions	For those in KiwiSaver the changes will ensure they can access their savings. For those yet to join, they will be able to access the scheme and the additional benefits (Government contribution and compulsory employer contributions) that KiwiSaver provides.	High	High
KiwiSaver providers	We expect that a relatively small number of current and prospective members of KiwiSaver have life-shortening congenital conditions, so any change that makes KiwiSaver accessible for people with life-shortening conditions will have a low impact on the total size and value of funds under management for a particular KiwiSaver provider	Low	Medium
Total Monetised Benefit		<i>Unknown</i>	<i>Unknown</i>
Non-monetised benefits		<i>Medium</i>	<i>Medium</i>

5.3 What other impacts is this approach likely to have?

The problem identified in relation to KiwiSaver and life-shortening congenital conditions raises a separate problem about whether KiwiSaver is designed in a way that best serves those with other life-shortening conditions.

Questions relating to non-congenital life-shortening conditions are outside the scope of this policy work. However the impact that the introduction of the proposed new withdrawal category has, including any calls for change in relation to non-congenital conditions will be monitored as part of MBIE's regulatory stewardship activities.

A question relating to other life-shortening conditions would require more research and evidence gathering in order to substantiate the evidence base. We do not currently have a good understanding of the people that might be impacted and the types of conditions that would need to be considered for withdrawal.

This broader question would also require consideration of how the serious illness provisions are currently operating and to what degree these are already capturing people with other life-shortening conditions in order to make a further case for change. The discretion provided to people to choose their own retirement date may also spur calls for more discretion in regards to access to KiwiSaver for other members. However, we are of the view that because NZ Superannuation is available from the age of 65 it is fair to assume that the majority of New Zealanders will retire from this date.

5.4 Is the preferred option compatible with the government's 'Expectations for the design of regulatory systems'?

We consider the option is targeted at the group it is intending to serve, whilst also providing flexibility in approach. We consider the administration costs to be reasonable.

MBIE will monitor the changes in line with its existing regulatory stewardship activities.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

Changes will be required under the KiwiSaver Act and supporting regulations.

KiwiSaver providers will need to add to and change their current administration practices to accommodate assessment of the new withdrawal category. This will likely include things like the generation of application forms and industry wide guidance (currently issued by the industry body Workplace Savings) to ensure the application and assessment process is consistent across providers.

Sufficient time will also be needed for KiwiSaver providers to change their disclosure documentation noting the new withdrawal category.

Individuals applying for withdrawal will need to first obtain medical certification providing evidence that they have a condition that would qualify for withdrawal under the new category.

The withdrawal category would be available for both existing members of KiwiSaver that have a congenital life-shortening condition, and prospective members of KiwiSaver.

Media statements will be issued to publicise the changes. MBIE will contact interest groups directly to notify them of the changes.

6.2 What are the implementation risks?

The intention of creating a set list of conditions that would guarantee withdrawal is so that there is certainty about who the withdrawal category applies to. This is partly to reduce the potential for excess administration costs associated with assessing all applications on a case-by-case basis.

However, this approach relies on capturing the majority of conditions within this set list. Because this is a complex area, there remains a degree of uncertainty in relation to the evidence base about the type and incidence of conditions that should qualify for withdrawal, for this reason the alternative process for application has been proposed where a person applies for a withdrawal for a condition that is not on the set list. If it eventuates that there are a reasonable number of applications that get assessed under the alternative process then the administration costs for KiwiSaver providers would increase.

A mitigation strategy for this is that the list of set conditions is proposed to be created in regulations so that it can be amended in cases where there are a number of applications (and approvals) for withdrawal for conditions that are not on the set list.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The alternative process for assessing applications for withdrawal (in relation to conditions that are not on the set list) should provide a good evidence base regarding conditions that might also be included on the set list (so as to provide certainty for those seeking withdrawal and those administering applications for withdrawal).

We have a good working relationship with those in the KiwiSaver industry that will process these applications (supervisors of KiwiSaver schemes) and so we can seek informal feedback about how the administration of the new category is working in practice.

7.2 When and how will the new arrangements be reviewed?

We do not propose a set review period for the list of congenital conditions to be reviewed and will instead rely on the information provided from the KiwiSaver industry to inform us of whether the list of congenital conditions in regulations should be reviewed.



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Withdrawal of KiwiSaver for Life-Shortening Congenital Conditions

Portfolio Commerce and Consumer Affairs

On 26 June 2019, the Cabinet Economic Development Committee:

Background

- 1 **noted** that the majority of New Zealanders are able to withdraw their KiwiSaver savings at the time they qualify for New Zealand superannuation;
- 2 **noted** that there are currently a limited number of situations where a person can withdraw their savings before the age of 65, being first home withdrawal, serious illness and financial hardship, and permanent emigration;

New withdrawal category

- 3 **agreed** that a new withdrawal category be created in the KiwiSaver Act 2006 allowing people with life-shortening congenital conditions to withdraw their savings before the lock-in date specified in the Act, being the New Zealand superannuation qualification age;
- 4 **noted** that the new category has been designed with the specific needs of those with life-shortening congenital conditions in mind;
- 5 **agreed** that the withdrawal category allow the individual applying for withdrawal to determine their date of withdrawal;
- 6 **agreed** that a set list of congenital conditions be specified as guaranteeing withdrawal, through regulations under the KiwiSaver Act;
- 7 **noted** that the list of congenital conditions to be detailed in regulations is being developed by officials in consultation with the medical profession, and that these will be finalised through the drafting process;
- 8 **agreed** that individuals that have a congenital condition that is not on the set list named in regulations may also apply for withdrawal;
- 9 **noted** that making a withdrawal under the new category does not prevent a person from continuing in paid employment;
- 10 **agreed** that a person who has made a withdrawal under the new category may continue to keep contributing to KiwiSaver;

- 11 **agreed** that the process for withdrawal for a person that has a congenital condition named in the regulations will be as follows:
- 11.1 apply in writing to the KiwiSaver manager or supervisor with accompanying medical evidence verifying that they have a life-shortening condition named in the regulations;
 - 11.2 supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver savings;
 - 11.3 supply any additional information that the KiwiSaver manager or supervisor requires to reasonably satisfy themselves that the person has a condition qualifying for withdrawal;
- 12 **agreed** that the process for withdrawal for a person that has a life-shortening congenital condition that is not named in the regulations will be as follows:
- 12.1 apply in writing to the KiwiSaver manager or supervisor stating that they have a congenital condition with medical evidence verifying that the condition is expected to reduce their life below the New Zealand superannuation qualification age;
 - 12.2 supply a statutory declaration that they are intending to retire and wish to withdraw their KiwiSaver saving;
 - 12.3 supply any additional information that the KiwiSaver manager or supervisor requires to reasonably satisfy themselves that the person has a condition qualifying for withdrawal;
- 13 **agreed** that the amount that can be withdrawn by a person that qualifies for withdrawal under the new category described in paragraph 3 above may be up to the value of the KiwiSaver member's accumulation;
- 14 **agreed** that a regulation-making power be inserted into the KiwiSaver Act to allow for a list of congenital conditions to be specified in regulations;
- 15 **noted** that work will be undertaken to examine the interface issues between early withdrawal of KiwiSaver and asset and income tests for the purpose of eligibility for social assistance under social assistance regulations;

Legislative implications

- 16 **agreed** that the changes outlined in the above paragraphs be made through a Supplementary Order Paper to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill;
- 17 **authorised** the Minister of Revenue to issue drafting instructions to Inland Revenue to give effect to the above paragraphs;
- 18 **authorised** the Minister of Commerce and Consumer Affairs to release exposure drafts of the legislative amendments and regulations for targeted consultation as required;

- 19 **authorised** the Minister of Commerce and Consumer Affairs and the Minister of Revenue to make decisions consistent with the policy proposals in the paper under DEV-19-SUB-0176 on minor issues that arise during the drafting process.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Shane Jones
Hon Kris Faafoi
Hon Julie Anne Genter
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:

Minister of Commerce and Consumer Affairs

PROACTIVELY RELEASED

Possible Changes to KiwiSaver Act 2006
in relation to members
with life-shortening congenital conditions

Dr Claire Matthews
Donna Mitchell
July 2019 (revised)

1. Introduction

Under the KiwiSaver Act 2006, unless funds are withdrawn for the purchase of a first home, a member cannot access the funds in their KiwiSaver account until the later of reaching the age of eligibility for NZ Superannuation or completing five years membership of the fund [Clause 4(2), Schedule 1]¹. During the public consultation phase on the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill, a submission was received raising the situation of Tim Fairhall.

Mr Fairhall has Down syndrome, with one effect being that he is aging prematurely, which means it is unlikely he will live to 65. Instead, his life expectancy is approximately 57 and he currently expects to retire around the age of 45-48. This means that he is not expected to live long enough to be able to access the funds in his KiwiSaver account under the current restrictions on when access is permitted.

The Ministry of Business, Innovation and Employment requested a short report to address the issues raised by Mr Fairhall, covering:

- Options for creating a new/different withdrawal category – including specific suggestions and advice on (1) how to word those options and (2) what/who it would capture.
- A recommended process for establishing whether individuals fall within the category, and other checks and balances that should apply.

2. Consultation

In preparing this report we have spoken to a number of people with an interest in KiwiSaver, as well as people able to provide guidance around congenital conditions. These include:

- KiwiSaver Trustees
- KiwiSaver Scheme providers
- Health and disability experts
- Mr Tim Fairhall, and his mother, Mrs Joan Fairhall
- Actuaries in relation to life expectancy
- IRD staff in relation to technical matters related to KiwiSaver
- A legal expert who specialises in the area of health and disability

¹ Access to KiwiSaver funds is possible in the case of serious illness or financial hardship [Clauses 10-12, Schedule 1]

In general, there was support in principle for providing earlier access than is currently permitted for KiwiSaver members with life-shortening congenital conditions. However, it is important to note that not all those spoken to were supportive of any change in access to KiwiSaver funds. During the discussions, information was provided to the authors to assist in formulating appropriate recommendations, and points raised about possible technical issues that need to be considered.

3. Background

The KiwiSaver Act 2006 came into force on 1 July 2007 to provide a government-mandated scheme to assist New Zealanders to save for their retirement. While the primary purpose of the scheme is to fund a KiwiSaver member's retirement, the scheme rules mandated by the legislation include a provision for early withdrawal in the event of serious illness, where serious illness is defined as:

- “an injury, illness, or disability—
- (a) that results in the member being totally and permanently unable to engage in work for which he or she is suited by reason of experience, education, or training, or any combination of those things; or
 - (b) that poses a serious and imminent risk of death.”
- [Clause 12(3), Schedule 1]

This provision is not suitable for the issue being considered here because it restricts the withdrawal to a point at which the KiwiSaver member is seriously incapacitated and/or facing imminent death. This means the member is unlikely to be able to utilise the funds to support an active and positive retirement, as intended by the scheme.

In some cases, KiwiSaver members face a likely death before reaching the end payment date, being the later of the age of eligibility for NZ Superannuation or five years membership, as a result of a congenital condition. If they do survive to the end payment date, their quality of life will likely have deteriorated so that access to their KiwiSaver funds will offer limited value in terms of being able to enjoy an active and positive retirement. Equity suggests that members with life-shortening congenital conditions should be able to withdraw their funds at an age when they can still expect to enjoy an active and positive retirement, as do other KiwiSaver members.

The population group of concern are people:

- with potentially life shortening conditions that are present from birth, although they may become evident or first occur in adulthood;

- who have signed up to KiwiSaver with the expectation of being able to use their savings to contribute to their financial security, standard of living and quality of life when they retire; and
- who will have to/want to stop work before 65 in order to enjoy these benefits but under current rules cannot access their savings.

In order to address the issues raised by Mr Fairhall, we need to address the following questions:

- What do we know about conditions associated with a shortened life expectancy and their prevalence?
- What are some of the criteria that could/should be considered so that individuals can apply for early access to their funds?
- What evidence would people be asked to provide to support an application?
- What further information is needed to get a better understanding of prevalence of identified impairments, premature ageing, causes of death and impact on wellbeing and functional ability?

It is important to note that this report is solely focussed on the issue of access to a member's own KiwiSaver funds, and does not give any consideration to possible changes to NZ Superannuation entitlements.

4. Context

As we consider possible changes to the KiwiSaver scheme to address the situation of members with life-shortening congenital conditions, there are a number of contextual matters that need to be considered.

4.1 UN Convention on the Rights for People with Disabilities

New Zealand is a signatory to the UN Convention on the Rights for People with Disabilities (UNCPRD). The principles of the UNCPRD include non-discrimination, full and effective participation and inclusion in society, and equality of opportunity. It is important that our obligations under the convention are met under any changes that are made.

4.2 Life expectancy

There is a difference in assessment of life expectancy for individuals and for cohorts, with average cohort life expectancy able to be measured with a reasonable level of accuracy; however, it is virtually impossible to do the same for an individual. Life expectancy can be assessed at any point in time, and is influenced by a range of factors, including genetics and lifestyle as well as socio-economic factors.

4.2.1 Increases in Life Expectancy

Advances in medicine, health, genetic and molecular research have resulted in marked increases in life expectancy. Although not as easily quantifiable, changing attitudes, greater inclusion and improved social and community care have also contributed.

As with all New Zealanders, people with intellectual impairments are living longer although their average age is still significantly lower than the general population. For people with Down syndrome there has been an extraordinary increase in age of death, particularly over the last 30 years. (Bittles & Glasson, 2004; Coppus et al 2013; Emerson & Hatton 2014; Stancliffe et al, 2012). Reported increases in age of death have gone from nine years in 1929 to an increase in the median age of death from 25 years to 49 years in the period from 1983-1997. The life expectancy of a child born with Down syndrome in the first decade of this century is predicted to exceed 60 years (Yang et al., 2002).

4.3 Life-shortening conditions

A person's life expectancy may be shortened by a range of conditions, some of which are congenital, such as cystic fibrosis, while others appear unexpectedly during their life-time, such as cancer. This report is restricted solely to the question of congenital conditions, including adult onset congenital conditions.

4.3.1 Poor Health and Earlier Mortality

Life expectancy for any one individual varies with the nature, severity and course of the condition, and related situational and environmental factors. These include the age of diagnosis of the condition and comorbidities, access to and availability of treatment and support services.

“Our observation of excess cause-specific mortality in individuals with ASD [Autism Spectrum Disorder] may signify an increased biological vulnerability, as well as insufficient awareness, diagnoses and treatment of comorbid diseases. In other words, people may be more vulnerable to getting certain diseases that can lead to death and doctors may not be as good at diagnosing and treating these diseases in [this population group].” (Hirvikoski et al, 2016)

The above statement applies equally to many of the conditions that fall into the group of people with conditions associated with a shortened life span. Additionally, there is growing evidence that the social determinants of health and wellbeing – education, employment, income/poverty and social supports - are strongly associated with poorer health outcomes, lower life expectancy and higher mortality rates (Rickard and Donkin, 2018; UK Trade Union paper, 2013). Many within the group of concern will have compounded and greater risk due to increased vulnerability associated with poorer social determinants of health such as inequalities in access to education, low income and low rates of employment (Rickard & Donkin, 2018).

Race and ethnicity are also critical factors with Māori and Pasifika people being over-represented in groups with high rates of potentially preventable diseases and lower life expectancy. The Social Report 2016 produced by the Ministry for Social Development explains that the lower life expectancy for Māori reflects higher death rates than for non-Māori at nearly all ages, and notes there are a number of explanatory factors including smoking rates and socio-economic factors – the report also notes that there “is a difference [in life expectancy] of 7.5 years for males and 6.1 years for females” between the most and least deprived areas of New Zealand.

4.4 Positive Retirement

Financial security, health, wellbeing, lifestyle, and adapting to change are key areas of consideration when thinking about retirement (Stancliffe, 2018; University of Otago Economics discussion paper No. 1703). Retiring voluntarily, planning for retirement, and engaging in a gradual transition to full retirement through bridge employment have all been associated with positive outcomes in general population studies (Wang & Shultz, 2010).

To understand retirement for people with the conditions that are the focus of this discussion, consideration has to be given to their employment experiences. Many of this group will have significantly lower rates of participation in employment and very different experiences to those of the general population. Despite policy initiatives to increase participation in work for particular population groups there has been little, if any, change. While there is a lack of disability and impairment specific data, recent information illustrates the gap and extent of the problem. The Household Labour Force data for the June 2017 quarter reports a labour force participation rate of 25.2% for disabled people and 72.6% for the not disabled group.

Recent research that explored retirement for individuals with intellectual and developmental impairments found that older adults with intellectual and developmental impairments do decrease their participation in paid employment as they age (Stancliffe et al., 2018). However, most adults with intellectual impairment are not in paid employment and if they are, their retirement tends to be sudden rather than a gradual reduction in work hours.

These findings indicate a need for connected and coherent policies across government, including reasonable accommodations in services, what is counted as income and possible impact on entitlements to benefits. While exact circumstances may vary for those with intellectual and developmental impairments, inherited conditions, illness, injury in adulthood and so on, many of the issues will be the same.

5. Conditions with a Potential for Shortened Life Expectancy

There are a number of conditions that have the potential to limit life expectancy or are associated with a shortened life span. How this translates for a particular individual will vary according to a number of factors. However, there are common features associated with higher rates of earlier death and premature ageing. These include:

- Greater severity of the condition (impairment/disability/disorder/disease)
- Having multiple conditions/comorbidities
- Where the condition is associated with a nervous system disorder (neurological, neurodevelopment impairment), particularly epilepsy
- Where the condition has an increased risk of respiratory aspiration and secondary disease
- Making comparisons with the right cohort/age band. The difference that this makes was illustrated earlier, as a child born with Down syndrome today has a considerably greater from birth life expectancy than of 30 years ago (see section 3.2.1 above). This applies across all the conditions discussed in this report.

The impacts of these factors are illustrated in the following sections. Many of the conditions listed are congenital (present at or before birth), however, for many people the cause of their condition is unknown.

5.1 Developmental Impairments

Available New Zealand information (MoH Health Indicators, 2011) on life expectancy from birth for people with intellectual impairments found males' average life expectancy to be 59.7 years, 18 years below that of the male general population average of 78.4 and females almost 23 years below that of the female population average of 82.4 years. This is consistent with findings in similar countries. People with an intellectual impairment die 15-20 years earlier than the average age in UK (Rickard & Donkin, 2018).

As a population group, people with an intellectual impairment have a shorter life expectancy from birth and increased age specific mortality rates across all age bands. A significant downward trend in over-time mortality rates for people with intellectual impairments was reported with an equivalent to a 1.2% year-on-year reduction. For the same period in the general population in England and Wales, the decline was 2.2% for men and 1.7% for women. As such the relative inequality in mortality rates showed a modest increase (Emerson and Hatten, 2014).

Mortality rates are higher for people with more severe impairments. In a UK sample of 247 people with intellectual impairments (Heslop et al, 2013), the average age of death varied by severity of impairment – 67.5 years for people with a mild learning impairment, 64 years for people with moderate, 59 years for severe, 46 years for people with profound and

multiple impairments. Young adults, women, people with epilepsy, people with Down syndrome and other congenital causes of intellectual impairment have also been found to have higher mortality rates.

Ageing is commonly reported as starting earlier for many people with intellectual impairment. This is seen in an earlier age of onset of medical problems related to the natural history of the specific impairment and earlier onset of some age-related diseases and frailty (Coppus, 2013). Commonly associated conditions experienced by people with intellectual impairments at higher rates than the general population include epilepsy, physical and sensory impairment, respiratory disease and dementia. People with intellectual impairment also have high rates of mental health disorders which in turn are associated with poor health and earlier death.

5.1.1 Down Syndrome

A review (O'Leary et al., 2018) of early death and causes of death for people with Down syndrome found a life expectancy 28 years younger than the general population. Congenital heart anomalies and respiratory conditions were the leading cause of death and more common than in the general population. People with Down syndrome have a greater chance of developing dementia at an earlier age than people with intellectual impairment without Down syndrome and the general population. An Irish study (McCarron et al., 2014) found that 15.8% of over 40s with Down syndrome had dementia or other serious memory impairment. This compared with 6% of over 60s in the general population. In another Irish study (McCarron et al, 2011) 26.1% had developed dementia by the age of 50, 79.6% by 60 and 95.7% by age 68.

5.1.2 Fragile X

Fragile X is the most commonly known inherited form of intellectual impairment. People with Fragile X have higher rates of epilepsy than the general population. Fragile X-associated Tremor/Ataxia Syndrome (FXTAS) is a progressive neurological impairment that can affect some male carriers over the age of 50 (Forster-Gibson & Holden, 2017). Life expectancy for people with Fragile X is normal, and therefore it is not a life-shortening congenital condition and outside the scope of this report.

5.1.3 Cerebral Palsy

For people with cerebral palsy who are able to walk and do not have complications, life expectancy is similar to that in the general population. For those who have hard to control seizures, significant respiratory difficulties, severe gastroesophageal reflux disease (GERD) and who are not ambulant, there is an increased risk of early mortality with life expectancy ranging from late 20s to early 50s. (Fehlings & Hunt 2017)

5.2 Adult Onset Conditions

5.2.1 Multiple Sclerosis

Using data from similar countries, it is estimated that one in every thousand New Zealanders has Multiple Sclerosis (MS) or approximately 4,000 people (Multiple Sclerosis Research Trust). Symptoms usually appear between the ages of 20 and 50 with a peak in the early 30's. The course of MS is unpredictable. Some people are minimally affected while others rapidly progress to being severely disabled. Most people with MS fall in between the two extremes. MS is more prevalent in people who have Northern European ancestry. MSNZ suggests that "on average, a person with MS can expect to live 7-10 years fewer than those without MS" (<https://www.msnz.org.nz/prognosis/>).

A small New Zealand study (Multiple Sclerosis NZ incidence study) to determine the numbers of people presenting with a first demyelinating event or new diagnosis of MS between June 1st, 2012 and May 31st, 2014 found the average age at which people developed their first symptoms was 37.8 ±11.8 years. This is older than the average age recorded in previous studies. The mean age at diagnosis was 42.2 years indicating that there is a significant delay between the onset of first symptoms and diagnosis of MS.

5.2.2 Motor Neurone Disease

Motor neurone disease (MND) is the umbrella term for a group of degenerative diseases that kill muscle nerve cells, affecting people's movement, speech and ability to breath. The incidence of MND is around 2 per 100,000 with median survival time approximately three years from symptom onset (Scotter, 2015).

The study found that New Zealand had the highest mortality rate from MND of any participating country with 2.2 deaths per 100,000 people. The mortality rate is just ahead of Australia and the United Kingdom, and while further research is needed to understand what is contributing to the high death rate, it is believed there may be links to genetic predispositions, especially among Māori and Pasifika people. Waiting times for a neurology consultation can be more than a year (Professor Valery Feigin, AUT quoted in James Ensor, Newshub, 2018).

A recent global study (Global Burden of Disease), in which New Zealand participated, reported the risk of developing the disease as one in 300 with most people dying within 15-20 months of diagnosis. As a result, the current serious illness provisions are more appropriate for someone with MND.

5.2.3 Other Relevant Conditions

Other relevant conditions that may be life-shortening and should therefore also be considered for inclusion as allowing early access to KiwiSaver funds are Huntington's chorea and Fetal Alcohol Syndrome Disorder (FASD).

There are other conditions that may result in death at an earlier age than the general population, including dementia and sequelae following different levels of severity of Spinal Cord Injury (SCI) and Traumatic Brain Injury (TBI). These are not congenital conditions and are therefore outside the scope of this report. Another condition outside the scope of this report is early onset (before 65) Parkinson's disease, as there is uncertainty as to whether it is a congenital condition or the result of environmental factors. There may be value in follow up work on conditions such as these.

6. Recommendations

6.1 Early access allowed

Some KiwiSaver members have congenital conditions that result in a shortened life span. Delaying access to their KiwiSaver funds until the legislated end payment date can be seen as inequitable since it means they are unable to enjoy the active and positive retirement available to ordinary members. As a signatory to the UNCRPD, New Zealand is expected to enable full and effective participation and inclusion in society and equality of opportunity for people with disabilities.

Recommendation 1: The KiwiSaver Act 2006 should be amended to allow for an earlier end payment date for members with life shortening congenital conditions.

6.2 Consequential effects of early access

The purpose of allowing early access is to allow the KiwiSaver member with a life-shortening congenital condition to enjoy an active and positive retirement similar to an ordinary member. In practice, the member is in effect 'retiring', in the same way that an ordinary member 'retires' on reaching the age of eligibility for NZ Superannuation. This means that the changes that occur to a member's KiwiSaver scheme entitlements on reaching the end payment date should also apply in cases of early access, in particular ending the entitlement to the Member Tax Credit and Compulsory Employer Contributions.

Recommendation 2: The introduction of an earlier end payment date should be accompanied by changes to remove the entitlement to Member Tax Credit and Compulsory Employer Contributions.

6.3 Life shortening congenital conditions

There are several known congenital conditions that are recognised as being associated with a shortened life-span. Enabling early access for such conditions should be made as simple as possible. However, there may be other congenital conditions, which are less common or not yet identified, that may also be associated with a shortened life span. The range of congenital conditions that may permit early access should not be limited to currently known

conditions. In addition, it should be possible to remove conditions from allowing early access where medical advances mean that the condition is no longer considered life-shortening.

Recommendation 3: The KiwiSaver Act 2006 should be amended to permit the making of a regulation that

- (a) Specifies the congenital conditions that allow early access, which may be revised from time to time.
- (b) Specify the end payment date associated with each condition included in the regulation.
- (c) Prescribes a process for assessing other congenital conditions to determine whether the condition should be added to or removed from the list of conditions permitting early access and/or permitting early access for an individual.

A person with Down Syndrome, Cerebral Palsy, Huntington's Chorea or Foetal Alcohol Syndrome is born with it. The basis of our recommendation on Multiple Sclerosis is that no one knows for certain what causes Multiple Sclerosis and more work is being done. However, Multiple Sclerosis New Zealand reports there may a risk factor at birth (which contributes to it being congenital) and environmental factors (Vitamin D, smoking or obesity) as contributors to adult onset of the condition.

Recommendation 4: The congenital conditions that permit early access should include Down Syndrome, Cerebral Palsy, Multiple Sclerosis, Huntington's chorea, and Foetal Alcohol Syndrome Disorder. An individual with one of these conditions who is applying for early access must apply in writing to their provider.

- The application must include a medical certificate that confirms the member has a congenital condition listed in the regulation.
- The medical certificate must be from a New Zealand registered medical specialist with a relevant area of expertise that includes the member's congenital condition.
- The medical conditions included in the regulations should be verified by a medical professional.

Recommendation 5: An individual wishing to apply for early access to their KiwiSaver funds under this regulation as a result of a congenital condition that is not listed in the regulation must apply in writing to the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme).

- The application must include a medical certificate from a New Zealand registered medical specialist with a relevant area of expertise that includes the member's congenital condition.
- The medical certificate must specify what the member's congenital condition is, it must confirm that the condition is associated with a shortened life expectancy, and it must detail the life expectancy from age 18 associated with the condition.
- The medical certificate should outline the existing national or international research that forms the basis for the life expectancy assessment.

- A congenital condition must reduce life expectancy by at least 15 years compared to an ordinary New Zealander of the same gender to permit early access.
- The date for early access will be calculated in line with recommendation 7 (see section 6.4 below).
- If the life expectancy associated with the condition is such that the member's death is likely to be within five years of the date of application, the member should consider whether it would be more appropriate to apply under the serious illness provision.

Recommendation 6: The list of congenital conditions which allow early access to a member's KiwiSaver funds should be reviewed every five years. At the time of the review, submissions from relevant support groups and/or medical experts should be invited and considered.

- Submissions must include a letter of support from a New Zealand registered medical specialist with a relevant area of expertise that includes the congenital condition that is the subject of the submission.
- The letter of support must confirm that the condition is associated with a shortened life expectancy, and it must detail the life expectancy from age 18 associated with the condition.
- The letter of support must outline the national or international research that forms the basis for the life expectancy assessment.
- A congenital condition must reduce life expectancy by at least 15 years compared to an ordinary New Zealander of the same gender to be added to the list.

6.4 End payment date for early access

A key consideration is the age at which early access should be permitted for KiwiSaver members with a life-shortening congenital condition. Currently the standard end payment date for an ordinary KiwiSaver member is age 65. Using the life expectancy tables produced by Statistics NZ, a male born in 1951 at age 18 had a life expectancy of 81, which equated to an expected retirement period of 16 years, or 25% of his adult life. We suggest it would be reasonable to assess the end payment date for a KiwiSaver member with a life-shortening congenital condition to provide an equivalent proportion of time in retirement. As an example, if the life expectancy of the member is 57 years, then allowing access to their KiwiSaver funds at age 47 would provide for a retirement period of 10 years, representing 26% of their adult life.

Recommendation 7: The age at which early access is permitted for any condition should be calculated to provide a retirement period that is equivalent to the expected retirement period of an ordinary member, expressed as a proportion of adult life (from age 18).

- Currently the proportion of adult life that is spent in retirement for an ordinary member should be specified as 25%.

Recommendation 8: The proportion of adult life (from age 18) that is spent in retirement for an ordinary member should be reviewed every ten years to take account of changes in life expectancy, and the end payment date for congenital conditions revised to maintain alignment if it changes.

6.5 Application process

All withdrawals from a KiwiSaver account require an application. The process associated with withdrawals for serious illness provides a foundation for a suitable process for withdrawals by members with a life-shortening congenital condition, as there is a medical element. KiwiSaver providers and trustees cannot be expected to have the requisite expertise to determine whether a member has a congenital condition that permits early withdrawal, therefore it is appropriate to require verification by an appropriate medical expert.

Recommendation 9: The process to apply for the earlier end payment date will require an application by the member, including a statutory declaration, accompanied by confirmation by an appropriate registered medical specialist that the member has a condition on the regulatory list.

6.6. KiwiSaver withdrawals are not income

KiwiSaver members with a life-shortening congenital condition who are not working may be in receipt of a government benefit to provide financial support. Some benefits are affected by income earned by the recipient. An ordinary KiwiSaver member, who reaches the end payment date, will usually receive NZ Superannuation which is a universal government payment, that is unaffected by the withdrawal of KiwiSaver funds. For equity reasons, it is appropriate that a member who has an earlier end payment date should be treated similarly.

Recommendation 10: The withdrawal of KiwiSaver funds by a member with a life-shortening congenital condition should not be treated as income.

7. Other Issues

In the course of preparing this report, we have identified a range of issues that are beyond the scope of this report, but are worth noting for possible future investigation and consideration.

7.1 Legal Capacity

In some cases, the congenital conditions that are life-shortening are associated with a degree of intellectual impairment. Article 12 of the UNCRPD, 'Equal recognition before the law', is relevant here. This article recognises that persons with disabilities should enjoy legal capacity on an equal basis with others in all aspects of life. This makes provisions for supports and safeguards for decision making, prevention of abuse and control of financial affairs.

New Zealand is in the process of reporting to the United Nations Committee on the Rights of Persons with Disabilities for our combined second and third periodic review. The UN Committee has asked the government to identify 'measures taken to ensure that responsive

and tailored supports are available and affordable to all persons with disabilities to exercise their legal capacity and to manage their financial affairs, particularly for persons with psychosocial and/or intellectual disabilities (NZ Govt. draft response current to 15 August 2018, p.32). The government has also been asked to provide information about measures taken to revise the relevant laws on supported decision making that are in full conformity with Article 12. This relates to making a shift from substitute to supported decision making and impacts on how consent, competence and mental capacity are defined and operationalised in policy and practice.

We note as an update on the government's draft response on the implementation of the UNCRPD, that the Office of Disability Issues has undertaken a stocktake to identify any legislation that is not consistent with the UNCRPD. This work yielded 59 pieces of legislation, 31 of which were identified as likely contravening the Convention.

Further work should be undertaken to

- Consider how New Zealand's commitment to the UNCRPD can be best reflected in the KiwiSaver framework, both currently and in relation to any changes
- Consider how someone with impairments affecting their mental capacity can be appropriately safeguarded in regards to informed consent and appropriately authorised legal representatives (e.g. welfare guardian or enduring power of attorney) acting on their behalf where necessary.

7.2 Provision of Information and Advice

The ability for someone like Mr Fairhall to become a KiwiSaver member under current scheme regulations raises a concern about the information and advice provided to pending and new members about the appropriateness of KiwiSaver for them. While KiwiSaver membership is generally seen as a positive option for most New Zealanders, there will always be exception. People must have sufficient information to be able to make a fully informed decision as to whether membership is the best decision for their particular circumstances. The exception to this would be if membership was compulsory for particular New Zealanders, such as those over the age of 18.

7.3 Prevalence of Different Conditions

The most common responses to questions about prevalence rates of different impairments in New Zealand reports and literature are "we don't know", "it is limited and more research is needed," "it's too old to use" or "that it is not publicly available". Most prevalence and incidence rates given are based on overseas research. As an example, there is no New Zealand data on prevalence and/or incidence of Fetal Alcohol Syndrome Disorder [FASD] but international studies suggest that around 3% of births may be affected.

Further consideration could be given to:

- What data is available that could be analysed to get a better understanding of age of death, cause of death, life expectancy from birth for different age bands (cohorts) for different impairments/population groups?
- This information may be available and could be analysed further from MoH, MSD, ACC and integrated data sets.

7.4 Serious Illness Provisions

The current provisions for early withdrawal of KiwiSaver funds include that of “serious illness”. This raises questions as to how the criteria for serious illness are defined and operationalised. For example, does ‘permanently affects your ability to work’ include unpaid/voluntary work?

8. References

- Bittles, A., et al. (2004). Clinical, social, and ethical implications of changing life expectancy in Down syndrome. *Developmental medicine & Child Neurology*, 46, 282-286.
- Coppus, A.M.W. (2013). People with intellectual disability: What do we know about adulthood and life expectancy? *Developmental Disabilities Research Reviews*, 18:6-16
- Emerson, E., and Hatton, C. (2014) *Health inequalities and people with intellectual disabilities*. Cambridge University Press.
- Ensor, J. (2018). New Zealand has world's highest death rate from motor neuron disease – study (<https://www.newshub.co.nz/home/new-zealand/2018/11/new-zealand-has-world-s-highest-death-rate-from-motor-neuron-disease-study.html>)
- Fehlings, D. & Hunt, C. (2017). Cerebral Palsy. M. Wehmeyer et al. (Eds). *A Comprehensive Guide to Intellectual & Developmental Disabilities* (2nd ed.), pps. 263-273. Baltimore: Paul Brookes.
- Forster-Gibson, C. & Holden, J. (2017). Fragile X Syndrome in M. Wehmeyer et al. Eds. *A Comprehensive Guide to Intellectual & developmental Disabilities* (2nd ed.), pps. 209-217 Baltimore: Paul Brookes.
- Glasson, E et al, 2017 Trends in ageing for people with Down syndrome: A 56 year cohort study in Western Australia, *Innovation in Ageing*, Volume 1, Issue 1, 1 July, page 1334 <https://doi.org/10.1093/geroni/igx004.4892>
- Global Burden of Disease Studies: Global, regional and national burden of motor neuron diseases 1990-2016 – a systemic analysis for the Global Burden of Disease Study 2016, released 2018.
- Haveman, M.J., et al.(2009). *Report on the State of Science on Health Risks and Ageing in People with Intellectual Disabilities*. IASSID Special Interest Research Group on Ageing and Intellectual Disabilities/Faculty Rehabilitation Sciences, University of Dortmund. (<https://www.iassidd.org/wp-content/uploads/2019/02/haveman-et-al-state-of-the-science.pdf>)
- Heslop, P., Blair, P., Fleming, P., Hoghton, M., Marriott, A., & Russ, L. (2013) *Confidential Inquiry into premature deaths of people with learning disabilities (CIPOLD): Final Report*. Norah Fry Research Centre
- Hirvikoski, T et al (2016) Premature mortality in autism spectrum disorder. *British Journal of Psychiatry*. 2016 Mar;208(3):232-8. doi: 10.1192/bjp.bp.114.160192. Epub 2015 Nov 5.
- McCarron, M. et al. (2011) *Growing Older with an Intellectual Disability in Ireland in 2011: First Results from the Intellectual Disability Supplement of The Irish Longitudinal Study on Ageing*. School of Nursing and Midwifery, Trinity College Dublin.
- McCarron, M. et al (2014). A prospective 14 year longitudinal follow up of dementia in persons with Down syndrome. *Journal of intellectual Disability Research*, vol. 58, issue 1,
- MENCAP - *Health inequalities research* <https://www.mencap.org.uk/learning-disability-explained/research-and-statistics/health/health-inequalities>
- Ministry of Social Development (2016). Life Expectancy at Birth in *The Social Report*. Available at <http://socialreport.msd.govt.nz/health/life-expectancy-at-birth.html>

- Mirfin-Veitch, B. & Paris, A. (2013). *Primary health and disability: A review of the literature*. Auckland: Te Pou o Te Whakaaro Nui.
- National Development Team for Inclusion. *Improving Health and Lives*. (<https://www.ndti.org.uk/our-work/our-projects/peoples-health/improving-health-and-lives-ihal>)
- NHS Digital site (2016/17) *Learning Disability Observatory* (<https://digital.nhs.uk/services/general-practice-gp-collections/service-information/learning-disabilities-observatory-2017-18>)
- Nichols, Murray & Vos (2018). Global, regional, and national burden of motor neuron diseases 1990–2016: a systematic analysis for the Global Burden of Disease Study 2016. *The Lancet Neurology*. (<http://www.healthdata.org/research-article/global-regional-and-national-burden-motor-neuron-diseases-1990%E2%80%932016-systematic>)
- NZ Government (2018). *The New Zealand Government response to the List of issues prior to submission of the combined second and third periodic review of New Zealand* (draft current to 15 August 2018). (<https://www.odi.govt.nz/united-nations-convention-on-the-rights-of-persons-with-disabilities/second-periodic-review/>)
- O’Leary, L., Hughes-McCormack, L., Dunn, K., and Cooper, S. (2018). Early death and causes of death of people with Down syndrome: A systematic review, *Journal of Applied Research in Intellectual Disabilities* 31 (5) September 2018: 687-708. 2018
- Rickard, W., & Donkin, A. (2018). *A Fair, Supportive Society: Summary Report*. [London]: Institute of Health Equity. (<http://www.instituteoftheequity.org/resources-reports/a-fair-supportive-society-summary-report/a-fair-supportive-society-summary-report.pdf>)
- Scotter, E. (2015). Motor Neurone Disease: bringing New Zealand patients onto the world stage. *New Zealand Medical Journal*, 20 Feb., 2015, vol. 128, no.1409
- Scottish Learning Disability Observatory <https://www.sldo.ac.uk/>
- Special Olympics New Zealand. (2012). *Special Olympics New Zealand Athlete Health Overview*. Wellington: Special Olympics New Zealand.
- Stancliffe, R. et al. (2012) Demographic Characteristics, Health Impairments, and Residential Service Use in Adults with Down Syndrome in 25 U.S. States. *Intellectual and Developmental Disabilities*: April 2012, Vol. 50, No. 2, pp. 92-108.
- Stancliffe, R., Krammer, and Nye-Lengerman, K. (2018) Exploring Retirement for Individuals with Intellectual and Developmental Disabilities: An Analysis of National Core Indicators Data. *Intellectual and Developmental Disabilities*: August 2018, Vol. 56, No. 4, pp. 217-233.
- Trinity College Longitudinal Study on Learning Disability and ageing – Ireland. <https://www.tcd.ie/tcaid/research/publications/>
- UK Trades Union Congress (2013). *Life expectancy, inequalities and state pension outcomes*. Trades Union Congress: August 2013.
- University of Otago (2017). *Economic Discussion Papers N. 1703: A balancing approach: using the living standards framework to assess different retirement income policies*.

Wang, K & Shultz, K (2010). Employee retirement: A review and recommendations for future retirement. *Journal of Management*, 36(1), 172-206.

Yang, Q., Rasmussen, S. A., & Friedman, J. M. (2002). Mortality associated with Down's syndrome in the USA from 1983 to 1997: A population-based study. *Lancet*, 359, 1019–1025.



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Supplementary Order Paper – Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill	Date to be published	23 September 2019

List of documents that have been proactively released

Date	Title	Author
23 September 2019	<i>Supplementary Order Paper – Taxation (KiwiSaver, Student Loans and Remedial Matters) Bill</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
23 September 2019	<i>LEG-19-MIN-0113</i>	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction which is "Confidential advice to Government".

This may include information that would be redacted if this information was requested under Official Information Act 1982.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Legislation Committee

Supplementary Order Paper - Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

Proposal

1. I seek the Committee's approval of a Supplementary Order Paper (SOP) making changes to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill. The SOP creates a new early withdrawal category in the KiwiSaver Act 2006 for people with life-shortening congenital conditions.
2. The Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill (the Bill) has had its first reading and is currently being considered by the Finance and Expenditure Committee. Subject to Cabinet approval, when I publicly release a copy of the SOP, I will invite the Chair of the Finance and Expenditure to include the SOP as part of its consideration of the Bill.

Policy

3. The policy to be implemented through the SOP creates a new withdrawal category in the KiwiSaver Act that would allow people with life-shortening congenital conditions (a condition they are born with) to withdraw their savings early for the purpose of retirement. This policy was approved by the Cabinet Economic Development Committee on 26 June 2019 [DEV-19-MIN-0176 refers].
4. People with life-shortening congenital conditions can join KiwiSaver to save for their retirement but, under the current withdrawal settings, cannot access their savings before the lock-in date of 65 years old (being the age of qualification for New Zealand superannuation). Having such a condition means a person may not live until 65 years old and will not be able to use their KiwiSaver savings to support their financial wellbeing in retirement.
5. There is an existing serious illness withdrawal category in the KiwiSaver Act but withdrawal under this category can only be made on the basis that a person is totally and permanently unable to engage in work for which they are suited or has a condition that poses a serious and imminent risk of death. This existing category would not allow people with life-shortening congenital conditions to withdraw their KiwiSaver at a point that would allow them to spend a reasonable portion of their adult life in retirement.
6. The SOP creates a new withdrawal category in the KiwiSaver Act allowing people with life-shortening congenital conditions to withdraw their savings before the

age of 65. There would be two ways that a person with such a condition could qualify for early withdrawal under the new category:

- 6.1. A set list of conditions would be named in regulations as qualifying for withdrawal. Establishing a set list is intended to give certainty to the majority of applicants that they are eligible for withdrawal.
 - 6.2. There would also be a process where a person could apply to their KiwiSaver provider for withdrawal for a life-shortening congenital condition that is not on the set list. This flexibility is needed because this is a complex area. This alternative process would be appropriate for people with rare congenital conditions that shorten their life below the age of 65.
7. People withdrawing under this new category will have discretion to choose their retirement date. This discretion is needed because people with life-shortening congenital conditions can have a wide variation in life expectancy. Even two people with the same condition can have very different life expectancies due to the severity of their condition and other associated medical conditions.
 8. People withdrawing under this category may continue to contribute to KiwiSaver as working part-time or resuming some form of employment can be considered part of a positive retirement. However following withdrawal under this new category a person will no longer receive the government contribution or compulsory employer contribution. This is consistent with how other KiwiSaver members are treated when they reach 65 years old.

Matters that may be contentious

9. The new withdrawal category is for people that are born with a condition that shortens their life. Questions may be raised about whether the category should be broadened to capture a wider range of conditions.
10. I believe that opening up a broad withdrawal category in the KiwiSaver Act risks undermining KiwiSaver as a retirement savings vehicle. The current design of the KiwiSaver Act restricts early withdrawal to a limited number of circumstances in order to ensure that, for most New Zealanders, their savings will be available for them in retirement.

Outstanding policy issues

11. The list of congenital conditions to be named in regulations as qualifying for withdrawal is still under development in consultation with members of the medical profession.
12. The early withdrawal of KiwiSaver funds interacts with cash asset and income tests under social assistance regulations. Early withdrawal of KiwiSaver for significant financial hardship, serious illness and first home withdrawal can impact on the amount of social assistance a person is entitled to receive. Work will be undertaken to investigate the interface issues between early withdrawal of KiwiSaver and social assistance regulations and any recommendations for change will be made by

Confidential advice to Government

Impact analysis

13. A Regulatory Impact Assessment was prepared and submitted at the time that Cabinet considered and approved the policy to be implemented through the SOP [DEV-19-MIN-0176 refers].

Compliance

14. The SOP complies with the following:
 - 14.1. the principles of the Treaty of Waitangi;
 - 14.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. However, it should be noted that.
 - 14.2.1. the changes to be implemented through the SOP seek to positively discriminate for people with life-shortening congenital conditions (so that KiwiSaver becomes a viable retirement for them). However, creating a withdrawal category which names certain conditions could have discriminatory effects upon those who have a congenital life-shortening condition that is not named, because the evidence burden for withdrawal may be higher. This approach has been taken to provide certainty for the majority of people, while still providing an avenue for those with other life-shortening conditions to withdraw their KiwiSaver for early retirement;
 - 14.2.2. there are also potential discriminatory effects for those who have a non-congenital life-shortening condition. It is likely that in creating a new category for early withdrawal, it would introduce some form of inconsistency relative to other conditions that might have been included. The existing serious illness withdrawal category can be relied on by people in certain circumstances, although there may be reasons to reconsider the existing serious illness withdrawal provisions in the future;
 - 14.3. the disclosure statement requirements (a draft revised disclosure statement for the Taxation (KiwiSaver, Student Loans, and Remedial Matters Bill has been prepared and is attached to this paper);
 - 14.4. the principles and guidelines set out in the Privacy Act 1993;
 - 14.5. relevant international standards and obligations; and
 - 14.6. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

Relevant Government departments and other public bodies

15. The following agencies and departments have been consulted: the Department of the Prime Minister and Cabinet (the Policy Advisory Group), the Treasury, Inland

Revenue, the Ministry of Social Development, the Financial Markets Authority, the Commission for Financial Capability and the Ministry of Justice on the SOP as well as the policy that informed it.

16. The Office of Disability Issues, within the Ministry of Social Development, is supportive of the intent that those with life-shortening congenital conditions should be able to access their KiwiSaver funds early. However, they are concerned to ensure fairness in how this works and, as far as possible, to reduce anomalies between the treatment of different congenital life-shortening conditions. Officials will continue to work with the Office of Disability Issues on these points.

The government and other parties represented in Parliament

17. Both Government caucus and coalition and support parties will be consulted on this SOP prior to its proposed release.

Relevant private sector organisations and public consultation process

18. The policy in the SOP was informed by a report written by two independent advisers: Dr Claire Matthews of Massey University and Ms Donna Mitchell of IHC. In developing that report, they carried out targeted consultation with people that have health and disability knowledge and expertise and those within the KiwiSaver industry.

Binding on the Crown

19. The SOP makes changes to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill. This Bill amends the KiwiSaver Act 2006, together with a number of other Acts. Some, but not all, of these Acts currently bind the Crown. This SOP does not alter the status quo in this respect – the amendments will follow the position of the principal Acts.

Creating new agencies or amending law relating to existing agencies

20. The SOP will not create a new agency.
21. The SOP will not amend existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision making powers

22. The SOP does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

23. Regulations will be needed to ensure that all aspects of the changes are operating. These will comply with the 28 day rule. They are likely to be of small size and low complexity.

Other instruments

24. The SOP does not contain any provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

25. The SOP does not contain any definitions of Ministers and departments because the KiwiSaver Act already does this.

Commencement of legislation

26. The proposal will come into force when the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill is passed, which is intended to be by March 2020.

Parliamentary stages/publicity

27. The Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill was introduced on 27 June 2019, and is intended to be passed by March 2020. It has been referred to the Finance and Expenditure Committee.
28. Subject to Cabinet approval, I will publicly release a copy of the SOP, and invite the Chair of the Finance and Expenditure Committee to include the SOP as part of its consideration of the Taxation (KiwiSaver, Student Loans, Remedial Matters) Bill. The letter to the Chair of the Finance and Expenditure Committee notes the Committee may wish to call for public submissions on the SOP.

Disability Perspective

29. The SOP seeks to positively influence the wellbeing of people with disabilities in retirement.

Proactive Release

30. I intend to release this paper proactively in within 30 days, subject to withholdings that are consistent with the Official Information Act 1982. The Ministry of Business, Innovation and Employment will publish a copy of this paper on its website.

Recommendations

The Minister for Commerce and Consumer Affairs recommends that the Committee:

1. **note** that the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill holds a category 3 priority on the 2019 Legislation Programme (to be passed if possible by the end of the year);
2. **note** that the Supplementary Order Paper creates a new early withdrawal category in the KiwiSaver Act 2006 for people with life-shortening congenital conditions [DEV-19-MIN-0176 and CAB-19-MIN-0317 refers];

3. **approve** the Supplementary Order Paper for release, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
4. **delegate** the Minister of Commerce and Consumer Affairs and Minister of Revenue authority to make minor amendments of a technical nature to measures recommended in this paper without further reference to Cabinet; and
5. **invite** the Minister of Commerce and Consumer Affairs to provide a copy of the Supplementary Order Paper to the Chair of the Finance and Expenditure Committee, with an invitation that the Supplementary Order Paper form part of their consideration of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

Authorised for lodgement

Hon Kris Faafoi
Minister of Commerce and Consumer Affairs

PROACTIVELY RELEASED



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill Supplementary Order Paper

Portfolio Commerce and Consumer Affairs

On 6 August 2019, the Cabinet Legislation Committee:

- 1 **noted** that the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill (the Bill) holds a category 3 priority on the 2019 Legislation Programme (to be passed if possible by the end of the year);
- 2 **noted** that the Supplementary Order Paper to the Bill creates a new early withdrawal category in the KiwiSaver Act 2006 for people with life-shortening congenital conditions [DEV-19-MIN-0176];
- 3 **approved** the Supplementary Order Paper [IRD 21910-1/1.5] for release, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 4 **authorised** the Minister of Commerce and Consumer Affairs and Minister of Revenue to make minor amendments of a technical nature to measures recommended in the paper under LEG-19-SUB-0113 without further reference to Cabinet;
- 5 **invited** the Minister of Commerce and Consumer Affairs to provide a copy of the Supplementary Order Paper to the Chair of the Finance and Expenditure Committee, with an invitation that the Supplementary Order Paper form part of their consideration of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill.

Vivien Meek
Committee Secretary

Hard-copy distribution (see over)

Present:

Rt Hon Winston Peters
Hon Andrew Little
Hon David Parker
Hon Iain Lees-Galloway (Chair)
Hon Kris Faafoi
Hon Tracey Martin
Hon Julie Ann Genter
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Hard-copy distribution:

Minister of Commerce and Consumer Affairs

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