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KiwiSaver Remedials

Thank you for the opportunity to comment on the draft legislation to address the KiwiSaver remedial issues that have been identified. We have consulted with our members and the comments received to date are as follows:

Section 140E - In section 57(3), “section 44” is replaced by “section 44, but excluding section 44(b) (which relates to allocation to an employer’s chosen KiwiSaver scheme)”, we would welcome clarification when an involuntary transfer applies to a saver and their new employer has a chosen KiwiSaver scheme.

Sections 141 & 143B – We note that contributions holidays and the optional mortgage diversion will be available to members of a complying superannuation fund. We understand that there is no specific legislation providing for the first home deposit subsidy and that it will be administered by Housing New Zealand Corporation. However, we would welcome clarification as to whether the subsidy will be available to complying superannuation fund members.

The addition of (iii) now makes the contributions holiday available to members of complying funds "at any time after 12 months have expired since ...the date that the person is first a member of a complying superannuation fund." Where a complying superannuation fund has both a locked-in section and a non locked-in section, is the relevant date the date the member first joined the locked-in section rather than when he/she joined the fund?

Section 143B (4) (ii) - reference to membership of a KiwiSaver scheme is OK, but in relation to a complying superannuation fund, it probably needs to be clarified that we are looking at membership of the locked-in section.

Section 190B means that the new transfer provisions (no member consent but GA consent) will now override the trust deed if the deed contains a transfer-out clause that requires member consent. However, we would be interested in what the intention is if a trust deed does not currently have a transfer-out clause. Are the new transfer provisions meant to be implied into all trust deeds, or is this a legal issue?

Section 191 (1)

We would appreciate further clarification on the following:

- S35 (1) will allow for the Government Actuary to approve a registered scheme or participation agreement.
- S35 (1) (c) "the registered superannuation scheme has at least 20 members" – will allow employer plans under a Master Trust and not individual stand alone employer plans.

Section 191(1) removes the requirement for a complying superannuation fund to be a DC scheme. However, the requirement for "relevant contributions, returns on relevant contributions and benefits" to be subject to the complying fund rules appears to require a ring-fencing of assets and liabilities for DB schemes. It will probably also require these assets to be looked at separately on a wind-up.

Section 191(2) allows sub-plans that commence after 1 July 2007 to become complying superannuation funds as long as the participation agreement was entered into "due to commercial necessity" and succeeds and replaces a participation agreement entered into on or before 1 July 2007.

Clarification is needed on:

- why does the new agreement have to succeed and replace an existing one? What about a partial termination where a successor fund has to be established for some of the members while the original plan continues?
- what if a stand-alone scheme moves into a master trust? The new agreement will be replacing an existing trust deed, but not an existing participation agreement.
- where does this leave a successor stand-alone scheme? Or, are we not meant to have any more of those?
- S35 (1) (e) - an extension has been made to S35 (1) (e) as a result of "commercial necessity".

A few typos to note:

Section 140B - paragraph (2) (a) needs an "s" after the apostrophe.

Section 140G - the words "the amount" can be deleted as they already appear in the relevant clause.

Other Issues

Partial withdrawals at age 65:

This needs clarification. The benefit does not have to be taken at age 65. However, read literally, when it is taken the full amount has to be taken.

Also, the KiwiSaver rules specifically use the words "up to the value" in relation to financial hardship and ill health withdrawals. They could have used "up to the value" with age 65 withdrawals but did not.

We trust our comments are self-explanatory, however we would be happy to discuss them further with IRD officials if required.

Yours sincerely,

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